

APPELLATE CIVIL.

*Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice and
Mr. Justice Chapman.*

1912

*April 19.***BASANTI LAL***v.***CHHEDO SINGH.***

*Forfeiture—Insolvency—Security for production of Insolvent-debtor—
Failure of insolvency application—Forfeiture of security-money—Civil
Procedure Code (Act V of 1908), s. 145.*

The decree-holder is entitled to the money that has been deposited by the surety as security for the benefit of the decree-holder whose rights were interfered with, to enable the judgment-debtor to make an application in insolvency with a view to his protection from arrest, on the money being forfeited by the Court for failure to produce the debtor when required.

The Court has no power to declare a forfeiture in favour of the Government.

APPEAL by the decree-holders, Basanti Lal and another, against the surety, Chhedo Singh, the judgment-debtor, Gendo Singh and the Secretary of State for India in Council.

One Chhedo Singh stood surety for the production of Chhedo Halwai, who on filing an application for insolvency was ordered to be released from civil jail. Chhedo failed to produce Chhedo on a date on which he had been directed to produce Chhedo and the security money, Rs. 500, was forfeited. The decree-holder and creditor, Basanti Lal, prayed that the amount might be declared to be forfeited to him and he might be ordered to get the money. He based his claim on the provisions of section 145 of the Code of Civil Procedure, clause (c), first part. The District Judge

* Appeal from Order No. 384 of 1910, against the order of S. C. Mullick, District Judge of Gaya, dated June 14, 1910.

held the section quoted above inapplicable to the case. He remarked that "Chhedo Singh did not stand surety for the payment of any money, but the production of the judgment-debtor Chhedo Halwai whenever wanted by the Court. As Chhedo failed to produce the man, the money was to be forfeited to Government and not to the creditor. The application of Basanti Lal was therefore rejected and the sum of Rs. 500 was ordered to be forfeited to Government."

The decree-holders appealed against the aforesaid order.

Babu Kshetramohan Sen, for the appellants, contended that the Court below had no jurisdiction to order the money to be forfeited to Government. The creditors at whose instance the debtor was imprisoned were entitled to get the money, as his rights were infringed.

Babu Shorashicharan Mitra (on behalf of *Babu Ramcharan Mitra*, the Senior Government Pleader), for the Secretary of State, left the matter entirely in the hands of the Court.

Babu Harihar Prasad Singh, for the surety, contended that the money should not have been forfeited at all.

[JENKINS C.J. You have not appealed against that order.]

JENKINS C.J. This I think is a very clear case; money was deposited by the surety as security for the benefit of the decree-holder whose rights were interfered with, to enable the judgment-debtor to make an application in insolvency with a view to his protection from arrest. The insolvency application failed, and so it became incumbent upon the surety to produce the debtor before the Court. This he failed to do, and, in the circumstances the officiating District

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Judge has determined that the sum of Rs. 500 deposited by the surety is forfeited to the Government. The Secretary of State has been represented before us, and the learned pleader tells us—I think most properly—that he leaves the matter in the hands of the Court. It is to my mind obvious that there was no power in the Court to declare a forfeiture in favour of the Government. The surety was anxious to suggest that his suretyship did not extend beyond the pendency of the insolvency proceedings. But he has not appealed from the order adjudicating upon this point adversely to him, so that we could not give effect to it, even if we thought there was merit in the contention. We must set aside the order under appeal and direct that the sum of Rs. 500 be paid to the decree-holder. We make no order as to costs.

CHAPMAN J. I agree.

S. M.

Appeal allowed.

CRIMINAL REVISION.

Before Mr. Justice Holmwood and Mr. Justice Imam

BHAGABAT SHAHA

v.

SADIQUE OSTAGAR.*

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Criminal Procedure Code (V of 1898), s. 522—Restoration of immoveable property—Appellate Court, power of—Jurisdiction.

An order under s. 522 of the Criminal Procedure Code can only be made by the Court which convicts, of an offence attended with criminal force. An Appellate Court has no power to make such an order restoring possession of immoveable property.

* Criminal Revision, No. 415 of 1912, against the order of H. M. Cowan, Additional District Magistrate of Dacca, dated Jan. 19, 1912.