

# LAHORE HIGH COURT

Kundo Mal

Vs

Daulat Ram-Vidya Parkash

(Din Mohammad, J.)

21.11.1939

## JUDGMENT

### **Din Mohammad, J.**

1. This is an appeal by the Firm Maya Mal-Kundu Mal judgment-debtors against an order of the Senior Subordinate Judge, Ludhiana, allowing the execution application of the Firm Daulat Ram-Vidya Parkash, decree-holders, to proceed against them. The application for execution was resisted principally on the ground that it was time-barred, but the Senior Subordinate Judge repelled this contention. Hence this appeal. The facts bearing on the question of limitation are these: On 19th December 1924 the decree-holders presented an application for execution by attachment of both moveable and immovable properties of the judgment-debtors and by their arrest. In pursuance of this application on 10th January 1925, a house situated in Mohalla Rupa Mistri was attached. On 13th January 1925 one Lachhman put in objections claiming the house as his own. On 26th January 1925 these objections were allowed to the extent of one-third of the house. The sale of the remaining two-thirds of the house was ordered for 12th June 1925. On 26th January 1925 the decree-holders put in an application stating that their decree be executed by attaching another house belonging to the judgment-debtors, which was situated in Lakar Bazar. On 13th February 1925, one Bansi Lal objected to the attachment of that house on the ground that it belonged to him. On 13th March 1925, these objections were allowed. On 12th June 1925, one Mt. Shibo put in a claim to one-third of the house situated in Mohalla Rupa Mistri and asked the Court to have the sale of that house stayed. Thereupon, the Junior Subordinate Judge issued a robkar to the Senior Subordinate Judge informing him that a declaratory suit had been instituted regarding one-third of the house which was under attachment under the orders of that Court and for the sale of which 12th June 1925, had been fixed. It was further stated that if the house was sold, the plaintiff would suffer an irreparable loss. It was accordingly suggested that it would be but proper if the execution proceedings were stayed. The Senior Subordinate Judge thereupon made an order staying the sale of the house and calling for a report. On 15th June 1925, the execution proceedings were consigned to the record room for want of prosecution as the decree-holders were absent. On 16th November 1925, the decree-holders instituted a suit under Order 21, Rule 63, Civil Procedure Code, in regard to the house situated in Lakar Bazar. On 4th May 1926, the suit brought by Mr. Shibo was dismissed. On 15th June 1928, the suit instituted by the decree-holders in regard to the house situated in Lakar Bazar was decreed. On 7th July 1928, the decree-holders put in another application for execution

asking for the revival of the original execution application and for the attachment of the house situated in Lakar Bazar. On 9th July 1928, Bansilal preferred an appeal to this Court against the order of 15th June 1928, decreeing the decree-holders' suit against him. On 18th July 1928, Addison J. stayed the sale of this house, but did not disturb the attachment. On 21st September 1928, the stay of sale was made absolute on certain conditions. On 5th October 1928, the judgment-debtors were served and on 25th October 1928, the house situated in Lakar Bazar was re-attached. On 9th November 1928, an order was recorded by the executing Court staying the sale of the house but continuing the attachment. On 29th June 1934, Bansilal's appeal to this Court was dismissed and on 27th July 1934, a third application for revival of the previous application was put in by the decree-holders. On 1st August 1934, the sale of the property attached was ordered. Various objections were again raised. On 12th January 1935, Bansilal's objections were disposed of. On 13th January 1935, the house was sold. On 9th February 1935, the judgment-debtors put in various objections and inter alia contended that the execution application was barred by time. On 12th February 1935, Kundu Mal, one of the judgment-debtors, made an application, which was signed by him and by a counsel, who was representing the decree-holders throughout these proceedings that he abandoned the plea of limitation. Proceedings went on until 14th January 1938, when the sale of one-half of the Lakar Bazar house was fixed for 1st July 1938. On 17th June 1938, the judgment-debtors once more objected to the execution application being time-barred and on 4th March 1939, the order under appeal was made.

