Nursinghdas Guzrati Vs Baijnath Prasad and Ors

Court: Calcutta High Court

Date of Decision: April 4, 1955

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 21 Rule 11(3), Order 21 Rule 22(1)(a), Order 21 Rule 50(2), Order 21 Rule 6, Order 21 Rule 90

Citation: 59 CWN 1011

Hon'ble Judges: P.B. Mukharji, J

Bench: Single Bench

Advocate: T.P. Das and A.K. Sen for the Decree-holder, for the Appellant; S. Chaudhuri, R. Chaudhuri and M.N. Barerjee, for the Respondent

Judgement

P.B. Mukharji, J.
This is an application for execution of a decree of the Original Side of this Court in Suit No. 330 of 1938, intituled

Nursingdas Guzrati v. Lata Baijnath Pro-sad and others. Although the decree was dated the 16th August, 1939, it was signed by the learned

Judge on the 10th September, 1943. The mode in which execution is sought is by attachment and sale of three immovable properties, two in

Benaras and one in Calcutta being premises No. 6 and also known as 6A, Shib Thakur Lane. Calcutta. The claim to attach and sell Benaras

properties has been withdrawn without prejudice to the decree-holder''s right to proceed against such Benaras properties by transmission of this

decree to Benaras Courts within whose jurisdiction such properties are situate. The present application for execution, therefore, is now concerned

only with the claim to attach and sell 6 or 6A, Shib Thakur Lane, Calcutta. The amount of the decree is for Rs. 52,533-10-0 together with interest

thereon at 6 per cent, per annum. That is the decree which is sought to be executed. It is said in the Tabular Statement that all (the defendants-

judgment-debtors are interested in the said property to the extent of 16 annas share therein. Being a decree more than one year old, usual notice

under Order 21, Rule 22 (1) (a) and (b) of the CPC was issued by the Master on the 4th August, 1953. The application is made on a Tabular

Statement. There are about 38 judgment-debtors. The only point taken in defence by the judgment-debtors is that the decree is barred by

limitation under Article 183 of the Limitation Act. To appreciate the point of limitation, certain facts and dates should be noticed.

2. The facts, briefly, are as follows:

The plaintiff advanced altogether a sum of Rs. 33.600 with interest at 9 per cent to the defendants between April, 1932, and December, 1933.

The plaintiff filed this suit on the 7th February, 1938, for the recovery of the sum of Rs. 49,537-10-0 being the amount then due on the loans with

interest against the defendants, who were about 38 in number as members and managing members of a Hindu joint family. On the 3rd June, 1939,

the minor members of the family filed a suit in the Civil Judge''s Court at Allahabad against the plaintiff and other Calcutta creditors who were likely

to obtain decrees for inter alia an injunction, restraining them from executing their decrees. In that minor''s suit an injunction was granted on the 3rd

June, 1939, against the plaintiff from executing his decree and from proceeding against the properties in which the minors were interested. The

terms of this injunction will be material later on, and I will at that stage set out the exact terms of this injunction. Now while that minor''s suit was

pending with an injunction granted against the Calcutta plaintiff, this decree was passed in this suit by Lort Williams, J., on the 16th August, 1939.

On the 14th September, 1939, the plaintiff gave requisition to draw up the decree through his solicitors. This draft decree was received on the 24th

November. 1939, by the plaintiff''s solicitor for the purpose of being approved. On the 28th November, 1939, the decree was settled and passed.

But an application was made by the plaintiff to speak to the minutes retarding the rate of interest, and the engrossing of the decree was stayed for

one week only. The plaintiff, however, did not ultimately speak to the minutes; but it is necessary to record here that the engrossing of the decree

was not stayed beyond a week. On the 4th March, 1940, the temporary injunction which the minors had got from the Civil Court at Allahabad

was made final. Again the terms of the order of injunction will be material, and I will discuss them at the proper stage. On the 27th April, 1943,

some of the creditors, but not the present decree-holder, appealed from that order of injunction to the Allahabad High Court and got the injunction

as against them vacated. The injunction against the present decree-holder however continued. On the 7th September, 1943, the decree-holder''s

solicitor wrote to the Registrar for completing his decree. Within three days thereafter on the 10th September, 1943, the decree was re-settled,

passed and signed by S. R. Das, J. On the 10th September, 1943, requisition was made for a certified copy of the decree and on the very

