SUPREME COURT OF INDIA

Bimal Kumar

Vs.

Shakuntala Debi

C.A.Nos.2524 of 2012

(Dalveer Bhandari and Dipak Misra JJ.)

27.02.2012

JUDGMENT

DIPAK MISRA, J.

1. Leave granted.

2. In this appeal, the assail is to the order dated 19.9.2009 passed by the learned single Judge of Jharkhand High Court at Ranchi in C.R. No. 53 of 2007 by which he has dislodged the order dated 10.7.2006 passed by the learned Sub-Judge (I), Ranchi, whereby he had dismissed the Execution Case No. 8 of 2004 filed by the respondents as being barred by limitation.

3. Filtering the unnecessary details, the facts which are requisite to be frescoed for the purpose of disposal of the present appeal are that one Kanilal Kasera filed a Partition Suit No. 131 of 1962 against his father, Nanak Kasera, and other brothers. The suit was compromised leaving aside Kishori Lal Kasera, the father of the present appellants, and a joint petition of compromise between the plaintiff and the defendant Nos. 1, 2, 4 to 9 and 11 to 18 was filed. It is worth noting that Kishori Lal Kasera had appeared in the suit and filed the written statement but thereafter chose not to contest.

4. The petition of compromise contained that the defendant Nos. 1, 9, 11 and 12 had relinquished and given up all their interests in item Nos. 3 and 8 of the suit schedule of property, being Holding No. 285 of new holding No. 509A of Ward No. II situated on portion of Municipal Survey Plot No. 621 and Holding No. 431 of Ward No. 1 situated on Municipal Survey Plot No. 902, and further declared

that they had no claim or concern with any other properties involved in the suit; that the business, namely, SEVEN BROTHERS STEEL FURNITURE WORKS, item 5 of -the schedule, belonged exclusively to the defendant No. 2, Moti Lal Kasera, and neither the plaintiff nor any of the other defendants either ever had or shall ever have any claim or interest; and that one half of the house and premises comprised in Municipal Holding No. 431, Ward No. 1, item 3 of the schedule, and half of Holding No. 509 A of Ward II, situated on portion of M.S. Plot No. 631, item 2 of the schedule, shall belong to the defendant No. 2 with all the liabilities and outstanding dues and the plaintiff and the other defendants shall have no liabilities or interest in the said properties; and that the business carried on under the name of `Chotanagpur Tin Works', item 6A of the schedule, was the sole separate business of the defendant No. 5, Prakash Kumar Kasera, and the plaintiff or the other defendants had no claim on the said property.

5. The application further contained that the partition of the house and premises comprised in Holding No. 431 of Ward I, item 3 of the schedule, marked in green colour in the exhibit, shall belong exclusively to the defendant no. 4, Mohan Lal Kasera, and neither the plaintiff nor the other defendants shall have any claim or interest; that the - business of iron shop at Bazaar Tan Ranchi, item 6 (c) of the schedule, was the separate and exclusive business of the defendant No. 6, Surendra Lal Kasera, and none others had any claim or interest and the portion of the building and premises comprised in Municipal Holding No. 431 of Ward No. I, item 3 of the schedule, marked in yellow colour, shall also belong to the defendant No. 6 and no one else had any claim or interest; that the portion of the building and premises comprised in Municipal Holding No. 431 of Ward No. I, item 3 of the schedule, marked in blue colour, and one-half of the shop premises comprised in Holding No. 509 A over portion of M.S. Plot No. 621 being item No. 2 of the schedule to the plaint shall exclusively belong to the plaintiff and he shall have absolute right over the same.

6. That apart, the plaintiff had agreed to pay up all outstanding dues of Bindrilal Agarwalla against the defendant No. 1 and none of the defendants shall be liable for the same.