2. Counsel for the appellants has contended: (1) that the application for execution which was put in on 7th July 1928, was evidently time-barred, firstly, because the execution case had been dismissed for default on 15th June 1925, and no application was made within three years of that order; secondly, the order made on 12th June 1925, staying the sale of the house related to the house situated in mohalla Rupa Mistri and not to the house which was later attached and sold; thirdly, no order for injunction had been issued to the decree-holders restraining them from executing their decree and fourthly, Mt. Shibo's suit related only to one-third of the house situated in mohalla Rupa Mistri, (2) that the decree-holders had asked for three reliefs in their first application, which was submitted on 19th December 1934, and that in spite of the orders of stay made from time to time the decree-holders were at liberty to proceed against the other properties of the judgment-debtors, both moveable and immovable, and also to apply for their arrest, and (3) that the question of limitation had not been abandoned by all the judgment-debtors; it was abandoned only by one of them, Kundu Mal; the other two judgment-debtors were not bound by what Kundu Mal had done on his own account at any rate, the question of limitation could not be abandoned and that it was the duty of the Court to have gone into this matter in spite of the fact that it had been waived by one of the judgment-debtors.

3. As regards point No. 1, counsel for the respondents urges that they were entitled to exclude three different periods and that consequently their application which was put in on 7th July 1928, as well as their application which was later put in on 27th July 1934, could not in any circumstances be barred by time. The deductions that they claim are (1) from 13th March 1925, when Bansilal's objections were allowed, to 15th June 1928, when the decree-holders' suit under Order 21, Rule 63, Civil Procedure Code, was decreed; (2) from 12th June 1925, when the sale proceedings in regard to the house situated in mohalla Rupa Mistri were stayed by the Senior Subordinate Judge at the request of the Junior Subordinate Judge, to 4th May 1926, when Mt. Shibo's suit was dismissed and (3) from 18th July 1928, when on the application of Bansilal

this Court had stayed the sale of the house ad interim to 29th June 1934, when the appeal of Bansi Lal was disposed of. Counsel for the appellants, on the other hand, urges that none of these deductions is permissible under the law. Section 15, Limitation Act, says that in computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded. It is obvious, therefore, that in order to enable the decree-holders to exclude any time in computing the period of limitation, the execution of their application must have been stayed by injunction or order and unless this is so no time can be excluded. In the present case, as stated above, all that was done by the Senior Subordinate Judge on 12th June 1925 was to stay the sale of the house situated in Mohalla Rupa Mistri. Apart from the fact that Mt. Shibo's suit related only to one-third of the house situated in Mohalla Rupa Mistri and that the present application relates to the house situated in Lakar Bazar, the fact remains that it was open to the decree-holders to have the other properties of the judgment-debtors, both moveable and immovable, attached and also to have taken action for their arrest. Execution of their decree had never been stayed by any order or injunction and they themselves had claimed three different reliefs in their application of 19th December 1924. It is well settled that if execution is not completely and absolutely stayed, Section 15 does not come into play. If any authority is needed for this proposition, reference may be made to *Ram Bharosay v. Sohan Lal*<sup>1</sup> *Chanbasappa Nagappa v. Holibasappa Basappa*<sup>2</sup> *Kirtyanand Singh v. Pirthichand Lal*<sup>3</sup> *Tripura Sundaram v. Abdul Khadar*<sup>4</sup> and *Kirtyanand Singh v. Prithichand Lal*<sup>5</sup>,