following day, i.e.. the 11th September, 1943, the decree was filed and a certified copy of the decree received by the decree-holder. Thereafter

the minor''s suit in Allahabad was dismissed on the 18th January, 1944. The dismissal of the minor''s suit in Allahabad, therefore, lifted the

injunction against the present decree-holder. It will be necessary to refer to another action. The first defendant Baijnath Prosad had filed a suit,

being Miscellaneous Case No. 25 of 1935. before the Special Judge, First Grade, Allahabad under the U. P. Encumbered States Act where

applications were made for injunction restraining the present decree-holder and other creditors from executing their Calcutta decrees. These

applications, however, were dismissed on the 21st November. 1946. Appeals were preferred against such dismissals in the Allahabad High Court,

and in these appeals, applications were made for injunction restraining the plaintiff from executing the decree, and a temporary injunction was

passed on the 13th February, 1947. That temporary injunction was confirmed so far as the present decree-holder was concerned by the

Allahabad High Court on the 26th April, 1948, until the disposal of the appeals. The appeals were ultimately dismissed by the Allahabad High

Court on the 17th February, 1950. The injunction, therefore, that was operating against the decree-holder in Baijnath''s suit from 13th February,

1947 was lifted by the 17th February, 1950, with the dismissal of the appeals. Then an application was made for leave to appeal to the Supreme

Court before the Allahabad High Court on the 1st May, 1950. and an injunction restraining the Calcutta decree-holders, including the plaintiff,

from executing their decrees was sought, but no injunction was granted.

3. The present proceeding in execution began on the 4th August, 1953, when the decree-holder filed his Tabular statement in execution of the

decree and an order was made by G. K. Mitter, J., on the 24th January, 1954, for attachment of the interests of the respondents Nos. 2 to 27 in

Shib Thakur Lane property mentioned in the Tabular Statement.

4. This completes recounting the material facts to which reference will be necessary in deciding the question of limitation. Limitation is the only

defence raised and argued on behalf of the judgment-debtor.

5. This being a judgment and decree of this Court in its ordinary original civil jurisdiction, it is not disputed that Article 183 of the Limitation Act

applies. The limitation there provided is for 12 years. Normally the right to enforce the decree arises when the decree is made and if the date of the

decree is taken to be the starting point of limitation in this case, then the decree would be barred by limitation within 12 years from 16th August,

1939, when Lort-Williams, J., passed the decree. In other words, the decree will be barred by the 16th August, 1951.

6. The decree-holder contends to save the limitation on two main grounds. First, he wants that in computing this limitation for 12 years, the time

taken by him from the making of the decree on the 16th August, 1939, till his obtaining a certified copy thereof on the 11th September, 1943.

should be excluded. That is a period of about 4 years short of five days. What the decree-holder contends is that until the decree is signed by the

Judge which in this case was done on the 11th September, 1943, he could not enforce that decree because in an application for execution of a

decree of this Court the Rules of this Court require a duly certified copy of the decree to be annexed to the application for execution. It may be

noticed in this connection, however, that although Lort-Williams, J., made the decree on the 16th. August, 1939. the requisition to draw it up was

not put in till the 14th September, 1939. So about a month, short of two days, or about 28 days the decree-holder lost, and that time which he lost

for his own delay should not be added to extend limitation. But then even excluding these 28 days, there still remains a large portion of that period

covered by 4 years short of five days.

7. The decree-holder''s second submission to extend the period of limitation is made on the ground that there were injunctions operating against

him from executing this decree. As will he seen from the account of the facts stated above, the injunction in the minor''s suit in Allahabad continued

from 3rd June, 1939, till the 18th January, 1944, when the minor''s suit was dismissed. The decree-holder therefore contends that for this period of

about four years six months he could not in any event execute his decree and he should therefore be allowed to exclude this time and thus

extending the limitation for executing his decree. For the same reason he claims exemption for the time between the 13th February 1947. and the

17th. February, 1950, a period of about three years; when the injunction in Baijnath suit operated against him preventing the execution of the

decree. The total period covered by these two injunctions, one in the minor''s suit and the other in Baijnath suit is about seven years six months.

The claim for exclusion of time for the purpose of computing the limitation is based on section 15 of the Limitation Act which inter alia provides that

in computing the period of limitation prescribed for an application for the execution of a decree the execution of which has been stayed by

injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was

withdrawn, shall be excluded.

