

**(1943) 11 AHC CK 0004**

**Allahabad High Court**

**Case No:** None

Seth Babu Ram and Others

APPELLANT

Vs

Aflatoon and Another

RESPONDENT

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**Date of Decision:** Nov. 22, 1943

**Citation:** AIR 1944 All 59

**Hon'ble Judges:** Mathur, J

**Bench:** Division Bench

**Final Decision:** Disposed Of

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### **Judgement**

Mathur, J.

This is a decree-holders" second appeal and it raises a very simple question of law. The decree-holder obtained a preliminary decree for sale under Order 34, Rule 4 on 11th January 1937. Then the Act, 10 of 1937, namely, Temporary Postponement of Execution of Decrees Act came into force and remained in force till 31st December 1940. On 1st January 1940, an application under Order 34, Rule 5 for preparation of the final decree was presented and it was urged that the time was saved by Section 5 of the said Act. Both the lower Courts have repelled this plea. It is argued before me as it was argued before the lower Courts that the words in Section 3 of the said Act "All proceedings in execution of any decree" include an application for preparation of final decree as it in a way leads to the execution of the decree. I cannot accept this argument as the proceedings in execution only start when there is an executable decree and an application for execution is made. I therefore agree with the Courts below that the application when made was barred by time. It has also been argued and it has been mentioned in the grounds of appeal that the lower Courts ought to have applied Section 5, Limitation Act. I do not find any reference to that section in the judgments of the lower Courts and I am not sure whether any such application was made in those Courts. If any application was made or if it was subsequently made it of course lay to those Courts to decide the matter. The appeal is accordingly dismissed with costs. Leave to appeal is refused.