7. It was also agreed upon that the House situated on Holding 6 Ward II of the Ranchi Municipality being comprised of Khata No. 71 plot No. 72 area 61 decimal and -plot No. 79 area 7= decimal total area measuring 14 decimal, being item No. 4 of the schedule and the house and premises comprised of Holding No. 180 Ward III being survey plot No. 92 area 0.30 Karies and Municipal Survey Plot No. 92 area 0.063 Karies total area 0.093 Karies of Hajamtolio, Ranchi being item No. 5

were separate and exclusive properties of Smt. Rama Devi and shall belong exclusively to the defendant No. 7, Srimati Rama Devi, the widow of Hira Lal Kasera, and no one else shall have any claim or concern in the said property; that the shop premises being holding No. 509 B of Ward II of Ranchi Municipality situated on portion of M.S. Plot No. 621 being item No. 1 of the schedule and the house premises comprised of Holding No. 133(g) of Ward II being item No. 8 and the properties comprised Holding No. 145 A of Ward No. I measuring 6= decimals being plot No. 268 of Khata No. 34 of Village Konka, being item No. 9 of the schedule belonged to the defendant No. 8, Sreemati Munitri Debi, wife of Prakash Lal Kasera, the defendant No. 5, and none had any claim or interest; that the house and the premises situated at Madhukam, Ranchi comprised in Holding No. 318 of - Ward I being item No. 10 of the schedule was the property of the defendant No. 13, Shreemati Deojani Debi, wife of Moti Lal Kasera, the defendant No. 2.

8. It was stipulated that the business and properties mentioned in item Nos. 6(b) and 7 were erroneously included in the suit.

9. Be it noted, in Clause (K) of the petition of compromise, it was clearly stated as follows: -

> k) That the parties are in separate and exclusive possession of the properties respectively belonging to them and have obtained separate and exclusive possession of the properties allotted to their respective shares.

10. The learned trial Judge being satisfied accepted the petition of compromise and passed a compromise decree on 3.4.1964 treating Kishori Lal Kasera ex parte.

11. When the matter stood thus, the legal representatives of Kishori Lal Kasera, the present appellants, initiated a fresh partition suit No. 49 of 1973 on the ground that the earlier decree was obtained by fraud. In the said suit, they claimed 1/11th share of the property for themselves which - was involved in the earlier suit being P.S. No. 131 of 1962. The said suit was dismissed on 27th August, 1994. Being dissatisfied with the said decision, Kishori Lal Kasera preferred Title Appeal No. 109 of 1994 which was dismissed for want of prosecution on 6.1.2004. At this juncture, the respondents herein filed execution case No. 8 of 2004 seeking execution of the decree passed in P.S. No. 131 of 1962. Be it noted, in the meantime, Kishori Lal Kasera had breathed his last and, therefore, the execution was levied against the legal heirs, the appellants herein.

12. An objection was raised by the appellants that the execution proceeding was barred by limitation and hence, deserved to be dismissed. The learned Sub-Judge dismissed the execution proceedings on the ground that it was absolutely barred by limitation.

13. Aggrieved by the said order, the respondents preferred C.R. No. 53 of 2007 under Section 115 of the Code of Civil Procedure (for short `the CPC') and the learned single Judge allowed the said Revision on the ground that the execution case preferred by the revisionists was not barred by limitation. For the said purpose, the learned single Judge - placed reliance on the decision in Bharti Devi v. Fagu Mahto1. The legal substantiality of the said order is the subject-matter of challenge in this appeal.

14. We have heard Mr. Amboj Kumar Sinha, learned counsel for the appellants, and Mr. S.S. Shamshery, learned counsel for the respondents.

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15. The two seminal and spinal issues that had emanated before the executing court and the High Court and have also spiralled to this Court are whether the decree passed by the court of first instance on the basis of compromise had become enforceable or it had the status of a preliminary decree requiring completion of a final decree proceeding to make it executable and whether the execution proceeding was untenable being hit by the law of limitation.

16. We shall advert to the first issue first. On a perusal of the tenor of the entire compromise application, we are of the considered view that the parties to the compromise settled the entire controversy. The defendant No. 3 who was the predecessor-in-interest of the present appellants was not - allotted any share. As is perceptible from the terms of the compromise which formed a part of the decree, the parties had conceded that they were in separate and exclusive possession of the properties respectively belonging to them and further had obtained separate and exclusive possession of the properties allotted to their respective shares. Thus, their respective shares and exclusive possession were admitted on the basis of the said compromise petition and a decree had been drawn up. The Court had taken note of the contents of the compromise wherein it had been prayed that the decree be passed in accordance with the terms of the compromise. It is clearly evincible that the Court had proceeded on the basis that it was finally disposing of the suit in accordance with the terms set out in the compromise petition. The factum of exclusive possession had also been recorded in the application of compromise. It

had been clearly stated that parties have been put in separate possession of the various immovable properties.

