

CALCUTTA HIGH COURT

Lala Baijnati Prosad

Vs.

Nursingdas Guzrati

A.F.O.O. No. 84 of 1955

(Chakravarti, C.J. and Sarkar, J.)

01.03.1957

JUDGMENT

Chakravarti, C. J.

1. On 16th of August, 1939, the Respondent Narsingdas Guzrati obtained from Lord-Williams J., sitting on the Original Side of this Court, a decree for money against 38 defendants. That decree was signed by S. R. Das, J. on 10th September, 1943 and a certified copy of it was obtained by the decree-holder on the following day. On 4th of August, 1953, the decree-holder applied for the execution of his decree. Not unnaturally, an objection was at once raised on behalf of some of the judgment-debtors that execution of the decree could no longer be had, because the twelve years' time allowed by Article 183 of the Limitation Act had long expired. The decree-holder's reply was that he had still the right to execute his decree because, according to him, in computing the period of limitation, he was entitled to exclude three periods of time which would bring his application within twelve years. He also contended that there had been acknowledgments of liability which had given a fresh start to limitation. The exclusions claimed by the decree-holder were of the period between the date of the decree and the date on which a certified copy of it had been obtained, a period during which execution of the decree was said to have remained stayed under an injunction and a further period during which execution was said to have remained further stayed under a second injunction. There can be no question that if any of those periods could be excluded, the application for execution would be within time. P. B. Mukherji, J., before whom the matter came up for hearing, allowed the exclusions claimed with some slight modifications, but he did not decide finally the question of the acknowledgments, though the inclination of his opinion was clearly in the decree-holder's favor. In the result, he over-ruled the objection of the judgment-debtors and directed the execution to proceed. Against that decision, twelve of the judgment-debtors have appealed.

2. There are no disputed questions of fact. The dates relating to the decree as well as the dates and the scope of the injunctions are matters of record and so are the dates and the contents of the alleged acknowledgments. The only questions involved in the case concern the effect on limitation of events which admittedly happened.

3. Some reference to the nature of the decree will have to be made later, but it is not relevant to the first of the points taken by the decree-holder. That point is not accurately stated by saying that in computing the period of limitation, he was entitled to exclude the period between the date of the decree and the date on which a certified copy of it was obtained by him. As the learned Judge has himself pointed out, Section 12 of the Limitation Act does not apply to applications for execution. In the case of such applications, there could be no question of excluding "the time requisite for obtaining a copy of the decree", even if a copy was required to be filed along with the application. What the decree-holder really contended and what the learned Judge has really held is that it is inherent in the very words of Article 183, read with the Rules of this Court, that the period of limitation prescribed by it does not commence to run till a certified copy of the decree or order, sought to be executed, has been obtained. The only question arising out of the first point of the decree-holder is whether that view is right.

4. If, under Article 183, limitation for executing a decree of the Original Side of this Court commences to run only on the date when a certified copy of it is obtained, no question as to the decree-holder's right to exclude any period prior to that date at all arises. The question of excluding any period of time in computing the period of limitation can arise only if the period falls after limitation has begun to run. No period antecedent to the date when time begins to run can be relevant, because it does not go into the computation of limitation and therefore, on the one hand, the plaintiff or appellant or applicant cannot be entitled to exclude any part of it, or to put it in another way, he cannot extend the period of limitation by adding it thereto and, on the other hand, he is not required to explain it or prove his diligence during it. The learned Judge, though he has held that time in the present case did not begin to run till the decree-holder obtained a certified copy of the decree, has at the same time taken into account the period between the date of the decree and the date when the certified copy was obtained and while allowing the decree-holder to exclude the major part of it, has refused to allow him the exclusion of two short periods. The decree, it will be remembered, was passed on 16th August, 1939. The decree-holder did not put in the requisition for the drawing up of the decree till 14th September, 1939 and subsequently, after the decree had been settled and passed, he obtained a week's stay of its engrossment in order that he might speak to the minutes which he never did. On 7th of September, 1943, his solicitor wrote to the Registrar, requesting that the decree might be completed and the decree being re-settled, passed and signed on 10th September, 1943, he put in a requisition for a certified copy on the same day. On the next day, he filed the decree and obtained a certified copy. The learned Judge has refused to allow the decree-holder to exclude the 28 days for which he delayed in putting in the requisition for the drawing up of the decree and the 7 days for which he caused its engrossment to be unnecessarily held up. That with respect, was not consistent or right, if the learned Judge's view of Article 183 be correct. On his view of the Article, the decree-holder would have twelve year's time from the date when he obtained the certified copy and no antecedent period could count either in his favour or against him for the purposes of limitation. It is stated in the judgment that the decree-holder was entitled to exclude the time taken by the Court's machinery to produce the certified copy "from the period of 12 years from the date of the decree", but he would not be entitled to exclude those portions of it for which he was himself responsible on account of default on his own part. This cannot be correct, if time did not begin to run till the copy was obtained. It is only when limitation runs from the date of the decree or order but the appellant or applicant is given the right to exclude the time requisite for obtaining a certified copy that the necessity for excluding such time occurs and a question arises as to whether all the time actually taken in obtaining the copy was justly required.

But if in a case limitation does not even begin to run till the date when a certified copy of the decree or order is obtained, the period between that date and the date of the decree or order is of no account. It was therefore not right or consistent to hold in the present case that under Article 183, read with the Rules of this Court, time does not begin to run before the date when a certified copy of the decree or order is obtained and hold at the same time that the respondent decree-holder was entitled to exclude the period between the date of the decree and the date on which he had obtained the certified copy but that, from that period, two short periods were to be deducted on account of his defaults. On the view taken of Article 183, the true position is, not that the period between 16th August, 1939, when the decree was passed and 11th September, 1943, when the certified copy was obtained, was to be excluded in computing the period of limitation, subject to deduction there from of periods affected by the decree-holder's default, but that the whole of the period was to be left out of account altogether as antecedent to the date on which limitation began to run and therefore irrelevant. That is what the learned Judge has in effect held, though, at places in his judgment, he unfortunately appears to have proceeded on the principle of exclusion of time in computing a period of limitation.

5. The contention of the Appellants on this question is that, under Article 183, time starts from the date of the decree and in computing the prescribed period of twelve years from that date, the time taken in obtaining a certified copy of the decree cannot be excluded, in as much as Section 12 of the Act has no application. The Article describes the time from which the period of limitation begins to run as "when a present right to enforce the judgment, decree or order accrues to some person capable of realizing the right". The learned trial Judge has pointed out that under Rule 10 of Chapter XVII of the Rules of the Original Side of this Court, an application for execution must in all cases be accompanied by a certified copy of the decree. Without obtaining such a copy, no proceeding for execution can therefore be commenced. The resultant position, according to the learned Judge, is that on the pronouncement of a decree on the Original Side of this Court, the decree-holder acquires an inchoate right to enforce it, but that right matures into a 'present' right only when he obtains a certified copy of the decree. Thus, in its application to the procedural rules of the Original Side of this Court, the very language of Article 183 fixes the commencement of the period of limitation prescribed by it at the point of time when a certified copy of the decree is obtained by the decree-holder. The learned Judge further pointed out that the immediately preceding Article, Article 182, also dealt with execution of decrees, but in prescribing a period of limitation for the execution of decrees of civil Courts, it expressly laid down that the Starting point would be the date of the decree. If Article 183 also intended the starting point to be the same, there was no reason why it should not have plainly said so but, on the other hand, described the starting point in different language. These are weighty considerations which undoubtedly require to be closely examined.

