

(1919) 06 AHC CK 0006

Allahabad High Court

Case No: None

Musammat Rukmina Kuar and
Others

APPELLANT

Vs

Sheo Dat Rai and Another

RESPONDENT

Date of Decision: June 2, 1919

Citation: AIR 1919 All 224 : 51 Ind. Cas. 576

Hon'ble Judges: Rafique, J; P.C. Banerji, J

Bench: Division Bench

Judgement

1. We agree with the view taken by the learned Judge of this Court. The decree was one for delivery of possession passed on the 22nd of January 1894 on the basis of an arbitration award. It provided that the plaintiffs decree holders were to get possession upon payment of Rs. 750 to the defendants in any year in the month of Jeth. The money was deposited on the 15th of June 1915 and the application for execution was made on the 29th of June 1916. It was contended that the application was time barred. The learned Judge of this Court has held that the application was not barred by limitation. Article 182 of the Limitation Act applies to cases in which the decree is capable of execution on the date on which it was passed, except in the circumstances mentioned in some of the special clauses to the Article. The decree in this case was not capable of execution on the date on which it was passed. Therefore, if Article 181 is applicable to the present case, limitation would run from the date on which the right to apply accrued. It is clear that the right to apply did not accrue until Rs. 750 was paid and the right to pay the money was given to the decree-holders in the month of Jeth of any year. The decree is, undoubtedly, indefinite as to the date on which payment was to be made, but it certainly did not direct that payment was to be made in the month of Jeth following the date of the decree. The Court executing the decree had to give effect to the decree as it stood and could not go behind it. Taking the decree as it stands, the decree-holders had the right to pay Rs. 750 at any time they liked in the month of Jeth of any year. Their right to execute the decree could not arise unless the payment was made Therefore,

they were entitled to execute the decree within three years of the 15th of June 1915 when they made the payment. We dismiss the appeal with costs, including fees on the higher scale.