## APPELLATE CIVIL.

*Before Henderson and R. C. Mitter JJ.*

KRISHNAKAMINEE DEBEE

*v.*

GIREESHCHANDRA MANDAL.*

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*May* 15, 16, 22.

*Limitation—Execution—Suspensory order—Revival of execution proceedings —Indian Limitation Act (IX of 1908), s. 15 ; Art. 181.*

The enlargement of the scope of section 15 of the Indian Limitation Act in 1908 has not superseded the principle that an application for execution may be treated as one in continuation or for revival of a previous application, similar in scope and character, the consideration of which had been interrupted by objections and claims, subsequently proved to be groundless, or had been suspended by reason of an injunction or like obstruction.

*Chhattar Singh* v. *Kamal Singh* (1) followed.

There is no rule of limitation prescribed for an application to continue execution proceedings which had been kept pending by a suspensory order. Article 181 of the Indian Limitation Act does not apply to such applications, for there is no duty cast upon the decree-holder to apply for revival of such execution proceedings.

*Kedarnath Dutt* v. *Harra Chand Dutt* (2), *Chalavadi Kotiah* v. *Poloori Alimelammah* (3) and *Subba Chariar* v. *Muthuveeran Pillai* (4) approved of.

*Balwant Singh* v. *Budh Singh* (5), *Madho Prasad* v. *Draupadi Bibi* (6), *Sat Narain Lal* v. *Ganga Jal* (7) and *Hajo* v. *Har Sahay Lal* (8) dissented from.

*Chhattar Singh* v. *Kamal Singh* (1), *Lal Gobind Nath Shah Deo* v. *Bhikar Sahu* (9) and *Akshaykumar Ray Chaudhuri* v. *Abdul Kader Khan* (10) distinguished and not applied.

APPEAL by the decree-holder.

The facts of the case are fully set out in the judgment of Mitter J.

(1) (1926) I. L. R. 49 All. 276.
(2) (1882) I. L. R. 8 Calc. 420.
(3) (1907) I. L. R. 31 Mad. 71.
(4) (1912) I. L. R. 36 Mad. 553.
(5) (1920) I. L. R. 42 All. 564.
(6) (1921) I. L. R. 43 All. 383.
(7) [1926] A. I. R. (All.) 409 ; 94 Ind. Cas. 1005.
(8) [1926] A. I. R. (Pat.) 62 ; 89 Ind. Cas. 992.
(9) (1913) 20 Ind. Cas. 439.
(10) (1929) I. L. R. 57 Calc. 860.

*Appeal from Appellate Order, No. 272 of 1934, against the order of S. K. Ganguli, District Judge of Burdwan, dated Feb. 10, 1934, affirming the order of Surendranath Sen, Subordinate Judge of Asansol, dated Nov. 18, 1933.

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*Bijaykumar Bhattacharya* and *Bhutnath Chatterji* for the appellant. Article 181 of the Limitation Act can have no application to this case. The original application for execution was really kept pending, although the Sub-Judge used the words "dismissed for the present". What he meant was obviously that the case was to be removed from the file of current cases for the time being. A case in which there has been no final order is a pending case and to such a case there can be no application of limitation. *Kedarnath Dutt* v. *Harra Chand Dutt* (1). Where execution proceedings have been interrupted by objections, which subsequently proved groundless, or suspended by order of court, an application for execution subsequently should be treated as continuation or revival of the earlier proceedings. *Madhabmani Dasi* v. *Lambert* (2), *Ajodhya Nath Pahary* v. *Srinath Chandra Pahary* (3). Therefore the question of the applicability of Article 181 is without doubt correctly decided in *Chalavadi Kotiah* v. *Poloori Alimelammah* (4). See also *Subba Chariar* v. *Muthuveeran Pillai* (5), *Baij Nath* v. *Ram Bharos* (6).

The question of the applicability of Article 181 did not really arise in the case of *Chhattar Singh* v. *Kamal Singh* (7), which supports my contention and shows that section 15 of the Limitation Act is not applicable to this case. Neither the Code of Civil Procedure nor the Indian Limitation Act provides for any procedure to revive a pending application for execution. No application was necessary and this application was merely to remind the Court.

