

(1985) 02 DEL CK 0039

Delhi High Court

Case No: Civil Revn. No. 969 of 1984

Des Raj and Another

APPELLANT

Vs

Noor Khan

RESPONDENT

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**Date of Decision:** Feb. 26, 1985**Acts Referred:**

- Delhi and Ajmer Rent Control Act, 1952 - Section 13(1)
- Limitation Act, 1963 - Article 136
- Slum Areas (Improvement and Clearance) Act, 1956 - Section 19, 19(1), 20

**Citation:** AIR 1985 Delhi 470 : (1986) 1 ILR Delhi 1**Hon'ble Judges:** Sultan Singh, J**Bench:** Single Bench**Advocate:** Sunil Malhotra, for the Appellant; Shiv Jee Mathur, for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

Sultan Singh, J.

The question for decision in this revision petition is whether the execution application is within limitation? Tehl Chand, father of the petitioners filed a suit for eviction of the respondent Noor Khan on 20th May, 1958 u/s 13(1)(e) of the Delhi and Ajmer Rent Control Act, 1952 with respect to a portion of property No. 10020 Gali Naiwali, Nawabganj, Pul Bangash, Delhi He obtained a decree for his eviction on 19th Feb. 1960. u/s 19(1)(b) of the Slum Areas (Improvement and Clearance) Act, 1956 the decree becomes executable only after obtaining the permission from the Competent Authority under the said Act as the suit premises are situated in a slum area. The decree-holder applied for permission to execute the decree but it was refused on 2nd Apr. 1962. His appeal filed u/s 20 of the Slum Areas (Improvement and Clearance) Act, 1956 was also dismissed. Subsequently it appears, the decree-holder filed a suit for possession on the basis of title but his suit was also dismissed on 1st Apr. 1968.

2. Tehl Chand, decree-holder died leaving behind his sons Des Raj and Nand Lal They applied for permission u/s 19 of the Slum Areas (Improvement & Clearance) Act, 1956 to execute the decree Dt. 19th Feb. 1960. They also filed an application on 17th July, 1980 for execution of the said decree. The judgment debtor Noor Khan filed objections. During the pendency of the execution application the decree-holder was granted permission on 8th May, 1981 u/s 19 of the Slum Areas (Improvement and Clearance) Act, 1956 to execute the decree dt. 19th Feb. 1960.

3. The judgment debtor had objected that the decree by the civil court was a nullity, it was barred by time and was not executable without permission of the Slum Authority. The execution court by the impugned order dt. 15th Oct. 1984 held that the decree was not a nullity, that though permission had been obtained the decree became unexecutable as the decree-holder did not take any action for a long time and the execution application was barred by time.

4. Learned Counsel for the petitioner submits that under Article 136 of the Limitation Act, 1963 the decree became enforceable only on the date when the permission under the Slum Areas (Improvement & Clearance) Act, 1956 was granted for execution of the decree and the limitation commenced from 8th May, 1981 when the decree became enforceable.

5. Learned Counsel for the respondent-judgment debtor submits that the petitioner filed an application for permission which was dismissed on 2nd Apr. 1962 and the appeal was also dismissed and therefore he was not entitled to file a fresh application seeking permission to execute the decree and the permission granted on 8th May, 1981 is contrary to law.

6. Article 136 of the Limitation Act, 1963 reads as under:

Description of Appli- cation	Period of Limitation	Time from which period begins to r
136. For the execution of any decree (other than a decree grant- ing a mandatory injun- ction) or order of any Civil court	Twelve Years	When the decree or order becomes e where the decree or any subsequent payment of money or the delivery o made at a certain date or at recur default in making the payment or o which execution is sought, takes p
		Provided that an application for th execution of a decree granting a pe shall not be subject to any period

Under this article a decree is executable within a period of 12 years from the date when it becomes enforceable. If the decree is not enforceable no execution lies and the period of limitation does not commence. It is not disputed that the permission to execute the decree dt. 19th Feb. 1960 was obtained for the first time on 8th May, 1981. The decree thus became enforceable on 8th May, 1981 and the period of 12 years under Article 136 of the Limitation Act commenced from that date and not earlier.

7. In [Abdul Rashid Vs. Sri Sitaramji Maharaj Brajman and Others](#), a compromise decree for possession of lands in dispute was passed on 27th Jan. 1954. The decree provided that the judgment debtor would remove the constructions and deliver possession to the decree-holder after the latter served him with a notice giving him two months" time to remove the construction. The decree-holder served a notice on 22nd Oct. 1962 asking the judgment debtor to deliver possession. The judgment debtor did not deliver possession. The execution application was filed on 2nd May, 1963. It was held that the execution application was not barred by time, that immediate execution of the decree was negatived by the terms of the compromise decree and that a period of limitation commenced from the time when the decree became executable.

8. In [Sri Chandra Mouli Deva Vs. Kumar Binoya Nand Singh and Others](#), referring to Article 136 of the Limitation Act, 1963 it has been observed that cases are not unknown when decrees become enforceable on some future date or on the happening of certain specified event. It has been further observed that the decree comes into existence as soon as the judgment is pronounced but it is executable only when it becomes enforceable,

9. In [Patel Chaturbhai Nanabhai Vs. Patel Mohanbhai Nanabhai and Another](#), it has been observed that when the decree is not immediately capable of execution but on the happening of the specified event, the right to apply for execution arises only when the decree becomes enforceable. I am, therefore, of the opinion that the decree in the instant case became enforceable only on 8th May, 1981 when the permission was granted to the decree-holder u/s 19 of the Slum Areas (Improvement and Clearance) Act, 1956. The execution application is, therefore, within time.

10. Learned Counsel for the judgment-debtor-respondent submits that the permission was refused on 2nd Apr. 1962 and therefore the decree-holder had no right to make a fresh application seeking permission to execute the decree. I do not agree. There is no limitation on the right of the decree-holder to make application u/s 19 of the Slum Areas (Improvement and Clearance) Act, 1956 seeking permission to execute the decree. It appears that the status of the judgment debtor changed during the period from 1962 to 1980 and therefore the decree-holder was in a position to obtain permission to execute the decree on 8th May, 1981.

11. I am, therefore, of the opinion that the judgment and order of the executing court holding the execution application to be barred by time is contrary to law and it acted illegally in the exercise of its jurisdiction. The revision petition is accepted setting aside the impugned order. The execution application is held to be within time. No other point has been argued.

12. Parties are directed to appear before the executing court on 12th April 1985 for the issue of warrant of possession with respect to the property in suit in accordance with law. No order as to costs.