17. Quite apart from the above, in the counter affidavit filed by the respondents, it is admitted that possession had remained with the parties as per the allotment. It is - profitable to reproduce the said portion of the counter affidavit:-

> It is pertinent to mention here that the parties who were allotted the share as per the decree were stated to be in possession of their share and it was written in the judgment that no preliminary, final decree or execution was required to be filed. Though Kishori Lal Kasera had full knowledge of the compromise decree but he did not challenge the decree within the period of limitation therefore the compromise decree became final and absolute against all the parties, including Kishori Lal Kasera.

18. Despite the aforesaid, a contention has been advanced by the learned counsel for the respondents that in a suit for partition, drawing up of a final decree is imperative. In this context, we may usefully refer to the decision in Rachakonda Venkat Rao And Others v. R. Satya Bai (D) by L.R. And Another2 wherein it has been stated as follows:-

> The compromise application does not contain any clause regarding future course of action which gives a clear indication that nothing was left for future on the question of partition of the joint family properties. The curtain had been finally drawn.
>
> After so stating, the Bench proceeded to observe as follows:- The decree as a matter of fact leaves nothing for future. As noticed earlier in a preliminary decree normally the court declares the shares of the parties and specifies the properties to be partitioned in the event of there being a dispute about the properties to be partitioned. After declaring the shares of the parties and the properties to be partitioned, the Court appoints a Commissioner to suggest mode of partition in terms of O. XXVI, R. 13, C.P.C. A AIR 2003 SC 3322 : 2003 7 SCC 452 perusal of Order XXVI, R. 13 C.P.C. shows that it comes into operation after a preliminary decree for partition has been passed. In the present case, there was no preliminary decree for partition and, therefore, R. 13 of O. XXVI does not come into operation. If the plaintiffs considered the decree dated 13th July, 1978 as a preliminary decree, why did they wait to move the application for final decree proceedings for 13 years? The only answer is that the plaintiffs knew and they always believed that the 1978

> decree was a final decree for partition and it was only passage of time and change in value of the properties which was not up to their expectations that drove plaintiffs to move such an application.

19. In Muzaffar Husain v. Sharafat Hussain3, it has been held as follows:-

> We think the decree passed by the civil Court should be treated as a final order for effecting a partition. It is true that the decree was passed on the basis of a compromise filed by -the parties, but the fact remains that it was passed in a partition suit, and had the effect of allotting a specific portion of the property to the plaintiff as his share in the property. The conclusion at which we have arrived is supported by a decision of the Madras High Court in Thiruvengadathamiah v. Mungiah4 AIR 1933 Oudh 562

20. In Raghubir Sahu v. Ajodhya Sahu5, the Division Bench of Patna High Court had ruled thus: - In the present case, the decree was passed on compromise. It was admitted that by the compromise, the properties allotted to the share of each party were clearly specified and schedules of properties allotted to each were appended to the compromise petition. Therefore, no further inquiry was at all necessary. In such circumstances, the decree did not merely declare the rights of the several parties interested in the properties but also allotted the properties according to the respective shares of each party. Therefore, it was not a preliminary decree but it was the final decree in the suit.

21. In Renu Devi v. Mahendra Singh and others6, the effect of a compromise decree and allotment of shares in pursuance of the said decree was dealt with. The two- Judge Bench referred to the decisions in Raghubir Sahu v. Ajodhya Sahu (supra) and Muzaffar Husain (supra) and - (1912) ILR 35 Mad 26 AIR 1945 Pat 482 6 AIR 2003 SC 1608 opined that the law had been correctly stated in the said authorities.

22. In the said case, after referring to CPC by Mulla, this Court, while drawing a distinction between the preliminary and the final decree, has stated that a preliminary decree declares the rights or shares of the parties to the partition. Once the shares have been declared and a further inquiry still remains to be done for actually partitioning the property and placing the parties in separate possession of the divided property, then such inquiry shall be held and pursuant to the result of further inquiry, a final decree shall be passed. A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. Then, as a result of the further inquiries

conducted pursuant to the preliminary decree, the rights of the parties are finally determined and a decree is passed in accordance with such determination, which is the final decree. Thus, fundamentally, the distinction between preliminary and final decree is that: a preliminary decree merely declares the rights and shares of the parties and leaves room for some -further inquiry to be held and conducted pursuant to the directions made in the preliminary decree which inquiry having been conducted and the rights of the parties finally determined a decree incorporating such determination needs to be drawn up which is the final decree.