6. In considering what the starting point of limitation under Article 183 is, it is certainly not possible to overlook the difference in language between that Article and Article 183. Article 182 deals with decrees and orders of civil Courts, while Article 183 deals inter alia with decrees and orders of Chartered High Courts passed in the exercise of their ordinary, original Civil jurisdiction. The application contemplated by Article 182 is described as an application "for the execution of a decree or order", while the application contemplated by Article 183 is described as an application "to enforce a judgment, decree or order". Again, the starting point of limitation for the first application under Article 182 is "the date of the decree or order," a definite date, while the starting point of limitation for the first application under Article 183 is apparently of a

contingent character and given by way of a description as "when a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right". It has been said that 'enforce' is a wider word than 'execute', but there can be no doubt that whatever else 'enforce' may include, it includes execution. This was not disputed. Applications for execution are thus within Article 183 and so far as such applications are concerned, the Article deals with the same kind of applications as Article 182. But the starting point of limitation for the first application under the respective Articles is noticeably different. "There is", observed Lord Hobhouse in *Navivahas v. Turner*¹, "a great difference between the two; for Article 179 assigns a fixed starting point of time, whereas Article 180 assigns one that is dependent on the right to enforce the judgment". Articles 179 and 180 were the corresponding Articles in the Limitation Act of 1877 and they were expressed in the same language.

7. It is not without interest to note the evolution of the two Articles and find that as respects the starting point of limitation for the first application for execution, there has been a difference from the beginning. In Act 14 of 1859, the first Limitation Act, the provision corresponding to Article 182 was Section 20, but it did not deal with the first application. Before the Act, the limitation applied by the practice of the Courts used to be 12 years from the date of the decree or order and Section 20 of the Act merely said that

"no process of execution shall issue..... to enforce any judgment, decree or order... unless some proceeding shall have been taken to enforce such judgment, decree or order or to keep the same in force within three years next preceding the application for such execution."

Thus, the section only imposed an internal time-limit for successive applications within 12 years, but the starting point of limitation for the first application was apparently left at what it had been under the previous practice. On the other hand, Section 19, which was the provision corresponding to Article 183, prescribed the period of limitation for a proceeding "to enforce any judgment, decree or order of any Court established by Royal Charter" as "twelve years next after a present right to enforce the same shall have accrued to some person capable of releasing the same". In the Act of 1871, which introduced a schedule in the present form, the subject-matter of Article 182 was distributed between Articles 167 and 168. They described the application as an "application for execution" and expressly laid down that the starting point of limitation would be "the date of the decree or order". On the other hand, Article 169, which was the Article corresponding to Article 183, maintained the old description of the application and also maintained the old starting point, only describing it in slightly different language as "when a present right to enforce the judgment, decree or order accrued to some person capable of releasing the right". That, it will be noticed, is the language of Article 183, except that the present Article has the word 'accrues' instead of the word 'accrued'. The Act of 1877, in which the

¹16 Ind App 156

corresponding Articles were 179 and 180, made no change in this regard, but the expression 'enforce or keep in force' which occurred in the fourth paragraph of the third column of Article 167 of the preceding Act, was replaced by "for execution or to take some step in execution" in Article 179, so that the word 'enforce' finally disappeared from the provision dealing with the execution of decrees or orders of civil Courts. There have been other changes in both the provisions since 1871, but they are not material for our present purpose. All that we need note is

that as respects the description of the application and the description of the starting point of time, virtually the present language of both the Articles was reached in 1871; and since at least that year, if not since 1859, the statutory indicia for determining the starting point under the two provisions have been different. It appears that, in reality, time for the execution of decrees or orders of civil Courts has always been computed from the date of the decree or order and only an express provision to that effect was made in 1871 which has since continued. On the other hand, the starting point of limitation for the execution of decrees or orders of Chartered High Courts, passed in the exercise of their ordinary original civil jurisdiction, has always been the date when a present right to enforce the decree or order accrues to some person capable of releasing the right.

8. The above history certainly puts one on enquiry as to whether the two starting points are different or necessarily and always so. The index under Article 182 is simple : one has only to see, leaving aside orders, what the date of the decree is. The date of the decree, it is now well settled, means the date when the judgment is pronounced and not the date when the decree is formally drawn up and signed by the Judge. The indicia under Article 183 are a present right to enforce the decree and such right accruing to some person capable of releasing it. The second test involves other and further considerations which may be left out of account for the moment. As to a present right to enforce the decree, it appears that even under Article 182, where the decree, by its own terms or because of its very nature, postpones its operation to a future date or makes its operation dependent on the happening of a future event, time for its execution will run from that future date and not from the date when it was passed. In the case of *Maharaja of Darbhanga v. Homeshvar Singh*², the decree passed by a subordinate Judge in 1906 directed the decretal amount to be realized by the sale of "the property" belonging to one J "which is in the defendant's possession", but not from any property of J in the possession of anyone else. The defendant did not obtain possession of the property in question till 1914 when the Privy Council finally decided the question of the title to the property in his favour. In those circumstances, the Privy Council held that an application for execution of the decree of 1906, made in 1914, was not time-barred under the Article 182, because before the property came into the possession of the defendant, the decree could not at all be executed. "When the Limitation Act of 1908", observed their Lordships, "prescribes three years from the date of a decree or order within which it must be enforced, the language, read with the context, refers only, as they have already indicated, to an order or decree made in such a form as to render it capable in the circumstances of being enforced". To say that was to say in effect that although Article 182 laid down the starting point of time as the date of the decree or order, yet, time would not begin to run under the Article till, in view of the form and contents of the decree or order, a present right to enforce it accrued. The case of *Haji Ashfaq Husain v. Lala Gauri Sahai*³, was also cited before us, but that case appears to have been decided on a different principle. There, a

²48 Ind App 17

³38 Ind App 37

mortgage decree for sale against several joint mortgagors having been set aside against one of them on the ground of non-service of summons, a decree was again passed against her on the re-hearing. The question being whether an application for execution against all the judgment-debtors, made more than three years from the date of the original decree, but within three years from the date of the second decree, was barred under Article 179 of the Limitation Act of 1877 as against those of the judgment-debtors who stood charged only under the original decree, the Privy Council held that it was not. The second decree, their Lordships held, supplemented and completed the first and "for the first time gave to the plaintiff that which would alone justify him

in applying for joint execution to which he was entitled." Accordingly, the statute began to run from the date of the Second decree or rather the date of the order absolute made thereon, although in itself it was limited to only one of the judgment-debtors. The decision proceeds on the view that a complete decree was not made till the second decree was passed.

