

Nanhai Lal Vs Official Receiver Civil Court, Kanpur

Court: Allahabad High Court

Date of Decision: Nov. 9, 1967

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 21 Rule 11, 47, 48
Limitation Act, 1908 – Article 182, 20, 29(2)

Citation: AIR 1969 All 441 : (1968) 38 AWR 215

Hon'ble Judges: V.G. Oak, C.J; Yashoda Nandan, J; S.D. Khare, J; Rajeshwari Prasad, J; B. Dayal, J

Bench: Full Bench

Advocate: S.P. Kumar and R.P. Verma, for the Appellant; M.P. Mehrotra, for the Respondent

Final Decision: Disposed Of

Judgement

Oak, C.J.

This is an execution second appeal by a judgment-debtor. The question for consideration is whether an execution application by

the respondent-decree-holder is within time or not.

2. The Official Receiver, Kanpur obtained against Nanhai Lal a decree from the Court of Munsif, Haveli, Kanpur on 17-7-1938. There was a

series of execution applications. The third execution application was filed on 11-8-1943. When the amin went on 13-8-1943 to attach property, a

sum of Rs. 800/- was paid to the amin by Halke, brother of Nanhai Lal, judgment-debtor. That execution application was dismissed in part

satisfaction. There were two more execution applications. The fifth execution application was dismissed on 9-4-1949. The sixth execution

application by the Official Receiver was moved on 14-3-1951, The decree-holder prayed for transfer of execution.

3. The decree-holder realised that the execution application dated 14-3-1951 was moved more than 12 years after the date of the decree (17-7-

1938). He moved on 27-8-1951 an application claiming extension of limitation on the ground that Nan-nai Lal, judgment-debtor had practised

fraud. Without issuing notice of this application dated 27-8-1951, the court at Kanpur passed an ex parte order on 6-10-1951 that the execution

application was within time in view of the fraud practised by the judgment-debtor. Nanhai Lal, judgment-debtor appeared before the Court, and

lodged a protest His protest was rejected on 2-2-1952, Nanhai Lal moved another application before the Court at Kanpur on 4-3-1952 u/s 47

C. P. C. re-agitating the question that execution was barred u/s 48, C. P. C. On 19-4-1952 the Court at Kanpur decided that the execution was

not barred u/s 48, C. P. C. The judgment-debtor's objection having been overruled, the certificate of execution was transferred by the Court at

Kanpur to the Court of the Additional Civil Judge, Jhansi on 3-5-1952. The decree-holder moved an application for execution on 4-5-1952 under

Order 21, Rule 11. C. P. C.

4. The Judgment-debtor moved another objection before the Additional Civil Judge, Jhansi raising the question of limitation again. This objection

was dismissed by the Additional Civil Judge, Jhansi on 20-2-1954, Against that order, the judgment-debtor appealed. The appeal was registered

as Civil Appeal No. 81 of 11954. The appeal was dismissed by the District Judge on 19-11-1954 on the ground that the principle of res judicata

precluded the judgment-debtor from raising the plea of limitation. The judgment-debtor filed a second appeal before this Court. The second appeal

was allowed by this Court. The decree-holder's contention that limitation was extended u/s 48, C. P. C. due to fraud practised by the judgment-

debtor was not accepted by this Court This Court remanded Civil Appeal No. 81 of 1954 for rehearing. The question whether limitation was

extended u/s 20. Indian Limitation Act in view of certain payments by the judgment-debtor, and the question whether the plea of limitation was

barred by res judicata were left open.

5. In pursuance of the order of remand, Civil Appeal No. 81 of 1954 was reheard by the District Judge. Jhansi He concluded that u/s 20, Indian

Limitation Act the execution was within time even u/s 48, C. P. C. The Court considered that there was no need to discuss the question of res

judicata. The appeal by the judgment-debtor was dismissed by the learned Judge on 2-9-1960.

