

ALLAHABAD HIGH COURT

B. Adya Prasad Singh

Vs.

Lal Girjish Bahadur Pal

(Niamatullah, J.)

19.01.1933

JUDGMENT

Niamatullah, J.

1. This is a judgment-debtor's appeal and the only question to be considered is one of limitation. The decree-holder obtained a final decree for ₹ 33,33040/- on the basis of a mortgage. He put the decree into execution and realized the sum of ₹ 20,777/-. The final order on this application for execution was passed on 10th May 1928. The application for execution which has given rise to the present appeal was made on 31st July 1931, that is more than three years from the date of the final order on the previous application. The decree-holder however contended that limitation was saved by certain proceedings that took place in the execution Court on 5th September 1929. On that date the parties appeared before the Court. The judgment-debtor paid the sum of ₹ 12,000/- to the decree-holder in Court and was granted a receipt for the amount. The decree-holder thereupon presented an application to the Court saying that the said payment be certified under Order 21, Rule 2, Civil Procedure Code. The payment was duly certified accordingly. At the same time the judgment-debtor presented to the Court a letter written by the decree-holder to the effect that it had been settled between the parties that no further execution should be taken out in respect of the money due under the decree before the end of 1930. This letter was accompanied by an application by the judgment-debtor stating that he was filing the original letter written by the decree-holder relating to extension of time and praying that it be placed on the record. In the light of these proceedings it was contended by the decree-holder:

2. Firstly, that his application for the payment of ₹ 12,000/- to be certified by the Court was an application to take a step in aid of execution within the meaning of Sub-clause (5), Art 182, Schedule 1, Limitation Act, and therefore his present application for execution was within time. Secondly, that the application of the judgment-debtor accompanied by the letter of the decree-holder granting time to the end of 1930 was an acknowledgment of liability in respect of the amount due under the decree within the meaning of Section 19, Limitation Act, and so gave rise to a fresh period of limitation. Thirdly, that the payment of ₹ 12,000/- by itself gave rise to a fresh period of limitation under Section 20, Limitation Act, inasmuch as the payment was acknowledged by the judgment-debtor by writing over his signature on the receipt issued by the

Court for the payment made before it that he had received his portion of the receipt.

3. The learned Subordinate Judge has accepted all the contentions of the decree-holder and dismissed the judgment-debtor's objection that the application for execution was time-barred. The correctness of the view taken by the Court below on each of the three points has been questioned before us. With regard to the first point in our opinion the finding of the Court below cannot be upheld. It is true that in certain cases this Court as well as other High Courts in India, had taken the view that an application by the decree-holder certifying a payment out of Court and praying that such payment be recorded by the Court is an application to take a step in aid of execution. *Chote Singh v. Ishwari*¹ cited by the Court below are two of such cases. In our opinion these decisions can no longer be regarded as laying down good law in view of the decision of their Lordships of the Privy Council in *Prakash Singh v. Allahabad Bank Ltd*². In that case it was laid down that the mere certification by the decree-holder of a payment to him out of Court by the judgment-debtor under Order 21, Rule 2(1) is not an application within the meaning of Article 181, Schedule 1, Lim. Act.

4. Their Lordships further observed that an application made by the bank decree-holder certifying certain payments made to it is no more than a request that the Court will carry out the provisions of the rule and record the payments... and the mere fact that the document was called an "application" and was in the form of a petition cannot... alter the real nature of the procedure and convert what was no more than a certificate of certain payments into an "application" within the meaning of Article 181.

5. It is contended on behalf of the respondent that this case related to an application under Article 181, Limitation Act, and that their Lordships expressly refrained from expressing any opinion on the view taken in certain cases in India that where a decree-holder had proceeded to certify a payment which had been made out of Court in satisfaction of a decree, he had taken a step in aid of execution of the decree within the meaning of Article 182 (5), Limitation Act. This is no doubt true, but the decision of their Lordships must be regarded as conclusive on the question that the terms of Order 21, Rule 2(1) involve no application and that certification under that clause is not an application under Article 181. Such being the case we find it impossible to hold that a petition to the Court merely to record under the same clause a payment certified by the decree-holder is an application within the meaning of Article 182, Sub-clause (5). The same view has been taken by a Bench of the Rangoon High Court in *Maang Tun Hlaing v. U. Aung Gyaw*³ by a Full Bench of the Calcutta High Court in *Amar Krishna v. Jagat Bandhu*⁴, and by a Full Bench of the Oudh Chief Court in *Ram Bharose v. Raman Lal*⁵. In all these cases the effect of the decision in *Prakash Singh v. Allahabad Bank Ltd*⁶. was considered and it was held that mere certification by the decree-holder of a payment of money under the decree is not an application to take some step in aid of execution of the decree within the meaning of Sub-clause (5), Article 182, Limitation Act, We therefore hold that limitation was not saved by the decree-holder's application to have the payment of Rupees 12,000 recorded by the Court. On the second point it is contended on behalf of the judgment-debtor that his application requesting that the letter of the decree-holder

¹(1910) 32 All 257 and *Bhura v. Ghure* (1911) 10 IC 925

³ A.I.R. 1930 Rang. 64

² A.I.R. 1929 PC 19

⁴ AIR 1931 Cal 719 : (1932)ILR 59 Cal 760

⁵ A.I.R. 1932 Oudh 148

⁶ A.I.R. 1929 P.C. 19

granting him time should be placed on the record does not amount to an acknowledgment of

liability within the meaning of Section 19, limitation Act. The learned Counsel for the judgment-debtor argues that it is only giving information to the Court that the decree-holder has granted time to the judgment-debtor and that it does not amount to an acknowledgment of liability. We are unable to accept this contention. The application begins by a reference to the number of the case and the names of the parties describing them as decree-holder and judgments-debtor, respectively, and then recites that in the above case I am filing the original letter relating to extension of time written by the decree-holder with the prayer that it may be placed on the record.

6. It is signed by the judgment-debtor. The letter was attached to the application. It is clear from the circumstances in which the application was made that the letter referred to therein must be regarded as forming part of the application. The letter recites that it has been settled between the parties that no further execution shall be taken out in respect of the money still due under the decree before the end of 1930. The application cannot be read otherwise than as admitting the contents of the letter and filing it in Court as a guarantee that the decree-holder shall observe the terms of the agreement recorded therein. It is clear to us that all the events of 5th September 1929 were closely connected together and that, what actually took place was not as a result of an agreement between the parties, on the judgment-debtor paying ₹ 12,000/- the decree-holder consented to take no further proceedings to execute his decree before the end of 1930. In the light of explanation 1, Section 19, Limitation Act, it seems to us that the application even if considered by itself cannot be construed otherwise than as an acknowledgment that the applicant was a judgment-debtor in a suit in which the opposite party was the decree-holder and that the decree was unsatisfied, which is a sufficient acknowledgment of liability to satisfy the requirements of Section 19. When the application is read with the letter, as we hold that it must be read, a clear admission is added that the applicant still owes the decree-holder money under the decree and has obtained a receipt from the decree-holder up to the end of 1930 for making further payment. This is a clear acknowledgment of liability. In our opinion therefore the Court below was right in holding that the application of the judgment-debtor of 5th September 1929 started a fresh period of limitation from that date. As we have held that the application for execution is within time in view of the judgment-debtor's acknowledgment of liability under the decree on 5th September 1929 it is unnecessary for us to go into the question whether the signature of the judgment-debtor on receipt for payment of the ₹ 12,000/- gave start to a fresh period of limitation within the meaning of Section 20 of the Act. The result is that the appeal fails and is dismissed with costs.