8. Obviously, if these two different classes of times, one taken for completion of the decree and signing of it and receipt of the certified copy

thereof, the other, the period covered by the injunctions, are excluded from the period of twelve years from the date of the decree, then the present

application for execution on the 4th August. 1953, is not barred by limitation.

9. The third ground advanced by the decree-holder is one of acknowledgment or admission as saving the limitation in this case. I shall refer to this

last ground later in this judgment.

10. I now proceed to discuss and determine the arguments put forward on behalf of the judgment-debtors to get round the two main contentions

of the decree-holder. Before doing so, I need only add a word about this family of judgment-debtors. They are a family of business men in Jhunsi,

in the district of Allahabad. They carry on extensive business spread over practically the whole country and as the Allahabad High Court points

out. they consist mainly of five branches, the Calcutta branch represented by Sangah Lal, the Benaras branch represented by Bansi Lal, the Naini

branch represented by Kanai Lal, the Jhunsi branch represented by Mohan Lal and another branch represented by Baijnath. That alignment still

continues and different branches have been represented before me by different Counsel.

11. It is first said on behalf of the judgment-debtors that the time taken to complete the decree between the 16th August, 1939, and the 11th

September, 1943, cannot be excluded from the operation of the limitation of twelve years which is said to run from the date of the decree. It is first

contended on the basis of the Privy Council decision in Banku Behari Chatterji v. Narian Das Datto (1) (L. R. 54 I. A. 129), that the limitation

under Article 183 runs from the date of the decree. Secondly, it is contended on behalf of the judgment debtors that section 12 of the Limitation

Act which excludes the time requisite for obtaining a copy of the decree does not apply in this case be cause it is limited only to an application for

leave to appeal, an application for review of judgment and an application to set aside an award and does not apply to an application for execution.

12. The Privy Council decision of Banku v. Narain (1) (L. R. 54 I. A. 129) does not really decide this point at all because this particular question

was not before the Privy Council in that case. There was no question there on the point of time taken from the making of the decree till signing of it

by the Judge. It has been repeatedly pointed out, as by Lord Halsbury, L. C, in the House of Lords in (2) [(1901) A.C. 495 at p. 506].that a case

is only an authority for the proposition it decides and not for what appears to follow from it. I therefore feel that this Privy Council decision is no

hindrance to the decree-holder. Reference was also made in the course of arguments at the Bar to a decision of the Court of Appeal of this Court

in Jagannath v. Chimanlal (3) [I. L.R. (1945) 1 Cal. 102] setting aside an order of S. R. Das, J. That case again is no authority for the point raised

in the present application before; me. Although Article 183 of the Limitation Act was interpreted in that case but that was only with reference to

Order 21, rule 50(2) of the Civil Procedure Code. It was held there that an application under Order 21, r. 50(2) of the Code to cause a decree of

Chartered High Court to be executed is not an independent application butt a component of an application to enforce the decree and as such was

governed by Article 183 of the Limitation Act. That case did not consider and had no occasion to consider Rule 10 of Chapter 17 or the question

how the present right to enforce the judgment under Article 183 can arise before obtaining the certified copy of the decree when the Rules enjoin

that all applications for execution shall be accompanied by a certified copy of the decree. That case therefore does not help the judgment-debtors

in this case. Besides it may be pointed out here that McNair, J.''s views on limitation in that case was criticised and dissented from by Chagla, C.

J., in Ramnath v. Amar-chand, (4) (55 Bom. Law Reporter 980. at p. 985).

13. Section 12 of the Limitation Act however does show that the exclusion of time there provided for is limited only to three classes of

applications, one for leave to appeal, another for review of judgment and the other for setting aside an award. It does not extend to an application

for execution. The reason, however, for omitting to mention application for execution in section 12 of the Limitation Act may not be far to seek.

Ordinarily, a decree under the CPC becomes executable on the day the decree is made under Article 182 and the ordinary procedure in civil

Court is very radically different from the procedure obtaining in the Original Side of the Chartered High Courts for which Article 183 is the special

provision.