9. The principle laid down in 48 Ind App 17 is, however, clear. In view of that principle, where there is something inherent in the decree itself, by reason of which it cannot become effective or executable till a future date, the starting point of limitation under both Article 182 and Article 183 would be the same. It is but self-evident that no decree-holder can put his decree into execution before it has become executable whether it is a decree of a civil court or a decree of a Chartered High Court, passed in the exercise of its ordinary original civil jurisdiction. But the law of limitation is not based on logic and the words of the first provision in the third column of Article 182, if taken literally, must obviously mean that time will begin to run from the date when the decree is passed, irrespective of whether the decree is immediately executable or not. The Privy Council has, however, provided logic by holding that decrees contemplated by the Article are immediately executable decrees or, rather, where the decree is not an immediately executable decree, the "date of the decree" is the date when it becomes executable and thus a present right to execute it arises. The question before us is whether the same principle will apply in the construction of Article 183 where the decree, by itself, is immediately executable, but it cannot in fact be put into execution under the rules of procedure, till proof of it in the form of a certified copy is obtained. Where the decree is not immediately executable by reason of its own nature or terms and it cannot be executed for some time for that reason, the words of the Article themselves suffice to prevent the running of time till a present right to execute the decree accrues. In 16 Ind App 156, the facts were that by an order of the Insolvency Court of Bombay, a judgment was entered up in the High Court against an insolvent in 1868 and it was not till 1886 that the Insolvency Court ordered that execution be taken out. Under Section 86 of the Indian Insolvency Act, execution upon a judgment entered in the High Court could be taken out only if the Insolvency Court so ordered. On the question as to whether execution had become time-barred under Article 180 of the Limitation Act of 1877, the immediate predecessor of Article 183, the Privy Council held that it had not, because a present right to enforce the decree had accrued to the Official Assignee only when the Insolvency Court ordered execution to be taken out. Cases of that kind present no difficulty. The question before us, however, is whether, even when the decree is in its terms immediately executable, a present right to enforce it within the meaning of Article 183 accrues only when, under the rules of procedure applicable, the decree-holder is first put in a position to execute it.

10. Even in the case of a decree of a civil court, some time is required for drawing it up and having it signed by the Judge, though the time taken may be much shorter than is ordinarily required for completing a decree of a Chartered High Court. But if a decree of a civil court is, by its terms, immediately executable, the decree-holder is under no necessity to wait till the decree has been drawn up and signed. He can apply for its execution as soon as it is passed, because he is not required to file a certified copy of the decree along with the application for execution. Rule 11 (3) of Order 21 of the Civil Procedure Code merely says that the Court to which an application for execution is made, may require the applicant to produce a certified copy of the decree. No difficulty is thus caused in the case of an immediately executable decree of a civil court, if the limitation for its execution is computed from the date of the decree. On the other hand, whatever may be the position in the other Chartered High Courts, no application for the execution of a decree passed on the Original Side of this Court can be made, unless it is

accompanied by a certified copy of the decree. The provision in that regard contained in R. 10, Chapter XVII of the Original Side Rules is imperative. If the period of limitation prescribed by Article 183 be taken to run, even in the case of the execution of a decree passed by this court in the exercise of its ordinary original civil jurisdiction, from the date of the decree, the time of twelve years provided by the Article must to a certain extent be abridged. It may be pointed out that like Order 20, Rule 7 of the Civil Procedure Code, R. 10 of Chapter XVI of the Original Side Rules of this Court provides that the decree shall bear the same date as the judgment in the suit.

11. In view of the procedural requirement that an application, for the execution of a decree passed by this Court in the exercise of its ordinary, original civil jurisdiction must be accompanied by a certified copy of the decree, when does the time prescribed by Article 183 begin to run in the case of such an application. The appellants relied upon *Hajee Aboobuckor Rahimtulla Saib v. The Official Assignee of Madras*⁴ and *Raghnath and Company v. Firm Ram Gopal Rohit Ram*⁵, in aid of their contention that the time would run from the date of the decree. Neither of the decisions cited is of any assistance. The Madras decision is merely a cryptic statement based, it would seem, on the practice of the Court. Nor do we know what the Rules of the Madras High Court are. The Lahore decision is a pronouncement regarding a decree of this Court, but it purports to be based on the decision of the Privy Council in *Banku Behari Chatterjee v. Naraindas Dutt*, *ILR 54 Cal 500*, where the present point was certainly not decided. The question must therefore be examined further.

12. Article 183 speaks of "a present right to enforce the decree". It does not speak of a right under the decree but of the right to enforce it. In other words, it does not speak of the right to the benefits provided for in the decree, but of the right to put the decree into service for the purpose of extracting those benefits. The learned trial Judge has held that In the case of decrees passed on the Original Side of this Court, the decree-holder acquires only an inchoate right when the decree is passed and that right matures into a personal right when he obtains a certified copy of the decree, for then only can he apply for its execution. I think I can express the learned Judge's point of view also by saying that the decree-holder acquires a substantive right to the benefits decreed to him as soon as the decree is passed, but the procedural right to exploit the substantive right - which

⁴25 Mad LJ 560

⁵ ILR (1939) 20 Lah 319: AIR 1939 Lah 110

only is a present right to enforce the decree - does not accrue to him till he is in a position to apply for execution.

13. On the question as to when a present right to enforce a decree arises, the appellants cited certain English decisions. They do not appear to me to be of any help. The decision in *Holtby v. Hodgson*⁶ turned on the words of Order 45, Rule 3 of the Rules of the Supreme Court and the question was whether a person who had obtained a judgment against a married woman, executable only against her separate estate, could attach in execution a sum recovered by her as damages in an action against a third party under a judgment which had been pronounced but not yet entered. It was held that the money could be attached, since under Order 45, Rule 3, the judgment became effective as soon as it was pronounced and, upon being entered, took effect from the date of its pronouncement so that, in view of the subsequent entry of the judgment,

there was a debt owing to the judgment-debtor at the date of the attachment. There was no question in the case as to the right of the decree-holder to put his own decree into execution before it was signed. In fact, the report states that execution was taken out upon the judgment being signed. In *Ex parte Hookey*, (1862) 4 De G. F and J. 456 : 45 ER 1261, also cited, the question was whether under Section 33 of 12 and 13 Vict. C. 108, an appeal, brought more than three weeks after the date of the order appealed from, was time barred: The section provided that no notice of motion for a rehearing "shall be given after the expiration of three weeks after the order complained of shall have been made." The appellant contended that the order not having been drawn up within three weeks, time was to be computed from the date when it had been drawn up, but the Lord Chancellor, Lord Westbury, held that an order was 'made' as soon as it was pronounced and indeed was made to bear the date of its pronouncement, when drawn up and therefore the appeal was time-barred under the words of the statute. The decision is of no direct help, because, as the Lord Chancellor pointed out, it was not necessary, in giving a notice of appeal, that the terms of the order should be set out and that the common practice was for the appellant to say that he was unable to state the precise terms of the order, as the opposite party had not yet had it drawn up.