6. The present execution second appeal by Nanhai Lal, judgment-debtor is directed against the appellate order dated 2.9. 1960 by the District

Judge, Jhansi. When this appeal came up for hearing before a learned single Judge of this Court, he expressed the opinion that a Full Bench

decision of Allahabad High Court required reconsideration. The case was successively heard by a Division Bench and a Full Bench of three

Judges. Since a previous Full Bench decision by three Judges needs reconsideration, the present Full Bench of five Judges was constituted for

disposing of the appeal.

7. The question is whether the execution application dated 14-3-1951 is within time. The appellant points out that the application was moved more

than 12 years after the date of the decree (17-7-1938). He relies on Section 48, C. P. C. Sub-section (1) of Section 48, C. P. C. states:--

Where an application to execute a decree has been made, no order for the execution of the same decree shall be made upon any fresh

application presented after the expiration of twelve years from--

(a) the date of the decree sought to be executed , . . .

8. Prima facie, the execution application dated 14-3-1951 is barred by limitation. But the decree-holder relies upon section 20, Indian Limitation

Act. Since the question of limitation arose in the year 1951, the case is governed by the Indian Limitation Act of the year 1908 (Act No. 9 of

1908, hereinafter referred to as the Limitation Act). Sub-section (1) of Section 20 of the Limitation Act ran thus:

Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy,

or by his agent duly authorised in this behalf,

or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorised in this

behalf,

a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of a payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in

the handwriting of, or in a writing signed by, the person making the payment.

9. In *Phoolbas Koonwar v. Lalla Jogeshur Sahoy*, ILR 1 Cal 226 it was held by the Privy Council that the limitation of the year provided by

Section 246 of Act VIII of 1859 is subject to be modified by Sections 11 and 12 of Act XIV of 1859. In that case, the Judicial Committee was

considering the relationship between two statutes of the year 1859. In the present case, we have to consider the relationship between two statutes

of the year 1908. The problem has to be resolved in the light of the language of the two statutes of 1908. The decision of the Privy Council in

Phoolbas Koonwar's case ILR 1 Cal 226 is of little assistance for deciding the question whether the period of limitation prescribed by Section 48,

C. P. C. can be extended by Section 20 Limitation Act.

10. On 3-1-1955 the judgment-debtor filed an objection before the execution. Court. In that objection he conceded having made a number of

payments to the decree-holder between the year 1943 and 1946. The sum of Rs. 800/- was paid on 13-8-1943 by Nanhai Lal's brother, Halke.

The question arises whether these payments made by the judgment-debtor between 1943 and 1946 extended the period of limitation u/s 20,

Limitation Act. On the one hand, these payments were made within 12 years from the date of the decree. On the other hand, there was no writing

by the judgment-debtor within 12 years from the date of the decree acknowledging those payments. The acknowledgment was contained in the

objection dated 3-1-1955. That was beyond 12 years from the date of the decree. The acknowledgment in writing came several years after the

date of the execution application (14-3-1951). We have to decide whether under these circumstances the period fixed by Section 48, C. P. C. is

extended u/s 20, Limitation Act.

11. Section 20, Limitation Act provides for extension of the period of limitation. The question arises whether Section 48, C. P. C. prescribes a

period of limitation at all. This question came up for consideration before a Full Bench of Allahabad High Court in Koer Durag Pal Singh Vs. Th.

Pancham Singh and Others, . It was held by the Full Bench that Section 48, C. P. C. prescribes a period of limitation. I respectfully agree.

12. It is true that Section 48, C. P. C. merely lays down that no order for the execution of a decree shall be made by the Court under certain

circumstances. In terms, the section does not prohibit a decree-holder from moving an application after certain time. But in substance Section 48,

C. P. C. precludes a decree-holder from moving an application after 12 years. If the Court is not going to give assistance to the decree-holder, it is

futile to move an execution application before the Court. Applications provided for in Article 181 of the Limitation Act are:--

Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908.

