

(1878) 01 AHC CK 0010

Allahabad High Court

Case No: None

Fakir Muhammad

APPELLANT

Vs

Ghulam Husain and
Another

RESPONDENT

Date of Decision: Jan. 29, 1878

Citation: (1875) ILR (All) 580

Hon'ble Judges: Robert Stuart, C.J; Turner, J; Spankie, J; Pearson, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Robert Stuart, C.J.

It appears to me that the judgment of the Privy Council see *Matab Chund v. Bulram Singh* LR 13 Ind. Ap. 479 referred to has no application to the present case. That was a judgment under a totally different limitation law from that which we have now to consider. Section 20 of Act XIV of 1859 provided that "no process of execution shall issue from any Court not established by Royal Charter to enforce any judgment, decree, or order of such Court, unless some proceeding shall have been taken to enforce such judgment, decree, or order, or to keep the same in force within three years next preceding the application for such execution." But the provisions of Act IX of 1871 are much more precise, for under No. 167 of the second schedule the time when the period of limitation begins to run is "the date of applying to the Court to enforce or keep in force the decree or order." I can quite understand that this may operate harshly in many cases, but the meaning is too plain, and it is that "the date of the applying to the Court" is the particular day on which the application is actually presented, and not the last or any other day on which the application was pending.

Pearson, J.

2. The date of applying must in my opinion be held to be the date of making application. Rut an application to enforce or keep in force may not ho exclusively an

application of the nature described in Section 212 of Act VIII of 1859 see Husain Bakhsh v. Madge ILR 1 All 525.

Turner, J.

3. However inconvenient may be the construction, I feel bound by the plain terms of the Act to hold that the date of applying means not any day on which an application may be pending but a certain day, the day of its presentation; but the Court may not feel constrained to hold that by the term applying we are to understand only an application to execute the decree. Any application made to a Court during the pendency of proceedings in execution to enforce or keep in force the decree might be held to give a date from which limitation might be calculated, and I am continued in this view by the more explicit language of the Act recently passed see Husain Bakhsh v. Madge ILR 1 All 525.

Spankie, J.

4. I concur.

5. The case having been returned to the Division Court, the Court (after stating the facts) delivered the following

6. The period of three years must be computed from the date on which the last application to enforce the decree was tiled. It cannot be said that the application of the 28th August 1872, was an application to enforce the decree. It was on the contrary an application for the suspension of the proceedings. Under the circumstances the Court below was right in holding the present application barred by limitation. "Use appeal is dismissed with costs.