14. Whereas the English decisions cited are wide off the mark, our attention was also drawn to two decisions of this Court which are certainly relevant and one of which appears to be a direct authority on the very point we are considering. In *Jagannath Jugal Kishore v. Chimanlal Chaudhuri*⁶, the actual decision was that where a decree was passed against a firm, an application for leave under Order 21, Rule 50 (2) of the Civil Procedure Code was not an independent application, governed by Article 181 of the Limitation Act, but a component part of the application for execution with which it could be combined and therefore governed, in the case of a decree passed by a Chartered High Court in the exercise of its ordinary original civil jurisdiction, by Article 183. An application for leave under Order 21, Rule 50 (2) of the Civil Procedure Code could be treated as a part of the application for execution only if the decree was immediately executable even against partners who were yet unidentified. McNair and Gentle, JJ., both held that a decree against a firm was a decree against all the individual members of the firm and against all of them it was executable from the beginning, though in the case of those who had not

⁶(1889) 24 QBD 103

⁷ILR (1945) 1 Cal 102 : AIR 1949 Cal113

appeared as, or admitted themselves to be, partners, nor had been adjudged to be such, some further proceeding would be required for ascertaining who exactly they were. It was contended that as against partners of the latter category, no present right to enforce the decree could arise before they had been adjudged to be partners, but McNair, J. repelled the contention in the view that it confused the right to enforce with the procedure of enforcement. Gentle, J., observed that the decree was against all the members of the firm, though some of them were not identified by name and therefore there was a present right to enforce the decree from the very beginning even against the unidentified partners, though the persons who were such partners remained to be ascertained. This decision is relevant, because in spite of an impediment to immediate execution against certain of the judgment-debtors, it was held that a present right to enforce the decree even against them arose at the date of the decree. The view taken in the case was dissented from by the Bombay High Court in *Ramnath Goenka v. Amarchand*⁸, In that case it was held that while a decree against a firm gave the decree-holder the rights under the decree against all the members

of the firm with immediate effect, the right to enforce the decree against such of the members as had not yet been ascertained and adjudged to be members, accrued only when they were ascertained and adjudged. It may perhaps be said that the Bombay view itself confuses the right to enforce a decree with the possibility or practicability of enforcing it. But these cases need not detain us, because the impediment was not an impediment external to the decree. Even if the Bombay view be right, it really rests on the basis that a decree against a firm, in so far as it is a decree against unidentified partners, is not "in such a form as to render it capable in the circumstances of being enforced" immediately and therefore the right to enforce it would not accrue till it came to be in such form. The reason which delays the accrual of the right to enforce is thus a reason inherent in the decree itself. The principle underlying the Bombay view is the principle laid down by the Privy Council in 48 Ind App 17 and it is of no help in a case where there is nothing in the decree itself which prevents it from being immediately executable, but it cannot be executed for some time because of an external circumstance.

15. The other decision of this Court in *Apurba Krishna Sett v. Rash Behary Dutt*⁹, is, however, directly in point. There, a preliminary decree was passed by this Court in a mortgage suit in June, 1904 and an order absolute for sale was made in March, 1907. The order was drawn up and signed in May, 1907 but it was not otherwise completed and was not filed. In May, 1919, an application was made, asking that the order might be completed and the sale proceeded with. An objection being taken that the application was time-barred, it was contended by the decree-holder that no present right to enforce the decree had arisen till the day when the order was filed and therefore the limitation under Article 183 was to be computed from that date. Rankin, J., as he then was, repelled that contention and observed as follows :-

"The only remaining question is whether the present right to enforce the order absolute arose when the order was pronounced. I think it did. The signing of the order has got nothing to do with the right in this case, any more than in the case of an ordinary judgment for payment of money. Before a judgment will be enforced, an applicant has no doubt to prove his right to do so and to prove that there is a

⁸ ILR (1954) Bom 377 : AIR 1954 Bom 208

⁹ ILR 47 Cal 746 : AIR 1920 Cal 638

judgment, but his right exists before he proves it. This 12 years' period of limitation is guarded by the words in the third column of the Article, because judgments are often given to take effect in part or whole upon the happening of a future event, not because it takes a little time to perfect an order and not because it is desired to encourage sloth or negligence."

16. On appeal, the decision was affirmed by Mookerjee and Fletcher, JJ. They too held that the present right to enforce the order absolute had arisen when the order was made and not when it was filed. On the contrary view, it was observed, the period of limitation might be indefinitely extended by the laches of the decree-holder who might not file the decree for years, as had actually happened in the case then before the Court.

17. Unless we are prepared to dissent from it and refer the question to a Full Bench, we must take this decision as binding on us. It is true that after making the observations I have quoted, Rankin,

J. added : "In the present case it is not even true that a copy of the order is required before an application can be made for execution : *Raj Girsahaya v. Iswardhari* ¹⁰". In making that statement, he was undoubtedly not correct and the decision he relied on was also not applicable, since it was concerned with execution of a decree of a civil court. But the reason given by the learned Judge in the further sentence was clearly an additional reason, as the form of language he adopted shows. Earlier, he had said that although before a judgment would be enforced, the applicant for its enforcement would be required to prove that there was a judgment and that he had a right to enforce it, his right existed before he proved it. That observation clearly means that the accrual of a right to enforce a decree is not dependent on the production of proof of the decree before the executing court by means of a certified copy or otherwise, but the right accrues out of the decree itself as soon as it is passed. The point before us is thus exactly covered. Further, the Appellate Court did not proceed, even partly, on the basis that a copy of the decree or order was not required for purposes of execution, but proceeded on general grounds.

