

1887

SEP. 22.

APPELLATE
CIVIL.

12 B. 228.

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APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice
Nanabai Haridas.

In re THE PETITION OF RADHI.* [22nd September, 1887.]

Married woman—Execution of decree—Liability of married woman—Arrest—Stridhan—Application for review of an order contrary to law—Waiver.

R., as surety for her husband, joined with him in executing a bond for Rs. 90. In a suit brought upon the bond, a decree was passed against both. R. was arrested in execution of the decree, and brought before the Court. She was then asked if she desired to apply to be declared an insolvent under the insolvency sections of the Civil Procedure Code (Act XIV of 1882), but not doing so she was committed to jail. Subsequently, however, she applied to be declared an insolvent, but her application was rejected. She then claimed to be released, on the ground of her coverture. The Judge rejected her application as being too late. On reference to the High Court,

Held, that her application for release was virtually an application for review of the order for her imprisonment, on the ground that it was contrary to law; that her mere omission to take the objection at the time of her arrest, could not be regarded as a waiver of her right of exemption from arrest; and, having regard to the nature of the right claimed, it was one which the Court could not properly decline to consider on review, however late the application might have been.

Held, also, that although the decree was absolute in its terms, and contained no express limitation of R.'s liability, nevertheless the law being clear that she could only be liable to the extent of her *stridhan*, it was to be assumed that the direction to pay, contained in the decree, had reference to that fund only.

[229] THIS was a reference by Rav Bahadur K. C. Bedarkar, Acting Judge of the Court of Small Causes at Poona, under s. 617 of the Civil Procedure Code (Act XIV of 1882).

The applicant Radhi and her husband were sued for Rs. 90 by a creditor of the husband on a bond dated the 15th September, 1884, which Radhi executed as surety for her husband. The husband appeared, and admitted the claim. Radhi did not appear. A decree was passed against them both.

In execution of this decree Radhi was arrested. On being brought before the Court she was asked if she desired to apply to be declared an insolvent, under the provisions of the Civil Procedure Code. She did not then apply, and she was sent to jail. She subsequently, however, applied to be declared an insolvent, and prayed, at the same time, for an *interim* order of release. The latter prayer was refused on the 25th May, 1887, and her application was refused on the 3rd June, 1887.

On the 9th June, 1887, she applied to be released, on the ground of her coverture. The Judge of the Small Cause Court rejected her application, holding that it was too late. He referred the case to the High Court.

Vishnu Krishna Bhalvadekar, for the applicant.—The Small Cause Court Judge was wrong in rejecting the application. The applicant was entitled to plead her coverture, and her omission to do so when she was arrested does not affect her right. She has no *stridhan*. If she had any, she would be liable only to that extent. See *Govindji Khimji v. Lakmidas Nathubhoj* (1); *Narotam v. Nanka* (2).

Ganpat Sadashiv Rav, for the creditor.—The applicant had an opportunity to set up the defence of coverture, but she waived it, and she

(1) 4 B. 318.

(2) 6 B. 473.

cannot claim it now. The decree was against her and her husband in general terms, and it should be executed as it is. See *Shaik Budan v. Ramchandra* (1). The execution proceedings came to an end when she was lodged in jail, and now the defence cannot be put forward.

JUDGMENT.

[230] SARGENT, C.J.—The application by Radhi to be released from prison was virtually an application for review of the order for her imprisonment, on the ground that it was contrary to law. Two objections were taken to this application by the judgment-creditor. First, that Radhi should have taken the objection when she was arrested and brought before the Judge, and that not having done so, it is now too late; but her mere omission to do so cannot, as it was contended by the opponent, be regarded as a waiver of her right of exemption from arrest; and, having regard to the nature of the right claimed, it was one which the Court could not properly decline to consider on review, however late the application might have been. Secondly, it was said that the decree was absolute in its terms, and contained no express limitation of her liability; and as she did not apply for a review, no other course was open to the Small Cause Court Judge in executing it but to enforce it in the ordinary manner. The decree had been made in a suit on a bond in which she had joined with her husband as surety, and simply directed her to pay the debt. As the law is clear that in such a case Radhi would only be liable to the extent of her *stridhan*—*Govindji Khimji v. Lakmidas Nathubhoy* (2) and *Narotam v. Nanka* (3)—it must be assumed that the direction to pay had reference to that fund only. We think, therefore, that the Small Cause Court Judge was wrong in refusing the application.

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APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Nanabhai Haridas.*

KASTURCHAND GUJAR (*Plaintiff*) v. PARSHA MAHAR (*Defendant*).*
[22nd September, 1887.]

Jurisdiction—Decree—Execution—British Courts in India, power of, to send their decrees for execution to Courts not in British India—Practice.

The Courts of British India have no authority to send their decrees for execution to Courts not in British India.

[F., 29 C. 400=6 C.W.N. 573; R., 34 C. 576=6 C.L.J. 30=11 C.W.N. 622.]

THIS was a reference by Rav Sahab Venkatrav R. Inamdar, Subordinate Judge of Bijapur, under s. 617 of the Civil Procedure Code (Act XIV of 1882).

[231] The question referred by the Subordinate Judge for the High Court's decision was:—

Has a Court in British India jurisdiction to transfer its decree to a foreign Court, or to a Court in a Native State, for execution by the latter?
The Subordinate Judge's opinion on the point was in the negative.

* Civil Reference, No. 37 of 1887.

(1) 11 B. 537.

(2) 4 B. 318.

(3) 6 B. 473.