23. Applying the principles laid down in the aforesaid authorities, it is graphically clear that in the case at hand, the parties entered into a compromise and clearly admitted that they were in separate and exclusive possession of the properties and the same had already been allotted to them. It was also admitted that they were in possession of their respective shares and, therefore, no final decree or execution was required to be filed. It is demonstrable that the compromise application does not contain any clause regarding the future course of action. The parties were absolutely conscious and rightly so, that their rights had been fructified and their possession had been exclusively determined. They were well aware that the decree was final in nature as their shares were allotted and nothing remained to be done by metes and bounds. Their rights had attained finality and no further enquiry from any spectrum –was required to be carried out. The whole thing had been embodied in the decree passed on the foundation of compromise.

24. It is to be borne in mind that the term `compromise' essentially means settlement of differences by mutual consent. In such process, the adversarial claims come to rest. The cavil between the parties is given a decent burial. A compromise which is arrived at by the parties puts an end to the litigative battle. Sometimes the parties feel that it is an unfortunate bitter struggle and allow good sense to prevail to resolve the dispute. In certain cases, by intervention of well-wishers, the conciliatory process commences and eventually, by consensus and concurrence, rights get concretised. A reciprocal settlement with a clear mind is regarded as noble. It signifies magnificent and majestic facets of the human mind. The exalted state of affairs brings in quintessence of sublime solemnity and social stability. In the present case, as the factual matrix would reveal, a decree came to be passed on the bedrock of a compromise in entirety from all angles leaving nothing to be done in the future. The curtains were really drawn and -the Court gave the stamp of approval to the same. Thus, the inescapable conclusion is that the compromise decree dated 03.04.1964 was a final decree.

25. Presently, we shall dwell upon the issue whether the execution levied by the respondents was barred by limitation or not. The executing Court, by its order dated 10.07.2006, accepted the plea of the present appellants and came to hold that the execution petition filed by the decree holder was hopelessly barred by limitation. In the Civil Revision, the learned Single Judge overturned the decision on several counts; (i) that no steps were taken and no objection was raised by the father of the opposite parties for setting aside the ex parte decree passed in the first suit, if he was aggrieved by it, for about 9 years, though he had appeared and had full knowledge about the first suit; (ii) that as per the compromise decree, the parties were in possession of the respective shares allotted to them and, accordingly, neither preliminary nor final decree was drawn up and there was no occasion for the petitioners for filing execution case for enforcement of the compromise decree; (iii) that the second suit challenging the compromise decree - passed in the first suit remained pending for about 21 years; (iv) that the appeal filed against the dismissal of the second suit also remained pending for about 10 years; (v) that after the appeal was dismissed and the judgment and decree passed in the second suit became final, the execution case was filed by the petitioner alleging dispossession from the family business being run in the ground floor of the building; and (vi) that on the basis of such allegation, the compromise decree passed in the first suit became enforceable.

26. Apart from the aforesaid reasons, the learned Single Judge has opined that after the execution case was admitted by the predecessor of the learned Sub-Judge presumably after condoning the delay, the successor should not have dismissed it on the ground of limitation. He placed reliance on the decision rendered in Bharti Devi (supra) and buttressed the reasoning that there was no delay in levying of the execution proceeding. The learned single Judge further took note of the pending Misc. Appeal No. 369 of 2008 preferred by the present appellants to reinforce the conclusion.

27. It is well settled in law that a preliminary decree declares the rights and liabilities, but in a given case, a decree may be both preliminary and final and that apart, a decree may be partly preliminary and partly final. It has been so held in Rachakonda Venkat Rao v. R. Satya Bai7. It is worth noting that what is executable is a final decree and not a preliminary decree unless and until the final decree is a part of the preliminary decree. That apart, a final decree proceeding may be initiated at any point of time. It has been so enunciated in Hasham Abbas Sayyad v. Usman Abbas Sayyad and others8. 7 (2003) 7 SCC 452 8

28. In Bikoba Deora Gaikwad and others v. Hirabai Marutirao Ghorgare and others9, a two-Judge Bench of this Court has held that only when a suit is completely disposed of, thereby a final decree would come into being. In the said case, it has also been laid down that an application for taking steps towards passing a final decree is not an execution application and further, for the purposes of construing the nature of the decree, one has to look to - the terms thereof rather than speculate upon the court's intention.

