LAHORE HIGH COURT

Barkat Ram, General Manager

Vs

Sardar Bhagwan Singh

(Tek Chand, J.)

25.01.1943

JUDGMENT

Tek Chand, J.

1. This petition under Sections 109 and no, Civil Procedure Code, for leave to appeal to His Majesty-in-Council from the order of 3 the Letters Patent Bench in Reported in Reported in A.I.R. 1943 Lah. 129, dated 13th May 1942, has been referred to the Pull Bench to determine the question whether the order of the Letters Patent Bench is a "decree or final order" within the meaning of Section 109(a). The material facts of the case and the reasons for the reference have been set out in some detail in the referring order, but to make this judgment self-contained, I shall recapitulate them briefly. In 1923, a decree for recovery of money was passed by the Senior Subordinate Judge, Ambala, against the petitioner and some others. In April 1927, the first application for execution was made in that Court and proceedings continued till July 1931, when it was consigned to the record room.

2. On 19th August 1931, the decree-holder assigned the decree to the respondent and, after proceedings under Order 21, Rule 16, Civil Procedure Code, his name was substituted as the decree-holder and execution ordered to proceed. In August 1932, on an application by the respondent the Senior Subordinate Judge, Ambala, issued a transfer certificate for execution of the decree at Delhi addressed to the Senior Subordinate Judge, Delhi Province. Under Order 21, Rule 5, the certificate should have been addressed to the District Judge, Delhi, in whose Court it should have been presented and he, in turn, should have sent it to the Subordinate Judge for execution. The mistake, however, was not noticed at the time and on 12th January 1933, the respondent presented the transfer certificate with a formal application for execution in the Court of the Senior Subordinate Judge, Delhi. In due course, the petitioner's right, title and interest in a certain partnership was attached and after protracted proceedings the attached property was sold on 2lst October 1935. The petitioner raised various objections to the publishing and conduct of the sale. These objections were dismissed by the executing Court, but on further appeal under the Letters Patent an order was passed on 25th February 1937 remanding the case for enquiry into some of the objections which had been raised before the sale but which had not been investigated. Enquiry into those objections continued before the Subordinate Judge, Delhi, for another two years, in the course of which a large number of witnesses were examined and arguments heard for several days. At the conclusion of the arguments on 22nd April 1939, the

petitioner presented an application under Section 47, Civil Procedure Code, raising for the first time "two new objections: (1) that all proceedings in the Delhi Court were null and void as the decree had not been transferred for execution to the District Judge of Delhi as it should have been under Order 21, Rule 5, Civil Procedure Code, but had been sent direct to the Senior Subordinate Judge, Delhi, and (2) that the application for execution presented on 12th January 1933, was time-barred inasmuch as the first application filed on 26th April 1927, had been presented more than three years after the High Court decree. The Subordinate Judge held that both these objections were belated and could not be entertained at that stage. He discussed the evidence on the objections relating to the proclamation and conduct of the sale and overruled them. In the result he passed an order confirming the sale.

3. From this order the petitioner appealed to the High Court and the appeal was heard by Din Mohammad, J. in Single Bench. *Barkat Ram v. Bhagwan Singh reported in*[1] The learned Judge held that the Senior Subordinate Judge had erroneously assumed jurisdiction in contravention of the provisions of Order 21 Rule 5 and for this reason, all proceedings held in the Delhi Court were null and void. He agreed with the executing Court that the plea that the first application was barred by limitation could not be raised after the lapse of six years during which proceedings on the second application had gone on. On the merits, he came to the conclusion that the proclamation was defective and the petitioner had been materially prejudiced thereby. On these findings, he reversed the order of the executing Court and dismissed the execution application. From this judgment, the decree-holder appealed under the Letters Patent. The Division Bench, who heard that appeal, disagreeing with the learned Judge, held j that it was not a case of inherent lack of jurisdiction but merely of an irregularity in the initial procedure and that the petitioner was not entitled after the lapse of so many years to dispute the jurisdiction of the Delhi Court. The Bench upheld the finding of the learned Single Judge that the plea of limitation could not be allowed to be raised at that stage, firstly, because it was a mixed question of fact and law and all the necessary materials were not on the record, and secondly, that the objection not having been raised when the first application for execution was made the petitioner was barred by the rule of constructive res judicate from raising it now. On the third point, also the Bench agreed with the learned Judge that the proclamation issued for the sale on 21st October 1935 was materially defective and contained an inaccurate and misleading description of the property to be sold. The decree, holder's appeal was accordingly accepted, the sale set aside and the case remitted to the executing Court for issuing a fresh proclamation of sale and taking further proceedings in accordance with law.

