

APPELLATE CIVIL.

Before the Hon'ble Mr. Harington, Acting Chief Justice, and Mr. Justice Mookerjee.

GOLAP KUMARI

v.

GANESH CHANDRA MITRA.*

1909

April 6.

Privy Council Appeal—Security for Costs of Respondents—Government Promissory Notes at their nominal value, whether acceptable—High Court Rules (Appellate Side), Part II, Chapter IV, Rule XX—Practice.

A deposit of Government Securities amounting to Rs. 4,000 at their nominal value, comes within the express words of Rule XX, Part II Chapter, IV of the High Court Rules, requiring the appellant to deposit Government Securities "to the extent of Rs. 4,000" for costs of the respondent in an appeal to His Majesty in Council.

APPLICATION on behalf of Bibi Golap Kumari Saheba, the appellant before His Majesty in Council.

Leave having been granted to the petitioner to prefer an appeal to His Majesty in Council, under the High Court Rules (Appellate Side), Part II, Chap. IV, Rule XX, she was required to deposit Government Securities to the extent of Rs. 4,000 for the costs of the respondent. Accordingly the petitioner tendered at the office four pieces of 3½ per cent. Government Promissory Notes of the nominal value of Rs. 1,000 each, but the office refused to accept the said notes as sufficient, and demanded an additional sum of Rs. 300 to make up for the discount at which such notes were then selling in the market.

The petitioner prayed that the said Promissory Notes might be accepted at their nominal value as sufficient security for costs of the respondent.

Babu Braja Lal Chuckerbutty, for the petitioner.

Babu Nalini Ranjan Chatterjee, for the opposite party.

* Application in the matter of the Privy Council Appeal No. 46 of 1908.

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HARINGTON A.C.J. AND MOOKERJEE J. We think that the deposit of Government Securities amounting to Rs. 4,000 comes within the express words of the rule requiring the deposit of Government Securities "to the extent of Rs. 4,000." The security must be accepted.

Application allowed.

S. C. G.

APPELLATE CIVIL.

Before Mr. Justice Chitty and Mr. Justice Vincent.

1909
 April 14.

PURNA CHANDRA MANDAL

v.

ANUKUL BISWAS.*

Sale in execution—Application to set aside sale—Limitation—Fraud—Onus of proof—What to prove exactly—Limitation Act (XV of 1877), s. 18.

When a suit or application is, on the face of it, barred by limitation, it is for the plaintiff or applicant to satisfy the Court of circumstances which would prevent the statute from having its ordinary effect.

In the case of an application for setting aside a sale in execution, where the petitioner relied upon the provisions of s. 18 of the Limitation Act, 1877:—

Held, that it was incumbent upon him to show that not only had he no knowledge of the sale until some date within three years of his application, but that he was kept from that knowledge in the manner and by the act of the person specified in that section.

SECOND APPEAL by Purna Chandra Mandal, the auction-purchaser.

This appeal arose out of an application of a judgment-debtor under sections 244 and 311 of the Civil Procedure Code for setting aside a sale held in execution on grounds of non-publication of writ of attachment or the sale proclamation on the property sold, fraud and inadequacy of price. Of the

* Appeal from order, No. 383 of 1908, against an order of Purna Chandra De, Subordinate Judge of Khulna, dated May 30, 1908, reversing an order of Ashutosh Goswami, Munsif of Satkhira, dated Aug. 31, 1907.