

**(1912) 10 BOM CK 0021****Bombay High Court****Case No:** Second Appeal No. 519 of 1912

Chinapa Karbasapa Lakmanhalli

APPELLANT

Vs

Ladasaheb Babasaheb

RESPONDENT

**Date of Decision:** Oct. 24, 1912**Citation:** (1913) 15 BOMLR 205 : 19 Ind. Cas. 394**Hon'ble Judges:** Chandavarkar, J; Basil Scott, J**Bench:** Division Bench**Judgement**

Basil Scott, Kt., C.J.

The question is whether the darkhast which has been issued in this case is barred by limitation. It is suggested that there was a bar of limitation between the date of the plaintiffs second darkhast of the 18th of June 1904 and his third darkhast of the 26th of June 1907.

2. The first point urged by the pleader for the appellants was that there was a step-in-aid of execution on the 31st of August 1904. On that date the notice, which had been issued u/s 245 B calling on the judgment-debtor to show cause why he should not be arrested, was returned served, but the defendant did not appear. Under those circumstances the Code provides by Section 245 B (2), that if appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor. A warrant was issued by the Court for the arrest of the Judgment-debtor and it appears from the roznama that the plaintiff's pleader was present at the time. There is, however, no record in the roznama or in the proceedings of the case as to any application or requisition by the decree-holder for the issue of a warrant.

3. It appears to us, however, from the wording of the section, that this was a case in which the Court would not have issued a warrant without requisition on the part judgment-creditor and under those circumstances we hold that it may be presumed that due application was made on behalf of the decree-holder- There for the issue of a warrant, and if such application was made that would be a step-in-aid of execution.

The presumption that such was made may be supported upon the authority of the judgments of the Chief Justice in Dungarsi A.C.J. v. Ujamsi ILR (1897) Bom. 727 and Bapuchand v. Mugutrao ILR (1896) Bom. 340

4. We reverse the order of the lower appellate Court and demand the darkhast for execution according to law. Chinapa
5. The costs of this appeal and those in the lower appellate Court must be borne by the respondent.