

1867.  
Jan. 24.

*Civil Petition.*

D. A. DALVI, a minor, by his mother and  
guardian, NIRA'BA'I.....*Petitioner.*  
LAKSHUMAN HARI PA'TI'L .....*Opponent.*

' *Execution of Decree—Application for—Bonâ fide Proceeding within preceding three years—Non-payment of Battâ—Act XIV. of 1859, Sec. xx.*

A District Judge having held that an application to execute a decree did not prevent the operation of Sec. xx. of Act XIV. of 1859, it having been struck off because the applicant did not pay *battâ*:—the High Court reversed the order, and directed the Judge to determine whether the former application to execute the decree was *bonâ fide*, notwithstanding *battâ* was not paid.

A DECREE was obtained by the applicant in the Court of the Munsif of Dahânu on the 15th of June 1860. Proceedings were taken to enforce it in 1862; and on the 24th of October 1865, a second application was presented, which was rejected by the Munsif, on the ground that it was barred by the law of limitation.

The petitioner then appealed to R. H. Pinhey, District Judge of the Konkan, who, on the 25th of July 1866, recorded the following order:—

“I reject this appeal. It is admitted that the applicant's *darkhâst* is time-expired, and barred by Sec. xx. of Act XIV. of 1859, unless the *darkhâst* of the appellant can operate to save the limitation. But I am of opinion that the appellant's former *darkhâst* cannot be held to have any such force. It was struck off, because appellant did not pay *battâ*; and, therefore, the Court cannot call it a *bonâ fide* proceeding taken to enforce a judgment.

*Vishvanâth Nârâyan Mandlik*, for the petitioner, on the 3rd of December 1866, obtained a *Rule Nisi*: calling upon the opposite party to show cause why the order of the District Judge should not be reversed.

The case was resumed this day before COUCH, C. J., and NEWTON, J.

PER CURIAM :—We reverse the order of the District Judge, and remand the case for him to determine whether the former application to execute the decree was *boná fide*, notwithstanding *battá* was not paid; and we refer him to the judgment of Sir B. Peacock, C. J., in *Goordodass Anchlolee v. Modhoo Koondoo*. (a)

1867.  
D. A. DALVI  
v.  
LAKSHMAN  
HARI PATIL.

—♦—  
*Civil Petition.*

Feb. 28.

NA'RA'YANBHA'I LA'LBHA'I.....Appellant.  
GANGA'KRISHNA BA'LRISHNA and another. Opponents.

*Execution of Decree—Joint Liability—Appeal—Review—Power of High Court under Reg. II. of 1827, Sec. v., Cl. 2—Act VIII. of 1859, Secs. 378 to 380—Act XXIII. of 1861, Secs. 11 and 38.*

The High Court should not, in the exercise of its extraordinary powers, give an appeal in a case where the law provides none.

Nor should the Court, in the exercise of those powers, interfere when such interference would have the effect of working an injustice.

A District Judge has power to review an order passed by him on appeal, in an application in the execution of a decree.

NARA'YANBHA'I sued Gangákrishna and Ratankrishna on a bond in the Court of the Principal Šadr Amín at Súrat, and obtained a decree against them in 1859 for the sum of Rs. 26,221-6-8.

On appeal by Gangákrishna, H. Hebbert, Judge of Súrat, decided, on the 19th of February 1859, that it was not competent to the plaintiff, Náráyaṇbhái, to sue upon the bond, (looking to the value of the stamp) for a greater amount than Rs. 20,000; concluding his judgment thus :—“ Under this view the Court amends the decree of the Principal Šadr Amín, so far as it has been appealed against, and directs that Gangákrishna pay to Náráyaṇbhái Rs. 20,000, or make over the half-village of Mothá Varchá to him till he has realised that amount; the rest of Náráyaṇbhái's claim is rejected.”

Náráyaṇbhái subsequently applied to the original court to execute both decrees, one against Gangákrishna for