

**(1969) 07 CAL CK 0004**

**Calcutta High Court**

**Case No:** Civil Revision Case No. 3506 of 1964

Messrs Rai Mohan Das and  
Others

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision:** July 24, 1969

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 48

**Citation:** 73 CWN 919

**Hon'ble Judges:** P.N. Mookerjee, Acting C.J.; A.K. Mookerji, J

**Bench:** Division Bench

**Advocate:** S. Mitra and P.K. Dasgupta, for the Appellant; M.N. Roy for Opp. No. 1, for the Respondent

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### **Judgement**

P.N. Mookerjee, A.C.J.

1. This Rule was obtained by the petitioners against an order of the Board of Revenue, rejecting their contention that the instant certificate was barred by limitation and, further, that the claim under it, so far as the certificate-holder is concerned, was an excess claim. The question of limitation was raised u/s 48 of the Code of Civil Procedure, the allegation being that more than 12 years had passed from the filing of the certificate and no execution is permissible of the same any longer. On this point the decision must go against the petitioners, as it appears that the execution case, which appears to have been started more than 12 years ago, is still continuing. There is no question of fresh execution and, accordingly, the plea of bar under sec. 48 of the Code of Civil Procedure, even if it is otherwise available, cannot be accepted. On this ground, we overrule the petitioners' above contention.

2. As to the second contention, however, namely, that in the instant case the dues claimed in the certificate were not dues to the certificate-holder alone but to another party, namely, the Government of Pakistan, as well, that, obviously, requires

consideration before disposal of the present proceedings. The view of the Hon"ble Member, Board of Revenue, that this is not a question, which can be raised in a certificate proceeding, does not appear to us to be tenable. If the certificate holder has included, within its claim, amounts, payable to other parties it is the duty of the Certificate court to determine the certificate debtor's objection that the certificate-holder was not entitled to the full amount, claimed under the certificate. It is true that this objection was not raised by the certificate officer and, therefore, he had no occasion to determine the same. It is also true that in the other proceedings, prior to the matter coming up before the Board of Revenue, this point was not taken and there was no occasion for the tribunals concerned to consider this aspect of the matter; but when the matter was raised before the Board of Revenue and there appeared to be some prima facie ground in support of the certificate-debtors' objection there is no reason why this question should not be determined. We, accordingly, accept the petitioners' contention that the extent of the claim allowable to the certificate-holder, namely, the Union of India, in the present proceedings, should be determined before the instant proceedings are disposed of. For that purpose, the matter should go back to the Certificate Officer for further consideration, the point of limitation, raised by the certificate-debtors-petitioners being rejected.

3. In the above view, we make this Rule absolute, set aside the impugned order of the Board of Revenue and direct that the case be remitted to the Certificate Officer for determination of the question as to how much, if any, out of the certificate in question, is realisable by the Union of India. That will be the only point to be decided by the Certificate Officer on this remand and, upon such determination, he will finally dispose of the matter in accordance with law.

4. There will be no order as to costs in this Rule.

Let the security, already furnished by the certificate-debtors, continue until the disposal of the instant proceedings.

Let the records go down as quickly as possible.

Amiya Kumar Mookerji, J.

I agree.