18. Giving the matter the best consideration I can, I have come to the conclusion that there is no good reason to dissent from the view taken concurrently by the trial and Appeal Courts in the above case. The right to enforce the decree, it appears to me, is one thing: the possibility or practicability of exercising the right is another. If by the terms of a decree, the decree-holder has become entitled to execute it immediately, an instant right to execute it has accrued to him contemporaneously with the passing of the decree. Even if he is prevented by some external circumstance from enforcing the decree for some time, the right as a right, is nevertheless a present right. and what is a present right is not merely the right declared by the decree but the right to enforce the decree, because if a decree declares certain rights in favour of a person and there is nothing in the decree itself by which they are declared with effect from a future date or which postpones the right to execution to some date in the future, there is no reason to say that a present right to enforce the decree does not accrue to the decree-holder as soon as the decree is passed. It may be that, though entitled under the terms of the decree to enforce it immediately, he cannot in fact do so for some time by reason, say, of having to comply first with some procedural requirement, as in the present case, but that only means that it is not practicable for him yet to enforce the decree and not that a present right to enforce it has

¹⁰11 Cal LJ 243

not accrued. If, to take the present case further, the decree-holder could not execute the decree till he could procure and produce a certified copy of it, that only means that so long as he could not produce a certified copy, he could not produce before the executing Court proof of his present right to enforce the decree and not that the right itself had not arisen.

19. Mukherji, J. has observed that to require a decree-holder to produce a certified copy of the decree if he wants to execute it and at the same time to refuse him the time required to obtain a copy, would be to create an impossible situation and therefore the words "when a present right to enforce a decree accrues" should be construed to mean "when the decree-holder obtains a certified copy of the decree". With respect, I am unable to agree. The natural meaning of the words does not warrant that construction; and the period prescribed being the period for only the first application and it being as long as twelve years, the slight abridgement that is likely to be caused in normal circumstances by the time required to obtain a copy of the decree, can be no reason for putting a strained construction on the words. On the other hand, as the Appeal Court pointed out in ILR 47 Cal 746: AIR 1920 Calcutta 638, if the decree-holder was allowed to claim that a present right to enforce the decree accrued to him only when he obtained a certified copy

of it, he might extend the period of limitation at his pleasure to any length. In that event, there would be for the judgment-debtor that "inconvenient uncertainty" to which Lord Westbury adverted in (1862) 4 De G F and J 456: 45 ER 1261. The law of limitation is intended to act as a spur to diligence. With a period of twelve years at his disposal, the decree-holder, who has normally the carriage of the proceedings for the completion of the decree in his own hands, ought to be able to have the decree completed and to get a certified copy of it within such period as to be left with abundant time to make an application for execution comfortably within the period of limitation. If he cannot get a certified copy early enough to be able to apply for execution within twelve years, it will be because he is not diligent. In the present case, for example, although the Long Vacation intervened, the decree was settled and passed on 28th November, 1939, which was a little over three months after the decree had been passed. Thereafter, it was the decree-holder himself who caused its engrossment to be stayed for a week in order that he might speak to the minutes which he never did. If he had written to the Registrar to proceed with the completion of the decree immediately after the week was over, instead of delaying to do so till 7th September, 1943, the decree would have been completed and he would have been able to obtain a certified copy of it long ago. In spite of such procrastination, when he did obtain a copy, there was a little more than eight years of the period of limitation still left. Some time will undoubtedly be required for obtaining a certified copy of the decree and if limitation is to be computed from its date, some abridgement of the period of limitation will undoubtedly occur, if a certified copy of the decree has to be filed. But in view of the length of the period of limitation, the abridgement will not be material and if ever it is considerable, the reason will be the decree-holder's own negligence or sloth. I do not therefore find it necessary to hold that because the Rules of this Court require a certified copy to be filed along with the application for execution, a present right to execute a decree of this Court, passed in the exercise of its ordinary original civil jurisdiction, should be taken to accrue only when a certified copy of the decree is obtained.

20. The decree in the present case contained no term by which its operation was postponed. The decree-holder was under no disability. Consequently, time began to run against him on 16th August, 1939 when the decree was passed and not on 11th September, 1943 when he obtained a certified copy.

21. One feels naturally inclined to ask why, as respects the starting point of the period of limitation, Articles 182 and 183 should have been differently expressed : Extensive researches were made in the literature relating to the passing of the Successive Limitation Acts, but no indication of the reason was found. Speculation can hardly be relied on for a correct answer, but I can think of two reasons. Article 182 fixes the starting point of limitation at "the date of the decree or order". Article 183 is concerned with the Chartered High Courts which have power, under Section 129 of the Civil Procedure Code, to make rules for the regulation of their own procedure in exercising their original civil jurisdiction. Such rules need be consistent only with the Letters Patent of the Court, but need not be consistent with the Code and therefore any of the Chartered High Courts might, by rule, make the expression "date of the decree" bear a different meaning from what it bore under the Code. The difficulty was increased when, in 1874, decrees and orders of the Privy Council came to be included in the predecessor of the Article in the Act of 1871. Secondly, unlike Article 182, Article 183 incorporates in itself the provisions of Section 6 of the Act with this difference that instead of extending the period of limitation as Section 6 does, it prevents the period from beginning to run. If time was to begin to run only when the right to execute the decree or order accrued to a person "capable of releasing the right" and therefore

when the decree-holder was under a disability at the date of the decree, it would not begin to run till the disability ceased, the date of the decree could not obviously be given as the starting point of limitation for all cases.

22. I may now proceed to a consideration of the decree-holder's claim that he was entitled to exclude in the computation of limitation two periods during which execution of the decree remained stayed under injunctions. The date of his application was beyond twelve years by 12 days less than two years. According to the finding of the learned Judge, the period of the first injunction commenced at least on the 4th March, 1940 and extended up to the 18th January, 1944; and that of the second injunction extended from the 13th February, 1947 up to the 17th February, 1950. If even one of those periods be available to the decree-holder, his application for execution was within time.

23. The first of the cases in which an injunction was issued was a suit brought by 14 minor members, belonging to certain branches of the judgment-debtors' family, against 18 decree-holders for a permanent injunction, restraining them from "doing anything" in pursuance of their decree 'or against the properties of the Plaintiffs i.e., properties in lists 4 and 6". The lists have not been printed in the Paper-Book. The present decree-holder was No. 16 among the decree-holders against whom an injunction was sought. An interim injunction was issued on the 3rd June 1939, which was before the present decree-holder had obtained his decree and by it the decree-holders were directed not to proceed against the Plaintiffs in the suit in execution of their decrees in any way, as also not to proceed "against properties belonging to the branches of the Plaintiffs who are the descendants of Mohanlal and Mukundilal". On the 4th March, 1940, the interim order of injunction was confirmed in a modified form. It now directed that the decrees were not to be "executed in a manner so as to affect the Plaintiffs or their interests in the joint family property." On appeal by some of the decree-holders, the injunction was dissolved as against them, but it continued to subsist as against the remaining decree-holders, including the present decree-holder, till the 18th January, 1944, when the suit itself was dismissed.

24. The present decree-holder obtained his decree on the 16th August, 1939. The learned trial Judge has not considered whether the interim injunction would attach to his decree at least from that date, because the final order of injunction made on the 4th March, 1940 would in any event affect the decree and if the decree-holder was entitled to the period between that date and the 18th January, 1944 when the injunction ceased to exist on the dismissal of the suit, it would suffice him for the purposes of limitation. I may add that if the decree-holder be not entitled to the period between the 4th March, 1940 and the 18th January, 1944 because of the modification of the terms of the injunction, the period between the 16th August, 1939 and the 4th March, 1940 would not suffice him, even if he be entitled to it. That period may therefore be left out of account, as was done by the learned trial Judge.