29. Regard being had to the aforesaid principles and having opined that the decree passed on the basis of a compromise in the case at hand is the final decree, it is to be addressed whether the execution is barred by limitation. Article 136 of the Limitation Act (for brevity `the Act') reads as follows: -

Description of Period of Time from which period begins application to run (2007) 2 SCC 355 9 (2008) 8 SCC 198

Limitation

> 136. For the Twelve When the decree or order execution of any years becomes enforceable or where decree (other the decree or any subsequent than a decree order directs any payment of granting a money or the delivery of any mandatory property to be made at a injunction) or certain date or at recurring order of any periods, when default in civil court. making the payment or delivery in respect of which execution is sought, takes place;
>
> Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

30. On a perusal of the said Article, it is quite vivid that an application for execution of a decree (other than a decree - granting a mandatory injunction) or order of any civil court is to be filed within a period of twelve years. In Dr. Chiranji Lal (D) by LRs. v. Hari Das (D) By LRs.,10 the question arose whether a final decree becomes enforceable only when it is engrossed on the stamp paper. The three- Judge Bench dealing with the controversy has opined that 10 (2005) 10 SCC 746 Article 136 of the Limitation Act presupposes two conditions for the execution of the decree; firstly, the judgment has to be converted into a decree and secondly, the decree should be enforceable. The submission that the period of limitation begins to run from the date when the decree becomes enforceable, i.e., when the decree is engrossed on the stamp paper, is unacceptable. The Bench,

while elaborating the said facet, proceeded to lay down as under: - 24. A decree in a suit for partition declares the rights of the parties in the immovable properties and divides the shares by metes and bounds. Since a decree in a suit for partition creates rights and liabilities of the parties with respect to the immovable properties, it is considered as an instrument liable for the payment of stamp duty under the Indian Stamp Act. The object of the Stamp Act being securing the revenue for the State, the scheme of the Stamp Act provides that a decree of partition not duly stamped can be impounded -and once the requisite stamp duty along with penalty, if any, is paid the decree can be acted upon.

> 25. The engrossment of the final decree in a suit for partition would relate back to the date of the decree. The beginning of the period of limitation for executing such a decree cannot be made to depend upon date of the engrossment of such a decree on the stamp paper. The date of furnishing of stamp paper is an uncertain act, within the domain, purview and control of a party. No date or period is fixed for furnishing stamp papers. No rule has been shown to us requiring the court to call upon or give any time for furnishing of stamp paper. A party by his own act of not furnishing stamp paper cannot stop the running of period of limitation. None can take advantage of his own wrong. The proposition that period of limitation would remain suspended till stamp paper is furnished and decree engrossed thereupon and only thereafter the period of twelve years will begin to run would lead to absurdity. In Yeshwant Deorao Deshmukh v. Walchand Ramchand Kothari [1950 SCR 852 : AIR 1951 SC 16] it was said that the payment of court fee on the amount found due was entirely in the power of the decree holder and there was nothing to prevent him from paying it then and there; it was a decree capable of execution from the very date it was passed.
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> 26. Rules of limitation are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. As abovenoted, there is no statutory provision prescribing a time limit for furnishing of the stamp paper for engrossing the decree or time limit for engrossment of the decree on stamp paper and there is no statutory obligation on the Court - passing the decree to direct the parties to furnish the stamp paper for engrossing the decree. In the present case the Court has not passed an order directing the parties to furnish the stamp papers for the purpose of engrossing the decree. Merely because there is no direction by the Court to furnish the stamp papers for engrossing of the decree or there is no time limit fixed by law, does not mean that the party can furnish stamp papers at its sweet will and claim that the period of

> limitation provided under Article 136 of the Act would start only thereafter as and when the decree is engrossed thereupon. The starting of period of limitation for execution of a partition decree cannot be made contingent upon the engrossment of the decree on the stamp paper.

