

Seth Babu Ram and Others Vs Aflatoon and Another

Court: Allahabad High Court

Date of Decision: Nov. 22, 1943

Citation: AIR 1944 All 59

Hon'ble Judges: Mathur, J

Bench: Division Bench

Final Decision: Disposed Of

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.