25. The injunction only prevented the decree-holders from executing their decrees in such manner as to affect the Plaintiffs in the suit or their interests in the joint family property. The plaintiffs in the suit included only judgment-debtors Nos. 9, 10, 11, 13 and 14 under the present decree-holder's decree, none of whom is an appellant before us. There was another Plaintiff, named Naraindas and it is said that he was none other than Moonoo, judgment-debtor No. 38, who is Appellant No. 12. There is no direct evidence of the identity, but it was practically admitted by Mr. Meyer who appears for the Appellants. According to the Appellants also,

Bansilal had only four sons and it appears from various applications printed in the Paper-book, that the fourth son was Naraindas. Moonoo, the 38th judgment-debtor and the 12th appellant before us, has been described as son of Bansilal. Since as regards the other three sons there is no difficulty and, according to both parties, Bansilal had only four sons, the fourth son may reasonably be taken to be Naraindas, alias Moonoo, as contended. Taking Naraindas to be the same person as Moonoo, the position as to the injunction in its application to the present decree was that it was limited, as to persons, to judgment-debtors Nos. 9, 10, 11, 13, 14 and 38 and, as to property, only to the interest of those judgment-debtors in the joint family property. Of those judgment-debtors, we are directly concerned in this appeal with only judgment-debtor No. 38.

26. The history of the other case in which an injunction was issued is extremely complicated. Before setting it out, it is necessary to mention that the judgment-debtors were members of a joint family which consisted of five branches, namely, the Calcutta Branch, the Jhusi Branch, the Banares Branch, the Naini Branch and the Branch of Baijnath. On the 2nd January, 1926, one Lala Pratap Chandra and other members of his Branch filed a suit for partition in the Court of a Subordinate Judge at Allahabad and in that suit a compromise preliminary decree was passed by the Allahabad High Court on appeal on the 13th January, 1931. A final decree was thereafter passed on the 13th January, 1939 and that decree was confirmed on appeal by the Allahabad High Court by three judgments, dated respectively the 19th January, 1948, the 12th April, 1948 and the 6th December, 1948. On the 9th September, 1935, the Plaintiffs in the partition suit, together with Baijnath, started a proceeding under the U. P. Encumbered Estates Act and to that proceeding, the members of the Banares Branch were made parties. In 1946, the Banares Branch made two separate applications before the Special Judge for injunctions against two Calcutta creditors, viz., Parsottam Das and Ghanashyam Das, restraining them from executing their decrees against the properties of the Banares Branch situated in the United Provinces on the ground that according to the final decree in the partition suit, the Banares Branch was not liable to pay the debts of the Calcutta creditors. The Special Judge granted ad interim injunctions in the first instance, but ultimately dismissed the applications. Two appeals were then preferred, Appeals Nos. 14 and 15 of 1947, to the Allahabad High Court. In the first appeal, an application was made for an ad interim injunction against Ghanashyam Das on the 19th December, 1946 and an injunction was granted. On or about the 6th February, 1947, another application was made for a similar injunction against 13 other Calcutta creditors, including the present decree-holder and another decree-holder named Kanaiyalal. An ad interim injunction was issued on the 13th February, 1947, but on cause being shown by Kanaiya Lal and two other decree-holders, the injunction was dissolved as against them. The appellants to the High Court then went back to the Special Judge and obtained an injunction against Kanaiya Lal, restraining him from executing his decree against them. From that order of injunction Kanaiya Lal preferred an appeal to the High Court which was Appeal No. 278 of 1948. The three appeals came up for hearing together and were disposed of by a common judgment, delivered on the 17th February, 1950. All the appeals were held to be incompetent, but Appeal No. 278 was treated as a revision and the injunction granted against Kanaiya Lal by the Special Judge was vacated.

27. The injunction against the present decree-holder was thus operative from the 13th February, 1947 up to the 17th February, 1950. By it, he and the other decree-holders were restrained "from getting a receiver appointed of the properties of the Banares Branch, situate in the United Provinces, or in anyway executing their decrees against the applicants' any other property situate in the United Provinces of Agra and Oudh". It appears that the Banares Branch which made the

application consisted of Bansilal and his sons, judgment-debtors Nos. 34 to 38 under the present decree. All of them are appellants before us, being Appellants Nos. 8 to 12.

28. The Respondent's application for execution was initially directed against three properties, two of them situated in Uttar Pradesh, it is stated in the learned trial Judge's judgment that the claim to attach and sell the U. P. properties was withdrawn by the Respondent, without prejudice to his right to obtain execution against those properties in future by a transaction of the decree to U. P. Courts. The application is thus now limited to the third property which is a Calcutta property, situated at 6 or 6A Shib Thakur Lane. It is not disputed that, by the final decree in the partition suit, this property has been allotted exclusively to Lala Baijnath Prasad, judgment-debtor No. 1 and Appellant No. 1 before us.

29. The learned trial Judge has held that by virtue of the provisions of Section 15 of the Limitation Act, the Respondent was entitled to exclude the periods of the two injunctions in computing the period of limitation. Section 15, so far as is material, says that in computing the period of limitation for the execution of a decree, "the execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order" shall be excluded. If the decree-holder is prevented altogether from executing his decree, it is but reasonable that time should not run against him so long as he remains disabled and the section says so. But there seems to be no reason why the section should be construed as meaning that even when the injunction or order is limited to one or some of several judgment-debtors or to one or some of their properties or to some particular mode of execution and even when the decree-holder is left free to proceed against the other judgment-debtors or other properties or in other ways, he will be entitled to the benefit of the section. In such a case, the execution of the decree is not "stayed" but only execution in certain ways or against certain persons or properties is prevented. But assuming 'stayed' includes 'stayed in part', the utmost that can be claimed under the terms of the section is that if a decree-holder is restrained for a time from proceeding against some particular judgment-debtor or some particular property or in some particular way and when the bar is lifted, he applies for execution against the Same judgment-debtor or the same property or in the same way, he will be entitled to exclude the period during which he remained restrained. That appears to be the view taken in *Parneswar Nambudiri v. Seshan Patter*¹¹, In that view of the section, the words "the execution of which was stayed" may be taken as meaning "the execution of which in the manner asked for was stayed". The preponderance of judicial opinion, however, appears to be in favour of the view that Section 15 contemplates an absolute stay. See *Kundo Mal v. Daulat Ram Vidya Prakash*¹², *Kirtyanand Singh v. Prithi Chand Lal*¹³, *Ram Bharosay v. Sohan Lal*¹⁴, and *Virchand Kapur Chand v. Marualappa*¹⁵, The decision of the Privy Council in *Kirtyanand Singh v. Prithi Chand Lal Chowdhury*¹⁶, which was cited does not decide anything, since the stay relied on was held to have been no stay at all. Only in *Ghulam Nasir-ud-din v. Hardeo Prasad*¹⁷, where execution against one property was stayed and thereafter there was a second application for execution against another property, it was held that the decree-holder could exclude the period of the Stay; and only in *Bai Ujam v. Bai Ruxmani*¹⁸, there was an observation that whether or not the order for stay was as to a part of the decree was wholly immaterial. It appears, however, as pointed out in the case in AIR 1944 Bombay 303, that the order for stay was really an order for a stay of execution of the whole decree.

