

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

BHANABHAI (ORIGINAL PLAINTIFF), APPELLANT, v. CHOTABHAI
(ORIGINAL DEFENDANT), RESPONDENT.*

1897.
September 21.

Civil Procedure Code (Act XIV of 1882), Sec. 337A—Lunatic—Arrest of a lunatic in execution of a decree—Court's power to order the arrest of a lunatic discretionary—Lunacy a good ground for disallowing application for his arrest.

Under the Code of Civil Procedure (Act XIV of 1882), a Court is not bound to order the arrest of a lunatic in execution of a decree passed against him. The power to order his arrest is discretionary.

The lunacy of a judgment-debtor is good cause within the meaning of section 337 A of the Code for disallowing an application for his arrest.

APPEAL from the order of Ráo Bahádur V. V. Paranjpe, First Class Subordinate Judge of Surat.

On the 9th April, 1895, plaintiff obtained an *ex parte* decree against the defendant on the Original Side of the High Court.

The decree was transferred for execution to the Court of the First Class Subordinate Judge of Surat.

The decree-holder applied for the execution of the decree by the arrest and imprisonment of the judgment-debtor.

The Court issued a notice under section 245 B of the Code of Civil Procedure (Act XIV of 1882), requiring the judgment-debtor to show cause why he should not be committed to jail in execution of the decree.

Thereupon the judgment-debtor's wife appeared in Court, and stated that her husband had been adjudged a lunatic under Act XXXV of 1858 by the Joint Judge of Ahmedabad, and was, therefore, unable to pay the decretal amount.

The Subordinate Judge dismissed the application, holding that as the judgment-debtor was a lunatic, the application for his arrest and imprisonment could not be granted.

Against this order of dismissal the decree-holder appealed to the High Court.

* Appeal, No. 10 of 1897.

1897.

BHANABHAI
v.
CHOTABHAI.*Shivram V. Bhandarkar* and *N. G. Chandavarkar*, for appellant.*Daji Abaji Khare*, for respondent.

PARSONS, J.:—The Subordinate Judge was right in saying that the darkhast in the form in which it was presented to him, viz., against the judgment-debtor personally, could not be proceeded with, because the judgment-debtor had been declared a lunatic under the provisions of Act XXXV of 1858, and his wife and father had been appointed managers of his estate and guardians of his person by the District Judge of Ahmedabad. Under the provisions, however, of section 443 of the Civil Procedure Code, which are applied to the case of lunatics by section 463, it was the duty of the Court to have appointed a guardian for the suit for the lunatic. This we have done, and we have now to determine the question whether, under the Civil Procedure Code, a Court is bound to order the arrest of a lunatic in execution of a decree passed against him. We think that it is not. There is no provision of the Code which expressly exempts lunatics from arrest as there is in the case of women (245A), but it is clear that the power to order an arrest at all is discretionary. Section 245 B allows the Court to issue a notice calling on the judgment-debtor to appear to show cause why he should not be committed to jail in execution of the decree. Section 337 A provides that on such appearance if it appears to the Court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree, the Court may make an order disallowing the application for his arrest and imprisonment. In the present case such a notice was issued, and the wife of the judgment-debtor appeared and showed the cause of her husband's lunacy and consequent inability to pay the amount of the decree, and the Subordinate Judge accepted this cause and rejected the darkhast. We see no reason to interfere with this exercise by the Subordinate Judge of his discretionary powers. There ought never to have been a decree passed against the judgment-debtor personally. Had the Judge of the High Court on its Original Side been aware that the defendant had been declared a lunatic in March, 1895, he would not, in April, 1895, have passed an *ex parte* decree against the

defendant personally. It was by concealment of this fact that the decree-holder obtained the decree, and we are not disposed to assist him in the execution thereof. If there is any property of the lunatic in the hands of his managers and guardians, he can proceed against that, but we think that the lunacy of the judgment-debtor is good cause within the meaning of the Code for disallowing an application for his arrest. Authorities have been cited to us showing that, under the old English law, a lunatic could be arrested. These are to be found collected in Phillips on Lunatics, page 37, but we do not think that they apply to this case which has to be decided under the provisions of the Code of Civil Procedure. We dismiss the appeal with costs.

1897.

BHANABHAI
v.
CHOTABHAI.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

SHET KAVASJI MANCHERJI (ORIGINAL DEFENDANT), APPELLANT, v.
DINSHAJI MANCHERJI (ORIGINAL PLAINTIFF), RESPONDENT.*

1897.

October 4.

Jurisdiction—Appeal—Administration suit—Suit filed in Second Class Subordinate Judge's Court—Decree in such a suit—Appeal from such decree to District Court—Practice—Procedure—Bombay Civil Courts Act (XIV of 1869).

The plaintiff filed an administration suit in the Court of a Subordinate Judge of the Second Class, valuing the relief claimed at Rs. 130. The Subordinate Judge found that the property in suit was worth over a lakh of rupees, that the liabilities came to Rs. 5,729, and that the defendant was indebted to the estate in the sum of Rs. 15,199. He drew up a preliminary decree, directing (*inter alia*) that the defendant should pay this amount into Court within two weeks. Against this order the defendant appealed to the District Court. The District Judge returned the appeal for presentation to the High Court, on the ground that the subject-matter exceeded Rs. 5,000.

Held, reversing the order of the District Judge, that the appeal lay to the District Court.

APPEAL from the decision of T. D. Fry, Acting District Judge of Ahmedabad.

The plaintiff filed this suit for the administration of the estate of his deceased father Mancherji and for the recovery of his share of the property.

* Appeal, No. 31 of 1897 from order.