4. From this order of the Division Bench the judgment-debtor proposes to appeal to His Majesty-in-Council and has applied for leave under Sections 109 and no, Civil Procedure Code The value of the subject-matter in dispute in the Court of first instance as well as in the proposed appeal is over L 10,000 and the order of the Division Bench is one of reversal of that of the Single Bench. The requirements of Section no, Civil Procedure Code, therefore, are satisfied. The question, however, is whether the order of the Division Bench is a 'decree' or 'final order' within the meaning of Section 109 (a). For the petitioner it is contended that though the

[1] A.I.R. 1940 Lah. 394

judgment has not finally determined the execution application and the case has been remitted to the executing Court for further proceedings, it is really a composite judgment consisting of (i) an order that the proceedings in the Delhi Court were not without jurisdiction; (ii) an order that execution was within time; and (iii) an order setting aside the sale held on 2lst October 1935 and

directing a fresh sale to be held. It is maintained that the order in (i) and that in (ii) is each tantamount to a 'decree' and that so much of the judgment as deals with these matters is appealable to His Majesty-in-Council. After hearing lengthy arguments I am unable to accept this contention. In the first place, I do not think that the judgment of the Bench can be split up in the manner suggested, and the findings on some of the points treated as 'decrees' and those on the others as mere orders. Secondly, the execution application has not been finally determined; only the former sale has been set aside at the instance of the petitioner himself and a re-sale ordered. The Court, no doubt disallowed objections by the petitioner as to want of jurisdiction and limitation, but this was really done because both objections had been raised at a very late stage. These findings, even if they can be treated as separate entities, distinct from the rest of the judgment, cannot, in my opinion, be treated as 'decrees'. It is conceded that in a suit an interlocutory order overruling pleas of want of jurisdiction and limitation would not be a 'decree'. But it is urged that the position is different in execution proceedings, and reliance is placed on Section 2(2) and Section 47 of the Code. Section 2(2) reads as follows:

> 2. In this Act, unless there is anything repugnant in the subject or context,
> (2) 'Decree' means the formal expression of an adjudication which, so far as regards the Court expressing it conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 47 (of the Code).

5. The material part of Section 47 is all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

6. It is contended on behalf of the petitioner that the combined effect of these two provisions is to make every order passed in execution 'a decree' and, therefore, appealable. It is pointed it that while in the first part of Section 2(2), which refers to an adjudication in a suit, it is laid down that the adjudication must, "so far as the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit," there e is no such qualification in the second part which merely says that the determination of any question within Section 47 shall be "deemed" to be "a decree"; and all that Section 47 requires is that the question must have arisen between the parties to the suit or their representatives and must relate to the execution, discharge or satisfaction of the decree. According to this view, every interlocutory or incidental order, judicially passed in execution proceedings, even though it relates to a minor matter of procedure, is 'a decree'. No authority for this extreme proposition is cited, and, so far as I am aware, no Court in India j has accepted it. It is, no doubt, true that in the second part of Sub-section (2) of Section 2 the words "the rights of the parties with regard to all or some of the matters in controversy" which occur in the first part of the Sub-section of Section 2 are not repeated. But the two sentences are closely associated with each other. The first sentence defines a "decree" strictly so-called, and has reference to an adjudication in a suit: The second states (inter alia) that certain orders passed in execution proceedings shall be deemed to be decrees. The two sentences are closely associated with each other and it is reasonably clear that the expression "determination of any question" in the second sentence is used ejusdem generis with the phrase