Again, Article 182 of the Limitation Act governs applications ""for the execution of a decree or order of any Civil Court not provided for by Article

183 or by Section 48 of the Code of Civil Procedure, 1908"". The language of Articles 181 and 182 of the Limitation Act is legislative recognition

of the position that a period of limitation has been prescribed by Section 48, C. P. C. In my opinion, Section 48, C. P. C. does prescribe a period

of, limitation.

13. It is to be noted that the period of limitation under discussion is contained in a statute other than the Limitation Act. Section 29 of the Limitation

Act explains how far provisions of the Limitation Act govern periods of limitation prescribed by other statutes. Sub-section (2) of Section 29,

Limitation Act ran thus:--.

Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore

by the first Schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefore in that Schedule, and for the purpose of

determining any period of limitation prescribed for any suit, appeal or application by any special or local law--

(a) the provisions contained in Section 4, Sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not

expressly excluded by such special or local law? and

(b) the remaining provisions of this Act shall not apply.

14. The question now arises whether the CPC and Section 48, C. P. C. constitute special or local law contemplated by Sub-section (2) of Section

29, Limitation Act. Obviously, the provision under consideration is not local law. The question is whether the relevant provision is special law.

15. On this point, Thom, C. J. observed in Koer Durag Pal Singh Vs. Th. Pancham Singh and Others, .

Now the CPC is not a special or local Act.

However, the question remains whether Section 48, C. P. C. is special law.

16. A somewhat similar question came up for consideration before the Supreme Court in Kaushalya Rani Vs. Gopal Singh, . Section 417, Cr. P. a

provides for an appeal by a complainant against an order of acquittal upon obtaining special leave. Sub-section (3) of section 417, Cr. P. C.

provides for grant of special leave. Sub-section (4) of Section 417, Cr. P. C. lays down that no application for special leave shall be entertained

after the expiry of sixty days from the date of the order of acquittal. The question arose whether the period of limitation prescribed by Sub-section

(4) of Section 417, Cr. P. C. can be extended u/s 5 of the Limitation Act. In order to decide whether the matter was governed by Section 29 of

the Limitation Act, it became necessary to ascertain whether Section 417(4), Cr. P. C. is special law, On this question, C. J. observed on page

263 thus:--

. . . the specific question with which we are here concerned is whether the provision contained in Section 417(4) of the Code is a special law. The

whole Code is indeed a general law regulating the procedure in criminal trials generally, but it may contain provisions specifying a bar of time for

particular class of cases which are of a special character. For example, a Land Revenue Code may be a general law regulating the relationship

between the revenue-payer and the revenue-receiver or the rent-payer and the rent-receiver. It is a general law in the sense that it lays down the

general rule governing such relationship, but it may contain special provisions relating to bar of time, in specified cases different from the general

law of limitation. Such a law will be a "special law" with reference to the law generally governing the subject-matter of that kind of relationship. A

"special law", therefore, means a law enacted for special cases, in special circumstances, in contradistinction to the general rules of the law laid

down, as applicable generally to all cases with which the general law deals. In that sense, the Code is a general law regulating the procedure for the

trial of Criminal cases generally; but if it lays down any bar of time in respect of special cases in special circumstances like those contemplated by

section 417(3) and (4), read together, it will be special law contained within the general law . Thus, the Limitation Act is a general law laying down

the general rules of limitation applicable to all cases dealt with by the Act; but there may be instances of a special law of limitation laid down in

special statutes, though not dealing generally with the law of limitation.