14. For execution of the ordinary decrees of any civil Court, Article 182 of the Limitation Act is relevant and there the time provided is three years

and it runs from the date of the decree or order. A very clear distinction is made in the very subsequent Article 183 in respect of decrees or

judgments of a Court established by Royal Charter in the exercise of its Ordinary Original Civil Jurisdiction. There limitation is not only the very

much longer period of twelve years, but it is also made to run not from the date of the decree or judgment as in Article 182, but from the point of

time when ""a present right to enforce the judgment or decree or order accrues to the person capable of releasing the right"". The question therefore

is, when does the present right to enforce the judgment of such a Court arise. Now, under the Rules of this Court made under the authority of its

Letters Patent and recognised by the Civil Procedure Code, meticulous provisions are made for execution of decrees of this Court. I find that in

Rule 10, Chapter 17 of the Original Side Rules of this Court, a mandatory provision is made that all applications for execution shall be

accompanied by a certified copy of the decree. If therefore a certified copy of the decree is not made avaliable, how can the present right to

enforce the decrees be said to arise ? All the more so until the decree itself was signed by the Judge because no certified copy of the decree can

be made available to the decree-holder before its signature by the Judge. Article 183 could easily have said that in such decrees also limitation will

run from the date of the decree as in Article 182. But it has not deliberately done so. It has intentionally used a language very different from the one

in the very preceding Article 182. To require the decree-holder by the mandatory provision of Rule 10 of Chapter 17 that all applications for

execution shall be accompanied by a certified copy of the decree, then to deny him the time that is required for obtaining a certified copy of the

decree and at the same time to tell him that limitation will operate against him from the date of the decree will be to create the most impossible

situation which even the worst legal solecism should not be allowed to invent. So far as the decrees of the Original Side of this Chartered High

Court are concerned, it is necessary therefore to construe the words ""the present right to enforce a judgment or decree"" to mean when the decree-

holder gets a certified copy of the decree. Before then his right to enforce the judgment under the express Rules of the Court does not arise.

15. Mr. R. Chaudhuri for Baijnath, realising this difficulty, tried to rely on the decision of the Supreme Court of India in Mohanlal Goenka v. Benoy

Krishna Mukherjee, (4) (1953 S. C. A. 475). In that case the controversy concerned section 39 of the Civil Procedure Code. That decision is not

an authority on the point of limitation that is before me on this application, but is only an authority for the proposition that an omission to send a

copy of the decree or an omission to transmit to the Court executing the decree the certificate referred to in Order 21. Rule 6 of the CPC does not

amount to such a material irregularity within the meaning of Order 21, Rule 90 as can be made a ground for setting aside a sale in execution of that

decree. Order 21, Rule 6 provides that the Court sending a decree for execution shall send a copy of the decree. No question of limitation or

allowance of time neeessary to obtain a certified copy of the decree by the decree-holder arose in that case. What happened there was that a sale

took place in exe- cution of the decree without a copy of the decree and the Court did not set it aside on the ground that it was not a material

irregularity and it is so clearly elucidated by the observations of the learned Judge S. R. Das, J., at page 482 of the Report. It cannot, in my view,

be said on the basis of that authority that although our Rules provide that a certified copy of the decree shall be accompanied in all cases of

application for execution, the decree holder should disregard and disobey that mandatory Rule with a view to avoid limitation. The consequence of

this breach of a mandatory provision of the CPC such as the Order 21, Rule 6 should not be confused as an invitation to commit the breach.

16. Rule 10 of Chapter XVII of the Original Side Rules of this High Court makes the mandatory provision that ""in all cases the application (for

execution) shall be accompanied by a duly certified copy of the decree"". Until, therefore, the duly certified copy of the decree is obtained by the

decree-holder from the Court--and I need not repeat that such a decree has to be signed by the Judge, the right to enforce the judgment within the

meaning of Article 183 cannot be said to arise. In this context the contrast may be noticed between Rule 10 of Chapter XVII and Order 21, Rule

11(3) of the CPC which does not make such a certified copy indispensable, but only says, ""the Court may require the applicant to produce a

certified copy of the decree."" Therefore, the difference in the terminus a quo of limitation in Article 182 and Article 183 of the Limitation Act

becomes quite clear. Under Article 182 the limitation starts from the date of the decree. But under Article 183 the limitation starts from the time

when a present right to enforce the judgment, decree or order"" accrues. So long as the duly certified copy of the decree is not obtained on the

Original Side of this Court, there is no present right to enforce the decree. With the. pronouncement of the decree on the Original Side what

happens is that the decree-holder has an inchoate right to enforce his decree and that matures into a ""present"" right when he obtains a certified

copy of the decree. In order to find out this terminus a quo allowance must, in my opinion, therefore, be made having regard to the language of

Article 183 in the third column thereof, for the time required to obtain the certified copy.

