

(1921) 12 BOM CK 0028

Bombay High Court**Case No:** Appeal under the Letters Patent No. 18 of 1921

Sitabai Zukappa Mhetre

APPELLANT

Vs

Keshavrao Parvatrao Kate

RESPONDENT

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 he 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.