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 v.
 GULAB KHATUN.
 BLACKER J.

With regard to the merits, I have been addressed by counsel on behalf of the respondent, but he has not said anything to convince me that the Naib-Tahsildar's order was in any way unjustified.

I accordingly accept the reference by the learned Sessions Judge, set aside the order of the learned Sub-Divisional Magistrate and restore the order of the original Court awarding Rs.50 as compensation against the respondent under section 250 of the Criminal Procedure Code.

A. K. C.

Reference accepted.

REVISIONAL CIVIL.

Before Addison J.

RAHIM-UD-DIN (DECREE-HOLDER) Petitioner,

versus

MURLI DHAR AND OTHERS (JUDGMENT-DEBTORS)
 Respondents.

Civil Revision No. 129 of 1938.

Civil Procedure Code (Act V of 1908), S. 145 — Decree — Execution — Surety — Notice to him before execution — Decree transferred — Jurisdiction of transferee Court to execute decree against surety.

One of the Judgment-Debtors applied to the Small Cause Court, Delhi, to have the *ex parte* decree set aside and K. stood surety for him for the satisfaction of the decree in case his application was unsuccessful. The application failed. The decree was transferred for execution to the Court of a Subordinate Judge, 4th Class, who attached the property of the surety without giving any notice to him as to why the decree should not be executed against him but subsequently the transferee Court upheld his objection that it had no jurisdiction to execute the decree against him.

Held, that the transferee Court had jurisdiction to execute the decree against the surety.

Held further, that there must be notice to the surety before his property can be attached in execution of the decree, attachment of the surety's property without notice being *ultra vires*, and that it was immaterial whether such notice was given by the Court which passed the decree or the Court to which it was sent for execution.

Muhammad Ewaz v. Haji Naneh Mian (1), and Lakshmi-shankar Devshankar v. Raghmal Girdharilal (2), relied upon.

Petition for revision of the order of Mr. A. N. Bhandari, District Judge, Delhi, dated 23rd October, 1937, affirming that of Mr. David Fazal-ud-Din, Subordinate Judge, 4th Class, Delhi, dated 19th February, 1937, dismissing the execution application.

MOHAMMAD AMIN, for Petitioner.

QABUL CHAND MITAL, for Respondents.

ADDISON J.—Rahim-ud-Din obtained an *ex parte* decree against the judgment-debtors in the Small Cause Court, Delhi. One of the judgment-debtors, Maharaj Kishore, applied to have the *ex parte* decree set aside and his application was entertained on condition that security was forthcoming for satisfaction of the decree in case his application should be unsuccessful. The *ex parte* decree was not set aside. The decree-holder realised part of his decree from his judgment-debtors and then applied to the Small Cause Court to transfer the decree to the Court of a Subordinate Judge, 4th Class, for further execution. A transfer certificate was granted by the Judge, Small Cause Court, the balance of the decretal amount outstanding being shown to be Rs.344 and it was also made clear that the execution of the decree was transferred as against the three judgment-debtors and the surety Kidar Nath. After the transfer certain immovable property of the

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surety was attached. The surety at this stage appeared and objected that the Subordinate Judge, 4th Class, had no power to execute the decree against him. The transferee Court held that the decree had not been fully satisfied and that the surety admitted that he was liable under the terms of his bond, but refused to execute the decree against him on the ground that it had no jurisdiction to do so. Against this decision this petition for revision has been preferred to this Court.

Under the terms of section 145 of the Civil Procedure Code a surety is undoubtedly liable and the decree or order may be executed against him, provided that such notice as the court thinks sufficient has been given to the surety. In the present case no notice was given to the surety as to why the decree should not be executed against him. His property was at once attached. It was held by me in *Muhammad Ewaz v. Haji Naneh Mian* (1) that there must be notice to the surety of some kind before his property can be attached in execution of the decree, attachment of the surety's property without notice being *ultra vires*. I also pointed out that it was optional for the executing Court to allow the decree to be executed against the surety or against the original judgment-debtors, this question depending upon various elements. In *Muhammad Ewaz v. Haji Naneh Mian* (1) the executing Court was also the original Court. It was held, however, by a Division Bench in *Lakshmishankar Devshankar v. Raghunath Girdharilal* (2) that it was immaterial whether such notice was given by the Court which passed the decree or the Court to which it was sent for execution. I see no reason to differ from this decision.

(1) 1929 A. I. R. (Lah.) 205.

(2) I. L. R. (1905) 29 Bom. 29.

In the result I accept this petition, set aside the order of the transferee executing Court and hold that the transferee Court has jurisdiction to execute the decree against the surety but that it should in the first instance issue notice to him to show cause why this should not be done. I have directed the parties to appear before the transferee executing Court on the 16th May, 1938. On that date the notice required by law can be handed to the surety and an adjournment allowed him to show cause. He may be able to induce, after receiving the notice, the judgment-debtors to pay the amount or he may be able to point out to the Court that the judgment-debtors have ample unencumbered property which can be easily got at. The question of his liability under the surety bond does not arise as he has admitted that he is liable. With these remarks the record will be sent back to the Subordinate Judge, 4th Class, Delhi, who is executing the decree. The parties will bear their own costs here.

A. N. K.

Petition accepted.

Case remanded.

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