17. This means that the decree-holder has to take steps to move the machinery of the Court for obtaining the certified copy. That machinery is

provided by Rule 27 of Chapter XVI of the Original Side Rules by putting in a requisition within the time specified there. If there is delay in putting

in the requisition by the decree-holder, then of course the decree-holder cannot take the benefit of his own delay. But once he has put in the

requisition, then the time taken by the Court''s machinery to produce the certified copy of the decree duly signed by the Judge has to be allowed to

the decree-holder. Lord Phillimore construing section 12(2) of the Limitation Act in J. N. Surty v. T. S. Chettyar, (5) (L.R. 55 IndAp 161).

observed at page 170 of the Report : ""For the time which is taken up by the officials of the Court in preparing and issuing the two documents, he is

not responsible."" In other words, the decree-holder is only responsible for the delay, if any, between the pronouncement of the decree in Court

and the time when he puts in the requisition by the decree-holder for drawing up his decree. Here in this case the decree was pronounced by Lort-

Williams, J., on 16th August, 1939, but the decree-holder did not put in the requisition till the 14th September, 1939. Therefore, this delay

between 16th August and 11th September, cannot be allowed to the decree-holder because he could have put in the requisition on the very day

the decree was pronounced. But once he put in that requisition on the 14th September, 1939, time ceased to run against him until he got the

certified copy of the decree on the 11th September, 1943, and even during this period, one week''s time should be excluded because that was due

to the decree-holder''s ineffective effort to speak to the minutes which held up the engrossing of the decree for a week only. That means that the

decree-holder must have four years'' time less three days and less seven days, i.e., four years less ten days.

18. On the, interpretation of Article 183 of the Limitation Act and specially in view of the express difference between the starting points of

limitation between Articles 182 and 183, one being from the date of the decree and the other being designedly different being the date of the

present right to enforce the decree, I hold that the present right to enforce the decree does not accrue to the decree-holder within the meaning of

Article 183 of the Limitation Act on the Original Side of this Court until the decree-holder obtains certified copy of the decree because that is

enjoined as an inescapable mandate by Rule 10 of Chapter XVII of the Rules of the Original Side of this Court in all applications for execution. I,

therefore, hold that the decree-holder in this case is entitled to have the benefit of excluding 4 years less 10 days from the period of 12 years from

the date of the decree in this case on the ground that, that was the time that the machinery of the Court took for granting to the decree-holder the

certified copy of his decree whose execution he sought. Any other interpretation construing that the limitation runs from the date of the decree even

for Original Side decrees of this Court would reduce Article 183 to the same level as Article 182 which could not have been the intention of the

Legislature having regard to the difference in language used in the two Articles. As ordinarily 12 years would have expired in this case on the 16th

August, 1951, and as the decree-holder gets, in my opinion, 4 years less 10 days in addition to it on the ground just stated, I hold that this

application for execution is not barred by limitation under Article 183 of the Limitation Act.

19. The next question relates to periods of injunctions restraining the plaintiff from executing his decree. As I have already said, this question

involves two different periods. One is the period of injunction in the minor''s suit at Allahabad against the plaintiff, first as ad interim injunction from

the 3rd June, 1939, till the 4th March, 1940, and then as final injunction from 4th March, 1940, till the 18th January. 1944, when the minor''s suit

was dismissed at Allahabad. The other is the period of injunction in Baijnath''s suit from 13th February, 1947, till 17th February, 1950, when the

appeals were dismissed by Allahabad High Court.

20. The contention raised on behalf of the judgment-debtors is that the injunction in the minor''s suit was not a valid injunction. The reason for

putting forward such an argument is that the temporary injunction that was granted first on the 3rd June, 1939, was an injunction at a point of time

when the decree which is now sought to be executed had not been passed. On the 3rd June, 1939, the Civil Judge at Allahabad issued the

injunction in the following terms:-

This Court doth order that an injunction be awarded to prohibit and restrain the defendant abovenamed. his servants, agents, representatives and

workmen from taking any proceeding in any way in execution of the decree in Suit No. 330 of 1938, Nursing Das Gujerati v. Lala, Baijnath

Prosad, by the High Court of Judicature at Fort William in Bengal (Ordinary Original Civil Jurisdiction). It is further directed that the properties

belonging to the branches of the plaintiffs, who are the descendants of Mohanlal and Mukundlal in which the plaintiffs are said to be interested will

not be proceeded against in execution of the decrees obtained.