17. As regards limitation, the position of Section 48 under the CPC is similar to the position of Section 417(4) under the Code of Criminal

Procedure, It is true that the CPC is a general law regulating the procedure for the trial of civil cases. But the Code contains a special provision

regulating limitation for execution applications. The Limitation Act is a general law laying down the general rules of limitation applicable to all cases

dealt with by that Act Section 48, C. P. C. is a special law contained within the general law (Code of Civil Procedure). In my opinion Section 48,

C. P. C. is special law as contemplated by Sub-section (2) of Section 29, Limitation Act.

17-A. Section 29(2), Limitation Act governs cases where a special law prescribes a period of limitation different from the period prescribed by the

Limitation Act. Under Article 182 of the Limitation Act the period of limitation for an execution application is three years from the date of the

decree. On the other hand, the period of limitation u/s 48, C. P. C. is 12 years from the date of the decree. The period of limitation contained in

the special law is different from the period prescribed by, the Limitation Act. Thus all the ingredients of Sub-section (2) of section 29, Limitation

Act are satisfied. The period of limitation contained in Section 48, C. P. C. is governed by Section 29(2) Limitation Act.

18. It is mentioned in Clause (a) of Section 29(2), Limitation Act that the provisions contained in Section 4, Sections 9 to 18, and Section 22 shall

apply to a period of limitation prescribed by a special law. According to Clause (b) of Sub- section (2) of Section 29, Limitation Act, ""the

remaining provisions of this Act shall not apply."" It will be noticed that Section 20 of the Limitation Act was not, mentioned in Clause (a) of Section

29 (2), Limitation Act. So, u/s 29(2)(b) Limitation Act, the provision contained in Section 20, Limitation Act shall not apply to the period of

limitation contained in any special law. The period of limitation contained in Section 48, C. P. C. cannot be extended u/s 20, Limitation Act.

19. We have seen that, although the judgment-debtor made payments within 12 years from the date of the decree, the acknowledgment was not

made within 12 years from the date of the decree. Payments were acknowledged long after the filing of the execution application. The question

arises whether such payments can be recognised for purposes of Section 20 of the Limitation Act. This question came up for consideration before

the Supreme Court in *Sant Lal Mahton Vs. Kamala Prasad*, . In that case the plaintiffs brought a suit on a simple mortgage bond. The defendants

made certain payments. None of the payments was endorsed on the bond itself. There was no acknowledgment either in the handwriting of, or

signed by, the debtors prior to the institution of the suit. The acknowledgment was contained in the written statement filed in the suit. Defendants

admitted payments specified in the plaint. The written statement was signed by defendants. It was held that the admission contained in the written

statement did not fulfil the requirements of a signed acknowledgment as contemplated by the proviso to Section 20, Limitation Act. It was

explained that it is the payment which really extends the period of limitation u/s 20. But the payment has got to be proved in a particular way.

For reasons of policy, the Legislature insists on a written or signed acknowledgment as the only proof of payment and excludes oral testimony.

Unless there is, acknowledgment in the required form, the payment by itself is of no avail. However, while the section requires that the payment

should be made within the period of limitation, It does not require that the acknowledgment should also be made within that period. But while it is

not necessary that the written acknowledgment should be made prior to the expiry of the period of limitation, it is essential that such

acknowledgment, whether made before or after the period of limitation, must be in existence prior to the institution of the suit. Whether a suit is

time-barred or not has got to be determined exclusively with reference to the date on which the plaint is filed and allegations made therein. To claim

exemption u/s 20, the plaintiff must be in a position to allege and prove not only that there was payment of interest on a debt or part payment of the

principal, but that such payment had been acknowledged in writing in the manner contemplated by the section. The ground of exemption is not

complete without the second element, and unless both these elements are proved to exist at the date of the plaint, the suit would be held to be

time-barred.

20. In *Sant Lal Mahton Vs. Kamala Prasad*, the Court was considering whether the suit was within limitation. In the present case we are

considering whether the respondent's execution application was within limitation. The principle laid down by the Supreme Court in *Sant Lal*

Mahton Vs. Kamala Prasad, applies as much to execution applications as to suits. It is true that acknowledgment of payment need not be within

12 years from the date of the decree. But whether the execution application is time-barred or not has got to be determined with reference to the

date on which the application is filed. To claim exemption u/s 20, Limitation Act, the decree-holder must be in a position to allege and prove not

only that there was payment of money by the judgment-debtor, but that such payment had been acknowledged in writing in the manner

contemplated by Section 20. The ground of exemption is not complete without the second element.