"conclusively determines" etc., in the first. This well-settled rule of interpretation applies as much to associated words in one sentence as to terms or phrases appearing in parts of the same section or in different sections in the same chapter. The omission of these words in the second sentence does not lend support to the contention of the appellants. A large number of rulings dealing with the meaning of Section 2(2) were cited before us but it does not seem necessary to discuss them here. It will ' be sufficient to refer to two decisions of the Calcutta High Court which are regarded as the leading cases on the subject. In *Deoki Nandan Singh v. Bansi Singh*[2] Mookerjee, J. (Teunon J. concurring) observed as follows:

> The decision of the question whether the order in controversy is a decree within the meaning of Section 2 of the Code must depend upon its nature and contents. The learned vakil for the petitioner has contended that every judicial order made in the course of execution proceedings is an order under Section 47 of the Code and is consequently appealable as a decree. In view of the decision of this (Calcutta) Court in *Beharilal Pandit v. Kedar Nath*[3] this position cannot possibly be maintained. It was there pointed out that an interlocutory order in the course of execution proceedings which decides, for instance, a point of law arising interlocutory or otherwise is not a decree within the meaning of Section 2 of the Code of 1882. It is reasonably plain from the terms of Section 2 that an order to be a decree must conclusively determine the rights of the parties. If any other view were adopted, the result would be that an appeal would be preferred against every order in the course of the execution proceedings, in other words, proceedings in execution could be arrested at every stage by an appeal on behalf of the judgment-debtor. This can hardly have been contemplated by the framers of the Code.

7. In *Jogodishury Debea v. Kailash Chandra*[4] decided by a Full Bench of five Judges of the Calcutta High Court, Banerjee, J. discussed the question at p. 739 and observed as follows:

> It is not every order made in execution of a decree that comes within Section 244 (: Section 47 of the present Code). If that were so, every" interlocutory order in an execution proceeding, such as an order granting or refusing process for the examination of witnesses, would be appealable; and far greater latitude would be given of appealing against orders in such proceedings than is allowed as against orders made in suits before decree--a thing which could hardly have been intended.... An order in execution proceedings can come

[2](11) 10 I.C. 371 [4](98) 24 Cal. 725

[3](91) 18 Cal 469

> under Section 244 only when it determines some question relating to the rights and liabilities of parties with reference to the relief granted by the decree; not when, as in this ease, it determines merely an incidental question as to whether the proceedings are to be conducted in a certain way. I may add that the language of Section 244 which enacts that certain questions shall be determined 'by an order of the Court executing the decree and not by a separate suit' clearly indicates that the questions contemplated by the section must be of a nature such that it is possible to suppose that but for the section they could

have formed the subject of determination by a separate suit. But a question of an incidental character can never come under that description, and an order determining such a question cannot, therefore, be a decree as defined in Section 2.

8. The test laid down in the case just cited is, of course, not exhaustive. As pointed out by Dawson Miller C.J. in *Shiva Narayan Lal v. Narayan Prasad*[4] there might be questions within the purview of Section 47 which could d hardly be the subject of a separate suit but which nevertheless might be proper questions for determination in the execution of a decree passed in a suit already decided. He added that when the effect of an order is to determine the rights of the parties with respect to a matter material to the due execution of the decree, the question would be under Section 47 and a decree from which an appeal would lie. Applying these tests, it cannot be said that so much of the judgment of this Court as held that the pleas of want of jurisdiction and limitation could not be allowed to be raised at that late stage, is tantamount to a 'decree.' An order rejecting an application to raise a new plea or to amend or alter the pleas already filed can, by no stretch of imagination be said to be a "determination of the rights of the parties," even if it be assumed that a finding on the plea itself, if properly raised and determined, might be "deemed" to be a decree. No authority has been cited in which it has been held that the refusal to entertain a new plea which had not been raised at the proper time (whether in a suit or in execution proceedings) can be regarded as "a determination of the rights of the parties."