30. There is no decision of this Court which deals with the point. The cases of *Ra-ghunandan Pershad v. Bhugoo Lal*¹⁹, and *Gurudas Narayan Sinha v. Amrit Narayan Sinha*²⁰, are not

relevant, because all that was considered in those cases was whether or not the second application for execution was a continuation of the first. Nor does *Govinda Nath Chaudhuri v. Basiruddin Mandal*²¹, help, because although execution was first stayed by an injunction with respect to only a half-share of one of four properties and thereafter the whole execution case was stayed by an order of the executing Court, all that the decree-holder asked for was exclusion of the period between the date when the whole execution case was stayed and the date when that order for stay expired. In the judgment it is stated that after the grant of the injunction, the decree-holder was still entitled to proceed with the execution with respect to the remaining properties, as in fact he did till the whole execution was stayed, but in stating the conclusion, the judgment says that the decree-holder was "entitled to deduct the time during which the injunction and the order continued, the date on which the injunction was issued and the order was made and the

¹¹ ILR 51 Mad 583: AIR 1928 Mad 627

¹³ AIR 1929 Pat 597

¹⁵ AIR 1944 Bom 303

¹² AIR 1940 Lah 75

¹⁴ AIR 1924 All 707

¹⁶ 60 Ind App 43

¹⁷ ILR 34 All 436

¹⁹ ILR 17 Cal 268

²¹ 34 Cal LJ 163: AIR 1921 Cal 606

¹⁸ ILR 38 Bom 153 : AIR 1914 Bom 211

²⁰ ILR 33 Cal 689

date on which the injunction and the order ceased to be operative." I do not think that this case can be taken as having decided that a stay of execution as respects even a part of the properties would entitle the decree-holder to exclude the time during which such stay may have lasted for the purposes a second application directed against other properties.

31. I think in its application to cases of a partial stay of execution, Section 15 (1) may reasonably be construed to mean that where a second application is directed against the same judgment-debtor or the same property, as against whom or which a previous execution was stayed or execution is sought in a form in which the decree-holder was restrained from proceeding for a certain time, the period during which the bar was subsisting may be excluded in computing the period of limitation. The view that in such a case Section 15 (1) is not attracted at all may cause hardship and does not seem to be reasonable. If, for example, the decree-holder is restrained from proceeding against one of the properties of the judgment-debtor for a certain time and the sale of the other properties does not satisfy his decree, but by the time the restraint in regard to the first property is removed, the period of limitation prescribed by the relevant Article has expired, he will not be able to recover the balance of his dues unless he is allowed to exclude the time during which he was under a restraint. In such a case, the decree-holder will be deprived of a part of the benefits under the decree for no fault of his. It is true that such a result can be prevented by holding that even a partial stay will entitle the decree-holder to exclude, under Section 15 (1), the period of the stay for the purposes of the whole execution, but that again does not seem to me to be a reasonable view. If, for example, execution of the decree is stayed in respect of a fractional share of one of the attached properties because of a claim of a third party or execution by the arrest of one of the judgment-debtors is stayed by reason of an application by him for insolvency, there seems to be no good reason to think that Section 15 (1) intends to allow the decree-holder even in such a case to stay his hands altogether with no risk of time running against him, so long as the Small impediment is not removed and thus to allow him to keep the threat of execution hanging indefinitely over the judgment-debtors and other properties, belonging to all the judgment-debtors. I would therefore hold, though not without some hesitation, that Section 15 (1) applies also to cases of a partial stay, but only so as to allow exclusion of the period of the stay in the computation of time for a further execution against the person or the property, as against whom or which execution was previously stayed and not so as to allow exclusion of that period for the purposes of a future execution against persons or

properties not affected by the stay order.

32. In the above view, the period of the first injunction may be available to the decree-holder only as against Naraindas, alias Moonoo, Appellant No. 12, among the appellants before us. Even that is not very clear, because the injunction was granted after the final decree in the partition suit, subsequently confirmed on appeal, had been passed and under that decree, Moonoo had been given no interest in the property at 6 or 6A Shib Thakur Lane. But since the appeal from the final decree in the partition suit was still pending and since the injunction restrained the decree-holders from executing their decrees in such a way as to affect the Plaintiffs or their interest in the joint family property, I would hold that the decree-holder could not have proceeded against Moonoo in an execution against the Shib Thakur Lane property so long as the injunction subsisted and at the same time could not have left him out if he wanted to sell his interest in the house, which it had not yet been finally decided he had not. As regards the other Appellants, the injunction did not prevent the decree-holder from proceeding against them. The decree-holder is thus entitled to exclude the period of the first injunction only as respects the execution against Moonoo, but he is not entitled to exclude it as respects any of the remaining Appellants.

33. The period of the Second injunction cannot be excluded at all. Though the injunction was in favor of judgment-debtors Nos. 34 to 38, Appellants Nos. 8 to 12, it only restrained execution against such of their properties as were situated in the United Provinces. There was nothing in the injunction to prevent the present decree-holder from proceeding against the interest of the judgment-debtors Nos. 34 to 38, if any, in the Calcutta property against which the present execution is directed. The decree-holder is thus not entitled to the benefit of period of the second injunction as against Appellants Nos. 8 to 12 or as against any of the other Appellants. Though he gets the benefit of the period of the first injunction as against Moonoo, Appellant No. 12, it appears to be a benefit without any substance so far as the present execution is concerned, because Moonoo has no interest in the property sought to be attached and sold.

34. There remains the decree-holder's claim of a fresh start of limitation founded on certain alleged acknowledgments of liability. The acknowledgments are said to be contained in an affidavit, affirmed by one Mukund Lal on the 7th August, 1944, another affidavit affirmed by the same person on the 4th December, 1944 and a third affidavit affirmed by one Prem Nath Chaubey on the 30th November, 1944, Mukherji, J. did not finally decide whether the statements relied on were really acknowledgments, nor even if they were, they would give a fresh start to limitation.