21. It is therefore said that although the suit number was correctly given, as no decree had been passed in favour of the decree-holder at that time,

this injunction is merely a nullity. My own view is that it was a qua timet injunction, that the words ""decree passed by the High Court"" means not

only decree already passed but also decree to be passed in the suit mentioned in the order. It is not necessary for me to rest my decision on this

ground at all. I will presently state the terms of the final order for injunction. But before I do so. it is necessary to refer to the other part of the ad-

interim injunction of the 3rd June, 1939, in the Allahabad minor''s suit which also protected the properties from being taken in execution. The

intention therefore; is clear from the terms of that order and it leaves very little doubt as to what that injunction was intended to do. But the position

becomes clear beyond doubt on the 4th March, 1940, when that ad-interim injunction was made final in the following terms:-

The injunction order of 3rd June, 1939, is confirmed with this direction that the decree obtained by the first set of defendants (which includes the

present decree-holder Narsing Das Gujerati) will not be executed, so as to affect the plaintiffs or their interest in the joint family properties or in a

manner that their interests may in any way be affected thereby, i.e., by the execution of the decree. This temporary injunction will remain in force till

the decision of the suit.

22. By this order of final injunction on the 4th March, 1940, the decree-holder was clearly restrained from executing this present decree which was

passed since the ad interim injunction, but before the final injunction.

23. Even leaving out the period of ad interim injunction from the 3rd June, 1939, at least the period of final injunction operating from 4th March,

1940, till the 18th January, 1944, when this Allahabad suit was dismissed must be excluded from the calculation of limitation. By that date of the

4th March, 1940, the decree in this suit had been passed and this injunction fastened on this decree. It may be emphasised here that some

creditors appealed from that order of injunction and got the injunction vacated as against them but that fact does not affect the present decree-

holder"s position here because he was not one of such appellants and the injunction continued against him till the disposal of the Allahabad minor"s

suit. 1 therefore overrule the objection taken by the judgment-debtors on this point and allow at least this period of injunction from the 4th March,

1940, till the 18th January, 1944, to be excluded from the period of 12 years" limitation.

24. With regard to the injunction in Baijnath"s suit, no further argument was advanced on behalf of the judgment-debtor and therefore the period of

time covered by that injunction in that suit must also be excluded from the period of twelve years" limitation for the same reason.

25. I need only add here that section 15 of the Limitation Act is mandatory and the time during which proceedings are suspended or stayed by

injunction must be excluded. The period of time allowed to be excluded u/s 15 of the Limitation Act starts from the day on which the injunction

staying execution of the decree is issued and continues till the day on which it is withdrawn, both the starting and the closing days being excluded as

well as the period covered thereby.

26. I therefore hold that the decree holder in this case is entitled to have the benefit of these two periods of time covered by injunction restraining

him from executing his Calcutta decree. The result is that this application for execution is saved from limitation on this ground also.

27. Having regard to my judgment on the point of interpretation of Article 183 of the Limitation Act and its necessary consequence of excluding

the time taken by the decree-holder for obtaining a certified copy of this Court"s decree and also having regard to my judgment that the periods

covered by injunctions issued by competent courts should be excluded from computing the period of limitation, it is unnecessary, in my opinion, to

consider the other contention of the decree-holder that this application for execution is not barred by limitation on the ground of acknowledgments

and admissions alleged to be contained in the proceedings of the Allahabad suit. I shall only, however, make a brief reference to them to show the

nature of the contention out of deference to the arguments advanced at the Bar.

28. Reliance is placed by the decree holder mainly on the affidavits of Mukundalal dated the 7th August, 1944, and the 4th December, 1944, and

on the affidavit of Premnath Chobey on behalf of the defendant-appellants in the First Appeal No. 530 of 1943 of the Allahabad High Court on

the 30th November, 1944. In Mukundalal''s affidavit of the 7th August, 1944, reference is made to paragraphs 13, 14 and 15. In paragraph 13

there is the statement that some of the decreeholders have already put their decrees into execution by attachment and sale of the properties of the

different members of the family and there is obvious reference to the Calcutta High Court suit. On that allegation it is contended that here is an

acknowledgment that the decree which is now sought to be executed was acknowledged on the 7th August, 1944, by Mukundalal. Again, in the

affidavit of Mukundalal affirmed on the 4th December, 1944, specially in paragraph 17 thereof, there is a reference to the fact that the Calcutta

decrees cannot be satisfied by the sale of any property except the Jhunsi Mills. On that basis also it is contended by the decree-holder that this is

an admission or acknowledgment of this decree which is now sought to be executed and such acknowledgment or admission is dated the 4th

December, 1944.

