

JUDGMENT OF THE DIVISION BENCH.

The following is the judgment of the Court :—

WESTROPP, C. J.—The Full Bench has found on the questions referred to it by this Division Court—

1. That an appeal does lie from an order in execution of a decree made under s. 53 of Act XX of 1866.

2. That an application for execution of such a decree falls within art. 166, and not art. 167, of sch. II of Act IX of 1871.

Mr. Shamray Vithal (for the appellant) now, on the cases coming before this Division Bench for final disposal, has drawn our attention to the case of *Mangal Pershad Dichit v. Grija Kant Lahiri Chowdhry* (1) where Her Majesty's Privy Council have held that Act XIV of 1859, and not Act IX of 1871, is applicable to applications in suits instituted before the 1st of April 1873, and to the fact that the suit, in which the order is under appeal in the present case, was instituted in 1872. He observes that, under s. 22 of Act XIV of 1859, his client's application for execution, made on the 11th September 1878, is as fully barred as by art. 166 of Act IX of 1871, no proceeding having been taken to enforce the summary decision or order of the 13th July 1872 within one year next preceding the present application for its execution. This Court, concurring in that view, affirms, with costs, the orders of the Court below whereby the application of the plaintiff for execution was dismissed.

5 B. 680.

[680] APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice, and
Mr. Justice Pinhey.

BALAJI RANCHODDAS AS MANAGER OF THE ESTATE OF MOHANLAL
DALSUKHRAM, DECEASED (*Applicant*). * [30th August, 1881.]

Decree—Execution—Power of the District Court to withdraw applications for execution—Mofussil Courts of Small Causes—Jurisdiction—Civil Procedure Code (Act X of 1877), ss. 25 and 647, sch. II.

Sections 25 and 647 of the Civil Procedure Code, Act X of 1877, are both applicable to Courts of Small Causes in the Mofussil, and the former section is extended by the latter to execution proceedings in such Courts.

Under s. 25 of the Civil Procedure Code, Act X of 1877, the District Judge has power to withdraw an application for execution of a decree from a Subordinate Court (such as a Mofussil Court of Small Causes) and to dispose of it himself, or to transfer it to another Subordinate Court competent to deal with it.

The distinction made for the purposes of limitation between suits, appeals, and applications by the Limitation Acts has no bearing upon a question of jurisdiction.

[N.F., 15 C. 177; F., 22 B. 778 (782); R., 16 C. 457 (463); 13 Ind. Cas. 542 (543); Cons., 18 B. 61 (64).]

THIS case was referred for the opinion of the High Court by S. H. Phillpotts, District Judge of Ahmedabad, under s. 617 of the Civil Procedure Code, Act X of 1877.

The applicant Balaji Ranchoddas, as manager of the estate of Mohanlal Dalsukhram, deceased, presented an application to the District

* Civil Reference, No. 23 of 1881.

(1) 8 I. A. 123.

1881
AUG. 30.
APPEL-
LATE
CIVIL.
5 B. 680.

Judge of Ahmedabad, stating that there were several decrees against Mohanlal Dalsukhram passed by the Subordinate Court and the Small Cause Court of Ahmedabad; that on the applications of the decree-holders for execution the said Courts ordered the amounts of their decrees to be recovered from the estate of Mohanlal, and issued attachment against his property; that the applicant, finding that Mohanlal's property was not sufficient to pay off his debts, took proceedings under ss. 213 and 344 of the Civil Procedure Code (Act X of 1877) to establish the insolvency of his (Mohanlal's) estate and the insufficiency of his property to pay off his debts. The applicant, therefore, prayed that the District Judge, under s. 25 of Act X of 1877, might withdraw the execution proceedings pending in the Small Cause Court and transfer them to the Subordinate Court for disposal, submitting that such a course would be convenient to all the parties concerned. The District Judge, accordingly, called for [681] the papers of the execution proceedings pending in the Small Cause Court, but the Judge of the latter Court declined to send them, on the ground that the District Judge had no jurisdiction in the matter. The Judge of the Small Cause Court was of opinion that s. 25 of Act X of 1877 applied only to suits and not to applications for the execution of decrees, and referred to several decisions of the Allahabad and other High Courts regarding the distinction made by the Limitation Acts between suits, appeals, and applications. The District Judge, being of opinion that he had jurisdiction, submitted the case for the decision of the High Court.

There was no appearance of parties in the High Court.

The following is the judgment of the Court:—

JUDGMENT.

WESTROPP, C.J.—Sections 25 and 647 of the Civil Procedure Code (Act X of 1877) are both applicable to Courts of Small Causes in the Mofussil,—see sch. II of Act X of 1877 and the concluding clause in s. 25. Questions arising in the execution of decrees are frequently quite as important as the questions in issue in suits and appeals, and this Court sees no reason for holding that s. 25 is not extended by s. 647 to execution proceedings in Courts of Small Causes. The distinction taken for the purposes of limitation between suits, appeals, and applications by the Limitation Acts relied on by the Judge of Small Cause Court does not appear to this Court to have any bearing upon the present question, which is not one of limitation. Section 647 has been held to extend s. 575 (which on the face of it applies to appeals only) to applications to the High Court in its extraordinary jurisdiction: *Apaji Bhivray v. Shivlal Khubchand*(1).

This Court's reply to the question of the District Judge, whether he has power, under s. 25 of Act X of 1877, to withdraw an application for execution of a decree from a Subordinate Court, and to dispose of that application himself, or to transfer it to another Subordinate Court competent to deal with the same, must be in the affirmative. The very case in which the question has arisen, shows the utility of such a power.

(1) 3 B. 204.