31. In Ram Bachan Rai and others v. Ram Udar Rai and others11, a contention was advanced to the effect that as the cost for enforcement of decree was not quantified, the period of limitation could not have commenced from the 11 (2006) 9 SCC 446 date of judgment and decree. The Court referred to the decision in Dr. Chiranji Lal (supra) and, after referring to paragraphs 24 and 25 of the said decision, expressed the view in unequivocal terms that the inevitable conclusion was that the suit was barred by limitation. –

32. In the present case, the learned counsel for the respondents, in support of the order passed in Civil Revision, has canvassed that when a suit was filed for declaring the earlier compromise decree to have been obtained by fraud and the same remained pending for more than 21 years, the period of limitation commenced only after the suit and the appeal arising therefrom were dismissed since only on the conclusion of the said proceeding, the decree became enforceable and further, the time consumed in the said proceeding is to be excluded for computation of the period of limitation under Article 136 of the Limitation Act. We have already held that the decree was a final decree. Therefore, it was immediately executable. The question, thus, would be `was the time arrested?' On a query being made, it was fairly conceded at the Bar that at no point of time, there was any order by any court directing stay of operation of the judgment and decree passed in P.S. No. 131 of 1962. The question that emanates for consideration is whether the period during which the suit and appeal preferred by the appellants remained pending is to be excluded for the purpose of limitation. In this context, - we may usefully refer to the dictum in Ratan Singh v. Vijay Singh and Ors.12 wherein, while dwelling upon the concept of enforceability of a decree and the effect of an order of stay passed by the appellate court, the Bench stated thus:

> 8. When is a decree becoming enforceable? Normally a decree or order becomes enforceable from its date. But cases are not unknown when the decree becomes enforceable on some future date or on the happening of certain specified events. The expression enforceable has been used to cover such decrees or orders also which become enforceable subsequently.
> 12 2000 (8) SCALE 214

> 9. Filing of an appeal would not affect the enforceability of the decree, unless the appellate court stays its operation. But if the appeal results in a decree that would supersede the decree passed by the lower court, it is the appellate court decree which becomes enforceable. When the appellate order does not amount to a decree there would be no supersession and hence the lower court decree continues to be enforceable.

33. In Ram Bachan Rai (supra), the two-Judge Bench took note of the fact that an application under Order IX Rule 13 for setting aside the ex parte decree was dismissed which was assailed in a miscellaneous appeal and - ultimately in a civil revision. At no stage, stay was granted by any court. The decree holders therein filed an application for execution after 12 years. Regard being had to the same, it was held that the execution proceeding was barred by limitation.

34. In this context, it is fruitful to refer to the pronouncement in Manohar v. Jaipalsing13. In the said case, it has been held as follows:
13 AIR 2008 SC 429

> 15. The order of purported stay passed by this Court in terms of its Order dated 21.3.1988 is also of no assistance to the plaintiff decree- holder. The Special Leave Petition was filed only against the Order dated 1.7.1985 refusing to review its judgment and decree dated 2.9.1983. The stay of operation of the Order dated 1.7.1985 for all intent and purport was meaningless as the review petition already stood dismissed.
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> 16. Further direction of this Court that computation of mesne profit would go on and the same would be deposited by the appellant is of no consequence inasmuch as by reason thereof neither proceeding was stayed nor had the operation of the judgment and decree been stayed. In fact, it was an order passed in favour of the decree holder. The said direction did not come in his way to execute the decree for possession.

35. In the case at hand, the compromise decree had the status of a final decree. The latter suit filed by the appellants was for partition and declaring the ex parte compromise decree as null and void. As has already been stated, there was no stay of the earlier judgment or any proceedings emanating therefrom. In the absence of any interdiction from any court, the decree-holder was entitled to execute the decree. It needs no special emphasis to state that there was no impediment or disability in the way of the respondents to execute the decree but the same was not done. Therefore, the irresistible conclusion is that the initiation of execution

proceedings was indubitably barred by limitation. Thus analyzed, the reasons ascribed by the learned single Judge are absolutely unsustainable. The period of limitation stipulated under Article 136 of the Act could not have been condoned as has been so presumed by the learned single Judge. The reliance placed on the decision in Bharti Devi (supra) is totally misconceived inasmuch as in the said case, the execution proceeding was initiated for permanent injunction. No exception can be - taken to the same and, therefore, reliance placed on the said decision is misconceived.

36. Ex consequenti, the appeal is allowed, the order passed by the High Court in Civil Revision is set aside and that of the executing court is restored. The parties shall bear their respective costs.