35. On whose behalf the affidavits relied on were affirmed is by no means clear. In the two affidavits affirmed by him, Mukund Lal states that he is the pairokar of Respondents Nos. 26-29 in the appeal in which the affidavits were being used, i.e. F. A. No. 530 of 1943. But the means of Respondents Nos. 26 to 29 do not appear anywhere. In paragraph 2 of Premnath's affidavit, which is an affidavit-in-opposition to Mukund Lal, it is however stated that Mukund Lal is the pairokar of "Respondents Nos. 26 to 29, known as the Banares Branch", but who the individuals constituting the Benares Branch at that time were, have not been shown. Premnath's affidavit was affirmed in the same appeal and he too describes himself merely as the pairokar of the defendants-appellants. Who the defendants-appellants were is not known, except that it appears from the cause-title of the appeal 'Banwarilal and others', that Banwarilal was one of them. I consider it most unsatisfactory that the decree-holder should rely on alleged acknowledgments

but not take care to prove precisely on whose behalf they were made. If he had only exhibited a copy of the Memorandum of Appeal in F. A. No. 530 of 1943, there would have been no difficulty at all in ascertaining who exactly the defendants-appellants or Respondents Nos. 26 to 29 were.

36. As regards Mukund Lal's affidavits, it however appears from numerous other applications and affidavits as well that he represented the Benares Branch. In an affidavit affirmed in this Court on the 10th March, 1955, he has stated that he is the Moonim Gomastha of Bansilal, Kasi Prasad, Sarda Prasad, Krishna Das and Moonoo, judgment-debtors Nos. 34 to 38. That Bansilal is the present head of the Benares Branch is also clear. But the respondents in the First Appeal No. 530 of 1943, on whose behalf the affidavits were sworn were four and not five in number. Who among the five was not included in Respondents Nos. 26 to 29 is not known. In those circumstances, it seems to me impossible to fasten the statements in Mukund Lal's affidavit on any of judgment-debtors Nos. 34 to 38.

37. Nor do I find it easy to hold that there was any proper acknowledgment. Paragraphs 13, 14 and 15 of the affidavit of the 7th August, 1944 and Paragraph 17 of the affidavit of the 4th December, 1944, on which reliance was placed, appear to me to be acknowledgments of the existence of the decree with a denial of liability thereunder. It is repeatedly stated in several other paragraphs of the affidavits that although the Calcutta decrees are against all the members of the joint family, the indebtedness was only of the Calcutta Branch and that under the final decree in the partition suit, other Branches of the family, particularly the Benares Branch, are not liable to pay those decretal debts. In those circumstances I find it difficult to hold that there was any acknowledgment proper, simply because an apprehension was expressed that the Benares Branch being prima facie liable under the decree, their properties might be proceeded against and sold. I would, however, prefer to rest my decision against the decree-holder in respect of these affidavits on the first ground.

38. Premnath's affidavit is slightly more in favor of the decree-holder, but I do not feel called upon to consider it, because, at the most, it gave a fresh start of limitation against Banwarilal, judgment-debtor No. 15, who is not an appellant before us. The decree undoubtedly directs the adult defendants to pay the decretal amount personally and the infant defendants to pay it out of the assets of the joint family business which are in, or which may come to, their hands. It seems to be a decree in respect of a business debt of a joint Hindu trading family. But even if it be such a decree, the acknowledgment, if any, was not in my view, made "to the person entitled thereto or his agent", as required by the proviso to Article 183. The learned trial Judge has held to the contrary, but I am unable to agree with him. If the statements had been made in affidavits used in the proceeding under the U. P. Encumbered Estates Act, to which all 18 decree-holders were parties, the case might come under the decision in *Srinarayan Kaya v. Bhagwan-das Churiwalla*²², on which the learned Judge has relied. But here the statements were made in affidavits used in the appeal from the final decree in the partition suit, to which the Calcutta decree-holders were not parties. But if there was an acknowledgment, I agree with the learned trial Judge that the respondent would be entitled to invoke Section 19 of the Limitation Act, although the acknowledgment might not be an acknowledgment within Article 183. Under Section 3 of the Act, an application made after the period of limitation prescribed therefor by the First Schedule, shall be dismissed, "subject to the provisions contained in Sees. 4 to 25". That clearly means that if an application is within time under the provisions of the relevant Article, no

occasion for the application for Sees. 4 to 25 for the purpose of its protection will arise. If, in the present case, there was an acknowledgment within the meaning of the proviso to Article 183, saving limitation under that very Article, Section 3 would not be attracted at all. But where, judged by the provision contained in the relevant Article, an application is out of time and it is prima facie liable to be dismissed, section 3 will come into play and the application will be dismissed only if there is nothing in Sections 4 to 25 to save limitation for it. In the present case, if the acknowledgment does not save limitation under Article 183 itself, not being an acknowledgment made to the decree-holder, it may nevertheless be an acknowledgment

²² ILR (1939) 2 Cal 523: AIR 1940 Cal 210

under Section 19 which does not require an acknowledgment to be made to any one. The application cannot therefore be dismissed if there was a proper acknowledgment and if under Section 19 the acknowledgment saves limitation.

39. But it appears to me that even under Section 19, the acknowledgment by Premnath, if there was a proper acknowledgment at all, cannot bind any one other than Banwarilal who is the only identifiable person on whose behalf the acknowledgment was made. In no event can it bind members of the other Branches. The acknowledgment, if any, having been made on behalf of one or some members of a trading family but not made in the course of business so as to have been made, in law, by him or them on behalf of all, cannot bind the other members by reason of Section 21 (2) of the Act. Nor can it bind the other members of the family under Section 21 (3) (b) on the basis that it was made by or on behalf of the manager, because who the manager was is not known and because the statement was made after the final decree in the partition suit and therefore after the disruption of the family, which was mentioned in the other parts of the same affidavit and which was even otherwise known to the decree-holder. The appellants before us are therefore not affected in any way by Premnath's statements, even if they contained an acknowledgment.

40. The question of the acknowledgment was not finally decided by the learned trial Judge, nor was it seriously argued before us on behalf of the Respondent. I have nevertheless dealt with it at some length, because it may still be relied on and it may be found that the view I have taken of the meaning of the statements is not correct.

41. In the result I hold that time began to run as against the Respondent on the 16th August, 1939 and that his application for execution was time-barred as against all the appellants save and except Appellant No. 2, Moonoo, as against whom the limitation was saved by the first injunction. I do not consider it necessary to consider the case of any judgment-debtor, not impleaded in the appeal, under the provisions of Order 41, Rule 4 or Rule 33 of the Civil Procedure Code.

42. The appeal accordingly succeeds in part. Except in so far as it was held that the respondent's application was within time as regards judgment-debtor No. 38, Appellant No. 12, Moonoo, the judgment and order of the learned trial Judge are set aside and the respondent's application for execution is dismissed except as against Moonoo.

43. The appellants, other than Appellant No. 12, will have the costs of this appeal.

44. Certified for two Counsel.

A. K. Sarkar, J.

45. I agree.

Appeal allowed in part.