9. Further, it seems to me that even if a point of jurisdiction like the one arising in this case, had been raised earlier and had been overruled in a separate order, the order would not have amounted to a "decree" and be appealable as such. It is conceded that the Senior Subordinate Judge, Delhi, had jurisdiction, both territorial and pecuniary, over the subject-matter, and proceedings in execution of the decree would normally have been taken in that Court, provided the transfer-certificate had been addressed to the District Judge, Delhi, and sent by him to the Senior Subordinate Judge. Admittedly, the only irregularity was that the certificate had not been transmitted through the proper channel but was sent direct. If the objection to the jurisdiction of the Senior Sub-Judge, founded on this irregularity, had been heard and overruled, it could not be said that there was a determination "of the rights of the parties."

10. The learned Counsel for the petitioner, strongly relied upon *Lloyds Bank, Ltd. v. Mt. Rehmat Bibi*[5] which seems to lend some support to his contention. In that case a mortgage decree had been passed in favour of a bank against A. Subsequent to the

[4] A.I.R. 1924 Pat. 683

[5] A.I.R. 1939 Lah. 177

decree, A died and his widow B was brought on the record as his legal representative. Execution then proceeded against the estate of A in the hands of B and the decree-holder prayed that a receiver be appointed pending the sale of the properties. B objected that she was in possession of one of the properties in lieu of dower, for which she held a lien over it. The decree, holder replied that as B was on the record as the legal representative of the original judgment-debtor and not in his personal capacity, her claim as a lien-holder in her personal right was not a question between "parties to the suit" and could not be raised under Section 47. The Subordinate Judge heard arguments on the legal point first and held that the objection was maintainable and the execution Court had jurisdiction to hear it, and ordered enquiry on the merits as to whether the alleged lien existed on the property. From this interlocutory order the decree-holder appealed to the High Court and the judgment-debtor objected that no appeal lay. The learned Judges, however, held

that the order was tantamount to a "decree" and was appealable. The learned Judges agreed with the rulings that an order passed in execution proceedings falls within the scope of Section 47 and is tantamount to a "decree," only if to decides a question relating to the, rights and liabilities of the parties with reference to the relief granted by the decree. If this is the test, it is difficult to see how can interlocutory order that an objection was maintainable and the execution Court had jurisdiction to hear it, without determining the objection on the merits, can be regarded as "deciding the rights and liabilities of the parties." With great respect, I venture to think that the decision goes too far and cannot be accepted as an authority.

11. Reference was also made to *Mt. Durga Devi v. Hans Raj*[6] but that case is clearly distinguishable. There, it was held that an order of the executing Court staying execution of the decree pending disposal of the appeal by the High Court was appealable as a decree under Section 2(2) read with Section 47. The stay order had (to use the words of LeRossignol, J.) the effect of "stopping execution dead." Under the order, the decree of the trial Court could not be executed till the decision of the appeal and after that decision it would be the decree of the High Court which would be executed and not that of the trial Court. For all practical purposes, therefore, the stay order conclusively determined the rights of the parties to execute the decree. This case, therefore, in no way supports the appellants' contention. ' The second question, whether an order holding that an execution application is within limitation, presents greater difficulty, and the rulings bearing on it are not uniform. In some cases it has been held that such an order determines substantial rights of the parties and is appealable as a decree (e.g., *Shiva Narayan Lal v. Narayan Prasad*[7] and *Rama Rao v. Sreeramamurthi*[8].) In others, the contrary view has been taken.

12. It is not necessary to express any final opinion on the matter as in the present case, the question does not really arise in this form. Here, as stated above, the order is really one of refusal to allow the plea of limitation to be raised, firstly, because it was a mixed question of fact and law to decide which the materials on the record were insufficient and secondly, that it had not been raised when the first application for execution was pending. For the foregoing reasons I would hold that the order of the Division Bench is not a "decree" within the meaning of Section 109(a).