29. On behalf of the judgment-debtors it is said that Mukundalal was not the judgment-debtor and. therefore, his admission cannot bind or extend

the limitation. Secondly, it is said that, admission or acknowledgment in order to extend limitation under Article 183 of the Limitation Act must be

made to the decree-holder who is the creditor. It appears from these affidavits that Mukundalal was a ""Piroker"" of defendants-respondents Nos.

26 to 29 in the First Appeal No. 530 of 1943 of the Allahabad High Court and was supposed to be representing the Benaras branch of this family.

Mukundalal as such agent, therefore, was allowed by these persons of the Benaras branch to represent them in Allahabad High Court on which the

Allahabad High Court in fact acted. That being so. his authority so far as the Benaras branch is concerned cannot be disputed.

30. With regard to Premnath Chobey, the same contention as against Mukundalal, has been raised by the judgment debtors. Premnath Chobey

describes himself as the ""Piroker"" of the appellants in the First Appeal No. 530 of 1943 of the Allahabad High Court. He represented Banwari Lal

and others who are judgment-debtors. On the same ground Premnath Chobey''s agency for these Allahabad appellants cannot be disputed. In

paragraph 4 of his affidavit of the 30th November, 1944, the statement is made that the decree-holders could execute the decree against any

member or members. In that paragraph reference is made to the decree of the Calcutta High Court.

31. The main dispute on this branch of the case, however, centres on the other question whether these admissions or acknowledgments, even

assuming that they are so. were made to the decree-holder. The contention here is that Article 183 requires such admissions or acknowledgments

to be made to the decree-holder and only then limitation can be extended under that Article. That is the argument of the judgment-debtors. The

answer given on behalf of the decree-holder is that such acknowledgment or admission is to be read subject to sec. 19 of the Limitation Act which

does not stipulate that the acknowledgment has to be made to the creditor. For that purpose, on behalf of the decree-holder, reliance is placed on

the decision of Ameer Ali. J., who had large experience in execution of decrees of the Original Side of this Court and with the problems arising

under Article 183 of the Limitation Act, in Srinarayan Keya. v. Bhagwandas Churiwalla (7) reported in 44 C.W.N 322 where the learned Judge

observes :-

As regards section 19. that is not the law in India. It is to be noticed that the proviso relates directly to the fixing of the terminus a quo for the

period of limitation mentioned in the preceding column. Section 19 is general. I do not myself see why or how section 19 is to be controlled or

limited by the language of the proviso to Column 3, Article 183. No doubt the two matters may be independent. but it does not follow that the

scope of section 19 should be narrowed by the proviso.

32. Mr. S. Chaudhuri appearing for some of the judgment-debtors has asked me to dissent from this view of Ameer Ali, J. I do not consider that

necessary at all because while Ameer Ali, J''s view that section 19 controls Article 183 on this point, may be debatable the learned Judge''s view

that such acknowledgments are in effect made to the creditor is enough to dispose of this argument on that short point. Ameer Ali, J., makes it

quite clear that affidavits of the nature that I have discussed may be considered as an acknowledgment to the creditor when the learned Judge said,

Even under the proviso to Article 183 an acknowledgment made in this form can be treated as an acknowledgment made to the creditor."" In that

case before Ameer Ali. J., the form of acknowledgment was contained in the entry for the debt in the list of creditors signed by the defendants who

applied to the Official Assignee. Applying that test, the acknowledgments here in the affidavits can similarly be held to be acknowledgments to the

creditor. If that be so, then the period of 12 years will run from at least the 7th August, 1944, which will make this present application for execution

within limitation. It is, however, unnecessary for me to decide this question of whether this is a proper acknowledgment in this case or not as I rest

my decision on the other two grounds which I have stated before in my judgment, the first being the period taken for obtaining a certified copy of

the decree, and, second being the periods covered by injunction. For these reasons, I order execution in terms of Column 10 of the Tabular

Statement limited to the premises No. 6 also known as 6A, Shib Thakur Lane, Calcutta. The applicant is entitled to the costs of this application.

Certified for Counsel.