21. In the present case, although payments were made within 12 years from the date of the decree, there was no acknowledgment in writing by the

judgment-debtor at any time before the date of the execution application (14-3-1951). The acknowledgment in writing came much later (3-1-

1955). On 14-3-1951 the decree-holder was not in a position to satisfy the Court that the payments made within 12 years had been

acknowledged by the judgment-debtor at any time up to 14-3-1951. On 14-3-1951 the decree-holder could not claim the benefit of Section 20,

Limitation Act.

22. Firstly, the period of limitation prescribed by Section 48, C. P. C. cannot be extended u/s 20, Limitation Act, Secondly, there was no

acknowledgment of payment in writing up to the date of the execution application (14-3-1951), For these reasons, the respondent-decree-holder

cannot get the benefit of Section 20 of the Limitation Act. It appears that in the circumstances of this case the execution application dated 14-3-

1951 was barred by limitation.

23. However, that is not the end of the matter. The Court at Kanpur considered the question of limitation at different stages. That Court took the

view that the application dated 14-3-1951 was within limitation. The question, therefore, arises whether in view of the decision of the Court at

Kanpur against the judgment-debtor, he could raise that question before the execution Court at Jhansi. The District Judge held at one stage that the

plea of limitation was barred by res judicata. When the matter came before this Court on a previous occasion, this Court expressly left the question

of res judicata open. The District Judge upon remand should have decided the question of res judicata. On 2-9-1960 the District Judge concluded

that the decree-holder is entitled to the benefit of Section 20, Limitation Act. He therefore, thought it unnecessary to discuss the question of res

judicata.

I have arrived at the conclusion that the decree-holder is not entitled to the benefit of Section 20, Limitation Act. The question of res judicata now

assumes great importance. If the decree-holder's plea on the question of res judicata succeeds, the execution Court will have to assume that the

application dated 14-3-1951 was within limitation in spite of my finding that the decree-holder was not entitled to the benefit of Section 20,

Limitation Act. For a proper disposal of the plea of res judicata, it will be necessary to examine the different proceedings at Kanpur and Jhansi All

the relevant files are not before us. It will be convenient if we direct the lower appellate Court to rehear Civil Appeal No. 81 of 1954 after dealing

with the question of res judicata.

24. In my opinion, the execution second appeal should be allowed. Civil Appeal No. 81 of 1954 should be remanded to the District Judge, Jhansi

for rehearing with the directions that he will dispose of the plea of res judicata raised by the decree-holder, and decide the appeal according to law

in the light of this Court's judgment. Parties may bear their own costs in this execution second appeal.

B. Dayal, J.

25. I have carefully gone through the judgment prepared by my Lord the Chief Justice. I entirely agree in the proposed order but I am unable to

agree with the proposition that Section 48 of the CPC lays down a period of limitation for making an application for execution of decrees and that

this period is different from and therefore in conflict with the period prescribed for the same purpose under Article 182 of the Limitation Act. 1908.

In my opinion. Section 48 of the Code is merely a procedural section and restricts powers of the Court to pass orders for execution in respect of

certain decrees. It determines the life of the decree after which it becomes unexecutable.

This section has nothing to do with the period of limitation prescribed for making application for execution. In this case I need not dilate on this

question. Suffice it to say that if the other view is taken, Article 182 of the Limitation Act would become completely redundant. In the first column

it provides: ""For the execution of a decree or order of any civil Court not provided for by Article 183 or by Section 48 of the Code of Civil

Procedure."" Since Section 48 C. P. C. applies to almost all decrees, Article 182 of the Limitation Act will become applicable to all those.

Moreover on historical reasons as well as on the plain language of the two provisions, in my opinion, they cover completely different fields and

provide for different matters. They are both parallel provisions and do not conflict with each other.

