

CIVIL RULE.

Before Teunon and Newbould JJ.

1918

Feb. 25.

JATINDRA KUMAR DAS

v.

GAGAN CHANDRA PAL.

Limitation—Execution of decree—Part-payments in satisfaction of decree within three years of date of decree—Application for execution within three years of such part-payments, if within time—Limitation Act (IX of 1908), Sch. I, Art. 182 (5).

Application for execution of decree within three years of the date of part-payments in satisfaction of the decree, if the part-payments were within three years of the date of the decree, is within time within the meaning of Article 182 (5) of the first schedule of the Limitation Act.

Rakhal Das Mazumdar v. Jogendra Narain Mazumdar (1), *Lakhi Narain Ganguli v. Felamani Dasi* (2) and *Khatibannessa Bibi v. Sanchia Lal Nahata* (3) referred to.

CIVIL RULE issued in favour of Jatindra Kumar Das, the decree-holder.

On the 9th May, 1913, the petitioner obtained a decree in the Court of Small Causes at Dacca against the opposite party for recovery of Rs. 196-11 annas with costs. Some payments were subsequently made by the judgment-debtors out of Court. These payments were uncertified ones. The last two payments were made on the 10th June, 1914, and the 20th November, 1914. On the 6th June, 1917, the decree-holder made an application under O. XXI., r. 2 for certifying these payments and on the 9th June, 1917, the present application for execution was made. The Court

* Civil Rule No. 741 of 1917, against the order of R. C. Sen, Judge of the Court of Small Causes, Dacca, dated July 6, 1917.

(1) (1909) 10 C. L. J. 467.

(2) (1914) 20 C. L. J. 131.

(3) (1915) 20 C. W. N. 272.

below held that the payments not having appeared in the signature of the judgment debtor, as provided by section 20 of the Limitation Act, and payments not being certified, the application was time-barred. Thereupon the decree-holder moved the High Court under section 115 of the Code, and obtained this Rule.

1918

JATINDRA
KUMAR DAS
v.
GAGAN
CHANDRA
PAL.

Babu Rajendra Chandra Guha, for the petitioner. The decree-holder can apply for certifying payments made by the judgment debtor out of Court at any time during the subsistence of the decree. Article 174 of the Limitation Act providing for 90 days' limitation does not apply to a case like this: *Lakhi Narain Ganguli v. Felamani Dasi* (1), *Khatibannessa Bibi v. Sanchia Lal Nahata* (2). The expression "at any time" must mean 3 years from the date of payment, according to the provision of Art. 181. The application, dated the 6th June, 1917, is therefore an application made in accordance with law. I must submit that it is an application to take a step in aid of execution, provided of course, that the alleged payments were actually made: *Rakhal Das Mazumdar v. Jogendra Narain Mazumdar* (3), *Tarini Das Bandopadhyaya v. Bishtoo Lal Mukhopadaya* (4), *Sujan Singh v. Hira Singh* (5). That being so, the present application, which was made within 3 years of that date (6th June, 1917), would be within time according to clause (5) of Art. 182.

No one for the opposite party.

TEUNON AND NEWBOULD JJ. This Rule is directed against an order by which the Court of Small Causes of Dacca has refused an application for execution of a certain decree on the ground that the decree is time-barred. The decree is dated the 9th May, 1913. The

(1) (1914) 20 C. L. J. 131.

(3) (1909) 10 C. L. J. 467.

(2) (1915) 20 C. W. N. 272.

(4) (1886) I. L. R. 12 Calc. 608.

(5) (1889) I. L. R. 12 All. 399.

1918
 JATINDRA
 KUMAR DAS
 v.
 GAGAN
 CHANDRA
 PAL.

decree-holder, who is the petitioner before us, alleges that the judgment-debtor made a payment to him of Rs. 25 on the 10th June, 1914, and a further payment of Rs. 50 on the 20th November, 1914. He also alleges two earlier payments, which for the purposes of this Rule we may disregard. On the 6th June, 1917, he then made an application to the Court for certifying the above payments. On the 9th June, 1917, he next applied for execution of his decree. Without taking evidence in the matter, the learned Subordinate Judge held that the payments of the 10th June, 1914, and 20th November, 1914, to which we have referred, taken with the decree-holder's application of the 6th June, 1917, were not sufficient to save limitation. We are unable to hold that on the facts before him he has come to a proper decision in this matter. We need only refer him to the cases *Rakhal Das Mazumdar v. Jogendra Narain Mazumdar* (1), *Lakhi Narain Ganguli v. Felamani Dasi* (2) and *Khatibannessa Bibi v. Sanchia Lal Nahata* (3). From these cases it will appear that the payments of June and November, 1914, being within three years from the date of the decree, and the application of the 6th June, 1917, being again within three years from the date of those payments, it follows that if those payments were in fact made, the decree-holder will have a fresh starting point for limitation within the meaning of Article 182 (5) of the first schedule of the Limitation Act.

Under these circumstances, we set aside the order made by the Court of Small Causes, and return the record to him in order that after the taking of evidence he may proceed to dispose of the application before him in accordance with law.

S. M.

Rule absolute.

(1) (1909) 10 C. L. J. 467.

(2) (1914) 20 C. L. J. 131.

(3) (1915) 20 C. W. N. 272.