4. Counsel for the respondents has drawn my attention in this connexion to *Pattamayya, v. Pattayya*<sup>6</sup> *Kamaruddin v. Jawahir Lal*<sup>7</sup> *Hira Lal v. Punjab National Bank*<sup>8</sup> and *Kristo Kamini Debi v. Girish Chandra Mondal*<sup>9</sup> I, however, consider that none of these authorities is in point. I am further of opinion that a decree-holder cannot extend the time in his favour by merely describing his petition as one for revival of the original application and that the authorities which grant him this concession have gone beyond the statute of limitation itself. In the matter of limitation only such periods can be excluded which are expressly mentioned in the Limitation Act and if the law does not allow any exclusion, I consider that it is impossible to allow that exclusion merely on the score of authorities. It is no doubt open to the Courts to interpret the law in any manner they like and to come to the conclusion that the case contemplated by them is not provided for under the statute, but the present case is not a case of that type. I hold, therefore, that the application of 7th July 1928 was clearly time-barred having been presented more than three years after the execution application had been consigned to the record room by the Senior

<sup>1</sup> AIR (1924) All 707

<sup>3</sup> AIR (1929) Pat 597

<sup>5</sup> AIR 1933 PC 52 : 1933 AWR (P.C.) 1 183

<sup>2</sup> AIR (1924) Bom 383

<sup>4</sup> AIR (1933) Mad 418

<sup>6</sup> AIR (1926) Mad 453

<sup>7</sup>(1905) 27 All 334

<sup>9</sup> AIR 1936 Cal 239

<sup>8</sup> AIR (1935) Lah 911

Subordinate Judge on account of the default of the decree-holders.

5. I am also of the opinion that the waiver of the question of limitation by Kundu Mal did not bind the other two judgment-debtors and that it was open to them to insist on a decision on that point. Further, there is abundant authority in support of the proposition that objections regarding limitation cannot be waived and that even if they are waived they can be taken up again by the parties waiving them or by the Courts themselves. Reference in this connexion may be made to *Desraj Hukumchand v. Lachhi Ram Prabh Dayal*<sup>10</sup> *Hukum Singh v. Shahab Din*<sup>11</sup> *Radha Mohan*

*v. Ami Chana*<sup>12</sup>, *Ram Charrittar v. Suraj Teli*<sup>13</sup>, *Rama Murthy v. Gopayya*<sup>14</sup> and *Gobardhan Das v. Dau Dayal*<sup>15</sup>

6. It was further contended by the appellant's counsel that the judgment-debtors were not expected to raise all points at one time and that it was open to them to raise their objections piecemeal. In support of his contention he relied on *Aley Rasul v. Bal Kishan*<sup>16</sup>, *Genda Lal v. Hazari Lal*,<sup>17</sup> *Allahabad Bank Ltd. v. Rattan Lal*<sup>18</sup> and *Raja Balbhadar Singh v. Shankar Das*<sup>19</sup> *Atul Krishna Ghosh v. Brindaban Naik*<sup>20</sup> and *Kesheo Prasad Singh v. Harbans Lal*<sup>21</sup> The principles enunciated in these judgments are clear, but it is not necessary to discuss this matter at length as on the findings, as already recorded, I am in a position to dispose of the appeal. I hold that the application for execution was time-barred and accepting the appeal set aside the order of the Senior Subordinate Judge. The decree-holder will pay costs to the judgment-debtors in both Courts.

<sup>10</sup> AIR (1933) Lah 404

<sup>11</sup> AIR (1918) Lah 374

<sup>14</sup> AIR (1917) Mad 892

<sup>15</sup> AIR (3932) All 273

<sup>18</sup> AIR (1937) Lah 21

<sup>19</sup> AIR (1937) Lah 211

<sup>12</sup> AIR 1934 All 386 : 1933 AWR (H.C.) 2 1102

<sup>13</sup> AIR 1932 All 108 : (1931) ILR 53 All 738 : 136 Ind. Cas. 71

<sup>16</sup> AIR 1937 All 446 : 1937 AWR (H.C.) 409

<sup>17</sup> AIR 1936 All 21 : 1935 AWR (H.C.) 1371

<sup>20</sup> AIR (1930) Pat 330

<sup>21</sup> AIR (1920) Pat 570