26. In this case even if it be assumed that Section 48 C. P. C. prescribes a period of limitation for making an application for execution the result

will not change. I entirely agree with the Hon. the Chief Justice that both on account of Section 29 Limitation Act as well as for want of an

acknowledgment in writing as required by Section 20 of the same Act, the decree-holder is not entitled to any extension.

27. As the District Judge did not decide the question of res judicata and the file is not complete before this Court to go into that question, it is

necessary to remand the case for that purpose.

28. KHARE, J.:-- I had the advantage of going through the judgments prepared by my Lord the Chief Justice and Hon. B. Dayal. J.

29. I need not repeat what we said In our order dated 1-5-1967 by which a request was made for the formation of a larger Bench.

30. Section 48 C. P. C. provides for an outer limit -- the maximum period available for executing decrees passed by the Civil Courts. Had that

provision of limitation not been there, the execution application presented by the decree-holder in the present case on 14th, March, 1951 would

have been within limitation for the simple reason that no execution application was presented by the decree-holder beyond three years of the order

passed on the last execution application. It follows that the provisions of limitation contained in special Act (Section 48 C. P. C.) is different from

the period of limitation permissible under the Limitation Act.

31. to 34. I respectfully concur with the judgment proposed to be delivered by my Lord the Chief Justice.

Rajeshwari Prasad J.

35. I am in respectful agreement with the order proposed by my Lord the Chief Justice. The Execution Second Appeal must be allowed and Civil

Appeal No. 81 of 1954 should be remanded to the District Judge, Jhansi for rehearing and to dispose of the plea of res judicata raised by the

decree-holder.

36. I, however, entertain serious doubts whether the provision of Section 48 of the CPC is, technically speaking a rule of limitation. Section 48

CPC takes away the power of the Court to order for the execution of the decree in case application for that purpose is presented after the

expiration of 12 years computed from the dates of the events enumerated in Section 48 Clause (1) Sub-clauses (a) and (b). It does not take away

the right of the decree-holder to make an application for execution beyond the period prescribed by that section. The purpose of articles of

limitation is to render an application filed beyond the prescribed period unentertainable. The scope and the object of Section 48, therefore,

appears to be different from the scope and the object of the articles of the Indian Limitation Act prescribing limitation for filing an application for

execution of a decree. Such view finds support from the observation of the Supreme Court in the case of Yeswant Deorao Deshmukh Vs.

Walchand Ramchand Kothari, . It is true that In that case, the main question that was under consideration was the implication of fraud within the

meaning of Section 48(2) of the Code of Civil Procedure. The observation of the Supreme Court quoted below is one relating to Section 48 CPC

as a whole:--

It is true that Articles 181 and 182, Limitation Act and Section 48 Civil Procedure Code, should be read together. The articles expressly refer to

the section. But they are independent or parallel provisions different in their scope and object

37. The orders which the Court is precluded from making by Section 48 Code of Civil Procedure, are those which are enumerated in Order XXI,

Rule 11 Sub-clause (j) of the Code of Civil Procedure, That provision of law lays down that assistance of the Court may be in the following form:-

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(i) by the delivery of any property specifically decreed;

(ii) by the attachment and sale, or by the sale without attachment, of any property;

(iii) by the arrest and detention in prison of any person;

(iv) by the appointment of a receiver;

(v) otherwise, as the nature of the relief granted may require.

38. If an application is made before the Court, whose duty it is to execute the decree, with the prayer to record, that money payable under a

decree, had been paid out of Court or that the decree had been otherwise adjusted in whole or part to the satisfaction of the decree-holder,

irrespective of consideration of section 48, to my mind, the Court can proceed to make such a record. Such an order of the Court, therefore, is an

instance of an order which the Court is not precluded from making even though application for making that order has been made beyond the

period fixed by Section 48 C. P. C. The Court would not be able to do this, if it were to be held that Section 48 C. P. C. prescribes a period of

limitation and that an application made contrary to the provision of Section 48 is one which cannot be entertained. The filing of such an application

may serve yet another purpose, namely, as proof of the assertion of right of a decree-holder.