[6] A.I.R. 1930 Lah. 187 [8] A.I.R. 1936 Mad. 801

[7] A.I.R. 1924 Pat. 683

13. The petitioner's learned Counsel made a faint-hearted attempt to argue, in the alternative, that if it is not a "decree" it is at least a "final order" and he referred us to *Rahimbhoy Habibhoy v. C.A. Turner*[9] and *Sayyed Muzhar Husein v. Mt. Bodha Bibi*[10] These cases, however, were decided under the old Code and in view of the more recent pronouncement of the Judicial Committee the test laid down therein can no longer be followed. In *Ramchand Manjimal v. Goverdhandas Vishandas Ratanchand*[11] and *Abdul Rahman v. D.K. Cassim & Sons*[12], their Lordships pointed out that the Bombay and Allahabad cases cited above had been decided with reference to the Civil Procedure Code of 1882 in which the wording of the relevant sections differed materially from the Code of 1908. After referring to the present Code, their Lordships laid down the test that the mere fact that the order of remand was on a point which went to the root of the suit, namely, the jurisdiction of the Court to entertain it, was not sufficient to make it a 'final order' within the meaning of Section 109. The finality must be a finality in relation to the suit. If, after the order, the suit is still a live suit in which the rights of the parties have still to be determined, no appeal lies against it under Section 109 of the Code.

14. These remarks were, no doubt, made in a case in which the remand order had been passed on appeal from a decree dismissing a suit on a preliminary point, but the same test would apply to execution proceedings, and as in the present case the execution application is still pending and is a 'live' application, the order cannot be said to be a 'final order'. Reference in this connexion may also be made to *Sultan Singh v. Murli Dhar*[13] *Rajrajeshwarashram v. Shri Sharda Peeth Math, Dwarka*[14] and *Girwar Prasad Singh v. Rameshwar Lal Bhagat,*[15] In the last mentioned case the Patna High Court held that an order of a High Court holding that a subordinate Court has jurisdiction to execute a decree and directing it to proceed with the execution is not a final order in respect of which leave may be obtained to appeal to His Majesty-in-Council.

15. The judgment of the Division Bench being neither a 'decree' nor a 'final order' the case does not fall under Section 109(a). The petitioner's counsel did not argue that the case was "otherwise a fit one" for appeal, to His Majesty-in-Council under Clause (e). Nor would it have been possible for us to grant a certificate to this effect, even if he had asked for it. For the foregoing reasons, I would dismiss the petition with costs.

Bhide, J.

16. I agree.

Beckett, J.

19. I have had the privilege of reading the judgment of my learned brother Tek Chand, J. There is one point on which I am in full agreement and which I think may be taken as settled law. It is not every order passed in execution proceedings which can be regarded as giving rise to an immediate right of appeal under Section 2(2) read

[9](91) 15 Bom. 155
[10](95) 17 All. 112
[11] A.I.R. 1920 P.C. 86
[12] AIR 1933 PC 58 : 1933 AWR (P.C.) 1 222 : 1933-37-LW 331
[13] A.I.R. 1924 Lah. 571
[14] A.I.R. 1933 Bom 260
[15] AIR 1919 Pat 383 : 52 Ind. Cas. 461

with Section 47, Civil Procedure Code, even though it may have a substantial bearing on the rights and liabilities of the parties. I also agree that the decision in *Lloyds Bank, Ltd. v. Mt. Rehmat Bibi*[16]*,* seems to go too far, if it is to be taken as suggesting that the mere finding that the Court has jurisdiction to entertain a particular objection must necessarily give rise to a right of appeal even before the objection has been decided. On the other hand, even an interlocutory order can be attacked in appeal, when the proper time comes for an appeal to be instituted, as was pointed out in *Chandanbala Debi v. Prabodh Chandra Ray*[17] The real difficulty is in determining when the right of appeal arises.

