

## APPELLATE CIVIL.

Before M. C. Ghose J.

JAGADEESH CHANDRA DHABAL DEB

1935

v.

Nov. 22.

SATYA KINKAR SHAHANA.\*

*Limitation—Execution of decree—Application filed by pleader not duly authorised, if and when saves limitation—Indian Limitation Act (IX of 1908), Sch. I, Art. 132 (5).*

When an application for execution was filed within three years of the decree by a pleader who did not file *vakdānāmā* till after more than three years had elapsed from the date of the decree, but the application was duly signed and verified by the decree-holder himself, and it was duly accepted by the Court, which proceeded to act upon it by issuing notices :

*Held* that the application was in accordance with law and the execution case was not barred by limitation.

APPEAL FROM APPELLATE ORDER by the decree-holders.

The facts of the case are sufficiently stated in the judgment.

*Jogesh Chandra Ray* and *Ram Krishna Pal* for the appellant. The judgment-debtor was estopped from raising the objection of limitation by an application under s. 47 of the Code of Civil Procedure, as notice under O. XXI, r. 22, of the Code had been duly served, the judgment-debtor having failed to raise any objection at that stage. I rely on *Lalit Mohan Roy v. Sarat Chandra Saha* (1) and *Mungul Pershad Dichit v. Grija Kant Lahiri* (2). The initial defect

\*Appeal from Appellate Order, No. 42 of 1935, against the order of S. K. Ganguli, District Judge of Bankura, dated Aug. 22, 1934, affirming the order of Bhupendra Nath Mukherji, First Munsif of Bishnupur, dated May 28, 1934.

(1) (1933) 37 C. W. N. 752.

(2) (1881) I. L. R. 8 Cal. 51;  
L. R. 8 I. A. 123.

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in the *vakâlâtnâmâ* having been subsequently removed, the proceedings were validated with retrospective effect. *Chhayemannessa Bibi v. Basirar Rahman* (1).

*Bijan Kumar Mukherji* and *Kumud Bandhu Bagchi* for the respondent. The facts of the present case and the principles applicable are different from those of the cases cited. The notice under O. XXI, r. 22, in this case was defective as it contained no particulars of the decree sought to be executed, but only bore the number of the execution case. The judgment-debtor was, therefore, not estopped from raising the bar of limitation.

M. C. GHOSE J. This is an appeal by the decree-holders in an execution case. The decree is dated June 4, 1930. The decree-holders' case is that they filed an execution petition on May 25, 1933, duly signed and verified by themselves, that a notice under O. XXI, r. 22, Code of Civil Procedure, was served upon the judgment-debtor and thereafter, on September 14, 1933, a further notice was served upon the judgment-debtor to show cause why certain debts due to him should not be attached. Then the judgment-debtor appeared and argued that the decree-holders' case was barred by limitation inasmuch as the petition of execution was not duly filed by an authorised pleader. It appears that the pleader who apparently acted on behalf of the decree-holders did not file a *vakâlâtnâmâ* on the day when the petition was filed. The omission was noticed by the Court on November 14, 1933. On that day, a *vakâlâtnâmâ* duly stamped was filed but the pleader again omitted to write his acceptance on the back of it. This omission was made good on May 19, 1934, with the permission of the Court. On these facts, the Courts below have dismissed the plaintiffs' case as barred by limitation.

Upon hearing the learned advocates on both sides, it appears to me that the petition of execution filed

on May 25, 1933, was duly signed and verified by the decree-holders themselves. On the face of it, there is nothing wrong in that petition and the record shows that it was duly accepted by the Court and the Court proceeded to act upon it. The Court issued notices under O. XXI, r. 22, Code of Civil Procedure, and again issued a further notice why certain property should not be attached. The only defect in the matter was that the pleader acting for the parties had omitted to file a *vakâlâtnâmâ*. For this omission it does not appear right in the circumstances that it should be held that the petition itself was wrong. The argument of the appellants is correct that the petition was duly filed on May 25, 1933, and duly acted upon by the Court and the case is not barred by limitation.

The appeal is allowed with costs in all Courts—  
hearing fee one gold mohur.

*Appeal allowed.*

A. A.

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