

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 28/10/2025

Sitabai Zukappa Mhetre Vs Keshavrao Parvatrao Kate

Appeal under the Letters Patent No. 18 of 1921

Court: Bombay High Court

Date of Decision: Dec. 2, 1921

Citation: (1922) 24 BOMLR 284: 67 Ind. Cas. 169

Hon'ble Judges: Shah, J; Norman Macleod, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Norman Macleod, Kt., C.J.

The plaintiffs in this suit got a decree on the 24th July 1908 for Rs. 6,693 with interest on Rs. 6,500 at twelve

annas per cent. per mensem. The decree was made payable by instalments of Rs. 1,000 each. The first instalment was to be paid at the end of

Ashad Shake 1831 corresponding with July 1909. Apparently nothing further was done by the plaintiffs although no instalments had been paid

under the decree until the 7th of April 1914 when an order was made making the decree final for the sum become due It is strange that that order

was made as it was absolutely unnecessary. But it has been made, and, therefore, it must be considered that that order kept the decree alive

2. In December 1915 the first Darkhast was filed. At that time all the instalments payable under the decree had become due. But we have not been

told to what instalments the Darkhast related. The Judge says that that Darkhast fell through on account of the plaintiffs" laches. But it is admitted

that the two instalments for 1909, 1910, with interest had been paid.

3. The next Darkhast was filed in November 1918 to recover the instalments which fell due in 1911, 1912 and 1914. The Judge said that that

Darkhast was evidently time-barred, and it would be so unless the Darkhast of 1915 could be considered as a step-in-aid of execution with regard

to the instalments which were sought to be recovered in the Darkhast of 1918. However that may be, execution proceeded under the Darkhast of

1918 and recoveries were made. It appears from the Darkhast that the instalments for 1914, 1915, were first entered in it, but were afterwards

struck out, so that the Court did not pass any order with regard to those instalments by which the plaintiffs" right to recover them was reserved.

4. The present Darkhast was filed in 1919 to recover the instalments for 1914, 1915. Those instalments were clearly barred at the date of the

Darkhast, unless the previous Darkhast of 1918 could be considered as a step-in-aid in respect of all the instalments then due, and a point arises

for which we can find no direct authority.

5. We have been referred to the decision in Nepal Chandra Sadookhan v. Amrita Lall Sadookhan I.L.R (1899) Cal. 888 where the decree

directed not only that possession should be given by the execution-debtor but also that he should pay costs. The plaintiff first sought execution with

regard to the costs, reserving his right to execute the decree for possession, and three years later when ha sought execution of the decree for

possession he was met with the contention that he ought to have done so when he executed the decree for costs. But this contention was

disallowed on the ground that an application for partial execution of a decree would be a step-in-aid with regard to the whole decree. No doubt

there is a considerable difference between a decree which directs several things to be done by the defendant without specifying any particular date

or dates for their performance, and a decree which directs instalments to be paid on particular dates; but we see no reason why a Darkhast, which

asks for the assistance of the Court for the recovery of one of several instalments due at the date of the Darkhast, should not be considered as a

step-in-aid so as to start a new period of limitation with regard to all the instalments then due. In our opinion the appeal should be allowed and the

Darkhast should proceed with costs throughout.