39. In view of the fact that I agree in the proposed order, it is not necessary for me to pursue this matter any further.

Yashoda Nandan, J.

40. I am in respectful agreement with the order proposed by my Lord the Chief Justice and my learned brothers.

41. The only justification for a separate judgment is that I am unable to subscribe to the view expressed by some of my learned brothers to the

effect that Section 48 of the CPC is not a law laying down a period of limitation. A law relating to limitation, in my opinion, need not be in any

particular form. I am of the view that a legislative provision that prescribes a bar of time to a party's obtaining relief from the Court would be a law

prescribing a period of limitation. The legislature may prescribe a period of limitation by taking away the right of a party to initiate proceedings in a

court of law on the expiry of a specified period or it may achieve the same result by depriving the Court of the power to pass orders in

proceedings initiated after a prescribed period. The result in either case would be the same, viz. to debar the party concerned from getting relief

from the Court. In my opinion it is the pith and substance that determines the nature of the legislation and not the form.

In *Surya Mohan Thakur Vs. The State of Bihar*, which was approved by their Lordships of the Supreme Court in *Kaushalya Rani Vs. Gopal*

Singh, a rule stating that an appeal against an award of the Arbitrator "shall be preferred within six weeks of the receipt by the parties of notice" of

the award was held to be a law prescribing a period of limitation. This provision placed a bar on the right of a party to appeal. Section 48 Sub-

section (3) of the Bombay Land Requisition Act, 1948, similarly provided that an appeal against an order fixing compensation passed by a Special

Officer u/s 8 Sub-section (1) of that Act shall be made "within a period of sixty days from the date of the decision". This provision of law held to

be a law prescribing a period of limitation within the meaning of Section 29 Sub-section (2) of the Limitation Act, 1908, in *The Canara Bank Ltd.*

Vs. The Warden Insurance Co. Ltd., which found the approval of the Supreme Court in *Kaushalya Rani Vs. Gopal Singh*, In *Kaushalya Rani Vs.*

Gopal Singh, Section 417 Sub-section (4) which provided that no application for grant of a special leave to appeal from the order of acquittal

"shall be entertained by the High Court after the expiry of sixty days from that order of acquittal" was held to be a law prescribing a period of

limitation. Section 417 Sub-section (4) placed a bar on the power of the Court to entertain an application for grant of a special leave.

42. Section 116-A(3) of the Representation of the People Act, 1951, which runs as follows:

Every appeal under this Chapter shall be preferred within a period of thirty days from the date of the order of the Tribunal u/s 98 or Section 99.

was held by the Supreme Court in *Vidyacharan Shukla Vs. Khubchand Baghel and Others*, to be a law prescribing a period of limitation. This

provision again placed a bar on the right of a party to invoke the power of the Court after the period prescribed. The view that Section 48 of the

CPC does not prescribe a period of limitation within the contemplation of Section 29 Sub-section (2) of the Limitation Act would lead to great

hardship. If twelve years from the date of the decree were to expire when the Court is closed a party would be compelled to apply for execution

of the decree before the vacations start or to face the consequence of the decree becoming inexecutable for no fault of his own because section 4

of the Limitation Act would not be attracted. Other startling results which would ensue in consequence of the view that section 48. of the CPC

does not prescribe a period of limitation have been considered by Iqbal Ahmad, J, in Koer Durag Pal Singh Vs. Th. Pancham Singh and Others, .

I am in respectful agreement with the decision in Koer Drigpal Singh (supra) that Section 48 of the CPC does prescribe a period of limitation.

43. BY THE COURT: The execution second appeal is allowed. Civil Appeal No. 81 of 1954 is remanded to the District Judge, Jhansi, for

rehearing with the directions that he will dispose of the plea of res judicata raised by the decree-holder, and decide the appeal according to law in

the light of this Court's judgment. Parties shall bear their own costs in this execution second appeal.