

BOMBAY HIGH COURT

Bapurao Sakharam Karmarkar

Vs.

Sadhu Bhivba Gholap

Civil Extraordinary Application No. 57 of 1922

(Norman Macleod, Kt., C.J. and Crump, J.)

07.11.1922

JUDGMENT

Norman Macleod, Kt., C.J.

1. We think that the learned Judge was wrong in refusing to entertain the applicant's petition for setting aside the ex parte decree passed against him. Under Article 164 of the Indian Limitation Act the defendant had thirty days from the date of the decree, or where the summons was not duly served, when the applicant had knowledge of the decree. The petitioner alleges that the summons had not been duly served, and that he had no knowledge of the decree until execution was levied against him. The plaintiff's reply was that the defendant had knowledge of the decree because he (the plaintiff) had asked two persons to tell him about the decree and asked him to settle. Those two persons were examined on commission. We do not think that their evidence is sufficient to impose knowledge of the decree on the defendant within the meaning of Article 164. We think the words of the Article mean something more than mere knowledge that a decree had been passed in some suit, in some Court against the applicant. We think it means that the applicant must have knowledge not merely that a decree has been passed by some Court against him, but that a particular decree has been passed against him in a particular Court in favor of a particular person for a particular sum. A judgment-debtor is not in such a favorable position as he used to be when he had thirty days from the time when execution was levied against him. But we do not think that the Legislature meant to go to the other extreme by laying down that time began to run from the time the judgment-debtor might have received some vague information that a decree had been passed against him. We think, therefore, that the rule must be made absolute and the Judge should now decide the application to set aside the ex parte decree on its merits. Costs will be costs in the application.