

# CALCUTTA HIGH COURT

Nepal Chandra Roy Chowdhury

Vs

Niroda Sundari Ghose

(Cecil Brett and Carnduff, JJ.)

05.02.1912

## JUDGMENT

### **Cecil Brett and Carnduff, JJ.**

1. This Rule was issued to show cause why an order passed by the Subordinate Judge setting aside an ex parte decree should not be reversed on the ground that the application on which it was made was barred by limitation. The present applicant brought a suit to recover the amount due on an instalment bond, and obtained an ex parte decree on the 28th March 1906. Execution was applied for on the 19th February 1907, and the property of the judgment-debtor was sold and purchased by the decree-holder on the 27th May 1907. The present application by the opposite party to set aside the ex parte decree was made on the 27th June 1911, that is to say, more than four years after the conclusion of the previous proceedings. Before the lower Court it was contended on behalf of the present applicant that the application was barred on the ground that the application to set aside the ex parte decree obtained by the applicant could only have been made when the provisions of the Limitation Act of 1877 were in force, and that, as under Article 164 of the Second Schedule of that Act, the application ought to have been made within thirty days from the date of executing the process for enforcing the judgment, the application was barred by limitation long before it was made on the 27th June 1911, and the right of the opposite party to make the application was lost long before the passing of Act IX of 1908, the present Limitation Act. The learned Subordinate Judge was, however, of opinion that the limitation provided in Article 164 of the First Schedule of Act IX of 1908 was applicable, and that the application was in time, as it was within thirty days of the time when the applicant had knowledge of the decree. The Rule was issued to set aside the order of the Subordinate Judge, and no one has appeared to contest it. In our opinion, the view taken by the learned Subordinate Judge cannot be accepted. The right of the opposite party to make the application was lost under the provisions of Article 164, Schedule II of the Limitation Act of 1877, long before Act IX of 1908 was passed, and Section 6 of the General Clauses Act distinctly provides that the repeal of the old Act would not have the effect of reviving any right not in force or existing at the time the repeal was made. We think, therefore, that on this ground the Rule must be made absolute, and the order of the Subordinate Judge set aside. The applicant is entitled to his costs of this hearing.