17. In the matter of interpreting Section 2(2), I do not think that the analogy of suits can be pressed too far. If exactly the same test as that laid down for suits in the earlier part of the same section was intended to be applied in terms to execution proceedings, it is difficult to see why the Legislature should have gone on to provide that the definition should be "deemed" to include the determination of any question under Section 47. This a is a form of expression which is ordinarily used only when it is recognized that there is some difference which prevents the definition from being directly applicable without some such additional provisions. It is true that there would usually be some sort of analogy, but the analogy may be very faint and the provision

for what is to be included must largely depend for interpretation on its own wording. As regards the interpretation of Section 47, reference may be made to the well-known decision of the Privy Council in *Prosunno Kumar Sanyal v. Kali Das Sanyal*[18] as authority for placing a liberal interpretation on the language used therein, regard being had to the importance of disposing of all objections to execution sales as speedily as possible. It is not always easy to decide how best this object can be achieved. If too many appeals are allowed in the course of execution proceedings, this may lead only to delay. If the provisions of the Code relating to execution proceedings are read as a whole, however, there seems to be a definite intention that all objections should be raised and decided, so far as possible, before the sale actually takes place. Otherwise, if what has been done has to be undone, this is liable to lead to confusion and further g expense. If this is true of proceedings in execution Courts, it must also be true of appeals. It is not only desirable that objections should be decided before sale takes place but that they should be finally decided.

18. In my opinion, therefore, the proper time for obtaining a final decision on an objection by means of appeal would ordinarily be before any sale takes place, except when the objection relates to the actual conduct of a sale. There are two forms in which a preliminary objection may be raised by a judgment-debtor. The objection may relate to some matter of detail, such as the liability of a particular piece of property to attachment, or to the manner in which it is proposed to conduct the sale. The objector may, however, go further and deny the right of the decree, holder to proceed at all with his application for execution. In either case, it would seem equally desirable that these points should be finally settled before the sale; and I have not been able to find anything in the wording of either Section 2(2) or Section 47 which would indicate a contrary intention. In the present instance, the judgment-debtor raised objections of both kinds. He took objection to the manner in which it was

[16] A.I.R. 1939 Lah. 177 [18](92) 19 Cal. 683

[17](09) 36 Cal. 422

proposed to sell his interest in the partnership, and he further objected that the decree-holder had no right to prosecute his execution application at all on two grounds: that the right to execute was dead by reason of limitation, and that the execution application was invalid for want of a proper transfer. Had these later objections been raised at the proper time and by themselves, it seems to me that it would have been necessary to have them finally decided before proceeding to sale, and it could hardly have been the intention that a final decision should wait over until after the sale takes place if the executing Court has happened to dismiss them, merely because the effect of the order dismissing the objections would be to keep the execution application alive.

19. Even if we return to the analogy of the suits and the wording used in the earlier part of Section 2(2), I do not think that the position would be really different. It seems to me that some confusion was introduced in the course of arguments by not drawing a distinction between an adjudication and a mere finding on a particular issue taken by itself. If a Court decides by means of a preliminary issue in the course of a suit that it has jurisdiction to entertain the suit before proceeding to trial on the merits, this finding may by itself not be one to which the name of adjudication can be properly applied. The same may possibly be said of an issue of limitation taken by itself. But if the only defences raised are those of jurisdiction and limitation, and if the Court as a result of its findings on these issues proceeds to pass a decree in favour of the plaintiff for want of any other defence, then there is a final adjudication on the rights of the parties, is distinct from the findings on which it is based, though one may be the automatic consequence of the other. It seems to me that the same distinction applies to proceedings on an objection in the

course of execution. The question whether a sale proclamation should be drawn up in a particular form has no bearing on the right of the decree-holder to execute and is quite a separate matter. The other objections raised in the present case are merely different grounds upon which the judgment-debtor questions the right of the decree-holder to execute. The right to execute, being based upon a decree, is quite a different matter from a supposed right to sue the existence of which has been questioned, and it was on a decision as to such a right that their Lordships of the Privy Council held in *Raja of Ramnad v. Velusami Tewar*[19] that a finding on the question of limitation could not be questioned in the course of a subsequent proceeding, even though the effect of the decision was to keep the execution proceedings alive.

