

1874
 IN THE
 MATTER OF
 THE PETITION
 OF SUMAT
 DAS,

relating to the decree or the execution thereof, which such Court of first instance or Court of Appeal might have made, if execution had been issued by such Court of first instance, or if application for execution had been made to such Court."

We by no means desire to say anything which shall conflict with a decision of a Division Bench of this Court holding that the Court to which a decree is transmitted for execution may, under the provision of the Civil Procedure Code, entertain even a question of limitation. But it must, we apprehend, be a question of limitation arising upon facts which come legitimately in the proceedings before the Munsif in the course of his carrying out the execution of the decree, and not a matter of limitation which could have been heard and determined by the Court from which the decree is transmitted for the purpose of execution. In this view of the case we think that the decision of the Judge was *ultra vires*, and must be aside. The rule therefore will be made absolute with costs (1).

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 March 16.

Before Mr. Justice Pheer and Mr. Justice Morris.

LUTFULLAH (JUDGMENT-DEBTOR) v. KIRAT CHAND (DECREE-HOLDER).*

Execution—Transfer of Decree—Jurisdiction—Limitation Act VIII of 1859, s. 284.

The transfer of a decree from one Court to another under s. 284 and the following sections of the Civil Procedure Code does not give the latter Court a jurisdiction to entertain and determine any question with regard to limitation or otherwise which arose between the parties antecedent to the date of transfer (2).

THE facts in this case were as follows:—One Aghori Biswas recovered a decree in the Court of the Munsif of Purneah against the judgment-debtor on the 19th of February 1864. In February 1871, one Hirarat Ali purchased this decree from the original decree-holder, and made an application to the Purneah Court for substitution of his name in place of Aghori Biswas, and for realization of the decree, in which he did not succeed. Hirart Ali subsequently sold the decree to Kirat Chand, the respondent. Kirat Chand obtained an order from the Munsif of Purneah to transfer the decree to the Court of the Munsif of Kishengunge for execution. On the case coming on

*Miscellaneous Special Appeal, No. 393 of 1873, against an order of the Officiating Judge of Zilla Purneah, dated the 8th September 1873, reversing an order of the Munsif of Kishengunge, dated the 8th July 1873.

(1) See next case.

(2) See *Leake v. Daniel*, B. L. R., Sup. Vol., 376.

for execution in the latter Court, the judgment-debtor objected that it was ¹⁸⁷⁴ barred. The Munsif sustained the objection and threw out the decree-holder's application for execution. On appeal preferred by Kirat Chand- the present decree-holder, the Judge overruled the objection of the judgment-debtor who appealed specially to the High Court.

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Munshees *Mahomed Yusuff* and *Abdool Bari* for the appellant.

Baboo *Deorga Mohun Doss* for the respondent.

The judgment of the Court was delivered by

PHEAR, J.— We do not think that in this case we ought, on special appeal to interfere with the decision of the lower appellate Court, because it appears to us that it is in effect right. At the same time we feel that we ought to say that in our judgment both the lower appellate Court and the Court of the Munsif of Kishengunge were wrong in entertaining and determining the objection which the judgment-debtor made to the execution of the transferred decree.

(His Lordship, after stating the facts as above, continued) :—We have lately had occasion to express our views with regard to the scope of s. 284 and the following sections of the Civil Procedure Code (1), and to show that in our judgment the Court to which a decree is under those sections transferred for the purpose of being executed, does not thereby acquire a jurisdiction to entertain and determine a question with regard to limitation or otherwise which arose between the parties antecedent to the date of transfer.

By s. 287 merely, "the copy of any decree, or of any order for execution when filed in the Court to which it shall have been transferred for the purpose of being executed as aforesaid, shall, for such purpose, have the same effect as a decree or order for execution made by such Court." And under the terms of these sections, nothing more than a copy of the decree or order for execution, together with a certificate of how much is due from the judgment-debtor to the judgment-creditor, ought to go to the Court which is called upon to execute the decree in this manner. And if nothing more than these materials were sent it is obvious that the Court would have no means of entertaining and determining the question which rests upon the proceedings which had occurred previously to the transfer of the decree. And s. 290 provides for any inconvenience or injustice which might, as a consequence of this, accrue to the judgment-debtor, by enacting that "the Court to which such application is made may, upon good and sufficient cause being shown, stay the execution of the decree for a reasonable time to enable the defendant to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the

(1) *In re Sumal Das*, ante, App., p. 27.

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execution, or for any other order relating to the decree or the execution there of, which such Court of first instance or Court of appeal might have made, if execution had been issued by such Court of first instance, or if application for execution had been made to such Court.

For instance as has been in the argument before us represented to have occurred in the present case, it might happen that the judgment-creditor or his representative had obtained a transfer of the decree for execution to a foreign Court, without causing any notice whatever of his claim, or of his intention of asking for the transfer, to be given to the judgment-debtor: and it might further happen that the judgment-debtor would, for the first time, after the transfer of the decree, discover that proceedings in execution were being taken against him which had been long ago barred by process of time or for any other sufficient cause. S. 290 in such a case provides the very remedy which the judgment-debtor wants, by enabling the Court to which the decree has been transferred, on his representation and on the facts being made apparent by him, to stay the execution until he can go to the original Court for his full remedy.

If there is any foundation for the argument which has been perferred to us by the judgment-debtor, he ought to have asked the Munsif of Kishengunge to stay proceedings in order that he might go to the Munsif of Purneah for his remedy. But if he did not take a step of this kind, or make an objection to this effect, then the Munsif of Kishengunge had no alternative but to execute the copy decree which came to him under the authority of the Munsif of Purneah, and the order for execution, if there was any, which the Purneah Munsif sent to him. He ought not, upon the footing of the copy decree, to have proceeded to enquire into the state of the facts between the parties antecedent to the date of transfer. And the same would be the case with the Judge. But in fact the Judge has passed a judgment which amounts to refusing to go behind that date. He has directed that execution should issue. For this reason we think that we ought not to interfere.

The appeal must be dismissed with costs.