20. There is also another way of looking at the matter. It was suggested in *Jogodishury Debea v. Kailash Chandra*[20] that the questions to be determined under the section of the Code then corresponding to Section 47 should be of a nature such that it is possible to suppose that but for the section they could have formed the subject of determination by a separate suit. If *Lakshman Chandra v. Ramdas Mandal*[21], was correctly decided, this would have to mean not only that they might be raised in a plaint but also that they might be raised by way of defence. If property is sold in execution and delivery of possession is resisted by the judgment-debtor on the ground that the executing Court had no jurisdiction to conduct the sale or was proceeding on an application barred by limitation, it is difficult to believe that the

[19] A.I.R. 1921 P.C. 23 [21] AIR 1929 Cal 374 : (1930) ILR 57 Cal 403 : 118 Ind. Cas. 857

[20](98) 24 Cal. 725

Legislature could have intended that these were not objections which should have been raised before and determined by the executing Court, or, if they had been raised and decided against the judgment-debtor, they should not be taken to be questions determined by that Court for the purposes of appeal.

21. It is indeed the final effect of such orders on the proceedings in executing Court that gives me most difficulty in accepting the suggestion that they are not final orders, so far as the proceedings in that Court are concerned, or that they should be questioned in appeal only after sale has taken place. I do not think that it has been suggested that orders dismissing objections raised on the ground of jurisdiction or limitation are in their essence not subject to appeal in any way but are to be final and conclusive for all purposes. The real question, as I have said above, is when an appeal should be brought. If the right of the decree-holder to execute is questioned on two grounds, as in the present instance, it may well be that an appeal should wait until both the grounds have been decided, if they happen to have been taken up separately; but if all the grounds upon which the right of the decree-holder to execute is questioned have been made the subject of decision by the executing Court, which has given a definite and final adjudication on the right of the decree, holder to execute, then at least it seems to me that the time to appeal has arrived. Though the execution application giving rise to the objection may be kept alive, this is only an application for the executing Court to take certain administrative action by way of sale; and although further questions may arise between the parties, these are quite separate and are based upon entirely different causes of action, so to speak.

22. There is one particular difficulty about the present ease. I have given it as my opinion that an adjudication on the right of the decree-holder to execute seems to be a subject-matter for immediate appeal if the objections are raised at the proper time. The difficulty here is that the objections have been held to be belated or barred by the rule of constructive res judicata; and it

can hardly be said that it is conducive to a speedy disposal of execution proceedings that such objections should be allowed to go up in appeal. Even so, I do not see that this can make any difference to the interpretation and application of Sections 2(2) and 47. If any reliance is to be placed on the analogy of suits, a suit may be dismissed on the ground that the plaintiff has been guilty of laches, but this does not affect the plaintiff's right of appeal. Nor do I think that an order dismissing such objections can be treated as on the same footing as the refusal to entertain pleas raised at a late stage of a suit, since these are the only grounds on which the right of the decree-holder to execute was questioned at all. In any case, a refusal to entertain a new plea can always be questioned when the suit has been finally decided. In the present instance, so far as the issue of jurisdiction is concerned, the judgment-debtor seeks to question the finding that his plea was not one which could be raised by him at any time and he bases this contention on the finding given by a Single Bench of this Court. It seems to me that the question is one on which an appeal should be allowed; and if it is to be allowed at all, it is better that the question should be finally determined now rather than after the conclusion of the whole of the execution proceedings, which may not take place for several years yet, to judge by the present rate of progress. For these reasons, I would myself prefer to grant leave for appeal to His Majesty in Council, leaving the parties to bear their own costs on this petition. Order of the Court.

23. In accordance with the opinion of the majority (Tek Chand & Bhide, JJ.; Beckett, J. dissenting) this petition for leave to appeal to His Majesty-in-Council is dismissed with costs.

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