*Gopendranath Das* and *Jagadeeshchandra Ghosh* for the respondent. The second application cannot be held to be a continuation of the earlier execution proceedings. The order of the Subordinate Judge was not one staying execution under Order XXI,

(1) (1882) I. L. R. 8 Calc. 420.
(2) (1910) I. L. R. 37 Calc. 796, 804.
(3) (1921) 26 C. W. N. 338.
(4) (1907) I. L. R. 31 Mad. 71.
(5) (1912) I. L. R. 36 Mad. 553, 557.
(6) (1927) I. L. R. 49 All. 509, 514.
(7) (1926) I. L. R. 49 All. 276.

rule 29, and therefore the decree-holder must apply for execution as soon as the injunction is dissolved. So Article 181 of the Limitation Act is clearly applicable. *Madho Prasad* v. *Draupadi Bibi* (1), *Sat Narain Lal* v. *Ganga Jal* (2), *Hajo* v. *Har Sahay Lal* (3), *Suppa Reddiar* v. *Avudai Ammal* (4), *Akshaykumar Ray Chaudhuri* v. *Abdul Kader Khan* (5) and *Lal Gobind Nath Shah Deo* v. *Bhikar Sahu* (6). The basis of the decision in *Chhattar Singh* v. *Kamal Singh* (7) is also that Article 181 of the Limitation Act applies. Anything to the contrary is mere *obiter*. The same applies to the statement in *Madhabmani Dasi* v. *Lambert* (8), which has been doubted in *Amlook Chand Parrack* v. *Sarat Chunder Mukerjee* (9).

Where execution has been stayed by an injunction it must be revived by an application and then section 15 of the Limitation Act can alone extend the period of limitation. The applicant will have the benefit of the period during which the injunction subsisted. The cases of *Chalavadi Kotiah* v. *Poloori Alimelammah* (10) and *Subba Chariar* v. *Muthuveeran Pillai* (11) are distinguishable because in those cases the execution proceedings were kept pending.

*Cur. adv. vult.*

R. C. MITTER J. This appeal is on behalf of the decree-holder and is directed against the order of the learned District Judge of Burdwan, dated the 10th February, 1934, by which her application for execution of a decree for money which she had obtained against the respondents on the 8th June, 1920, has been dismissed. The appeal raises an important question of limitation on which not only the other High Courts have differed, but different views have been expressed by this Court on different occasions.

(1) (1921) I. L. R. 43 All. 383, 385.
(2) [1926] A. I. R. (All.) 409 (410); 94 Ind. Cas. 1005 (1006).
(3) [1926] A. I. R. (Pat.) 62; 89 Ind. Cas. 992.
(4) (1904) I. L. R. 28 Mad. 50.
(5) (1929) I. L. R. 57 Calc. 860.
(6) (1913) 20 Ind. Cas. 439.
(7) (1926) I. L. R. 49 All. 276.
(8) (1910) I. L. R. 37 Calc. 796.
(9) (1911) I. L. R. 38 Calc. 913.
(10) (1907) I. L. R. 31 Mad. 71.
(11) (1912) I. L. R. 36 Mad. 553.

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The relevant facts are as follows: In 1921, the appellant applied to execute her decree. Her application for execution was numbered Title Execution No. 135 of 1921. Therein, she applied for sale of some properties and in due course the said properties were attached. The judgment-debtors, however, instituted a suit against her in the year 1922 (Title Suit No. 66 of 1922) in which they prayed for setting aside her decree. In the course of that suit an injunction was applied for and obtained by the judgment-debtors restraining her from proceeding with her execution till the disposal of the said suit. On the injunction being granted the executing court recorded an order on the 19th June, 1922, in the following terms:—

> Under order No. 7, dated the 19th June, 1922, passed in Title Suit No. 66 of 1922 the sale of this case be stayed. The attachment will continue till the disposal of the aforesaid suit. This case be dismissed for the present.

There is nothing to show that this order was passed in the presence of the decree-holder, and certainly there is nothing to show that the decree-holder was at fault or in default to merit the dismissal of her execution case. It seems to us to be one of these classes of orders, for which there is no warrant in law, frequently passed for the quarterly returns. The order had, no doubt, the incidental advantage of improving the Subordinate Judge's list, but it has the disadvantage of causing a great deal of difficulty and argument both in the courts below and before us. After giving our anxious consideration to the matter we have come to the conclusion that it is a suspensory order which kept the executing case pending, but off the list of pending cases, only during the time that the aforesaid title suit of 1922 would be pending in the court of first instance.

On the 10th June, 1929, the said title suit was dismissed by the court of first instance and an appeal against the decree of the said court was dismissed on the 21st July, 1930. On the 20th April, 1933, that is beyond three years of the date of

the dismissal of the title suit by the first court, when the injunction terminated, the appellant filed an application in the executing court in a tabular form. Therein, she mentioned some properties, over and above those mentioned in her application for execution filed in 1921, which she wanted to sell for satisfaction of her decree, but ultimately she gave up those additional properties and wanted to sell only those properties which were mentioned in her application for execution filed in 1921. In one column of the application which she filed on the 20th April, 1933, she stated that her application may be treated as an application for reviving Title Execution Case No. 135 of 1921, and be taken in continuation of her previous application for execution. The learned District Judge has held that, after the abandonment of her claim to proceed against the additional properties, her application is one in continuation of her previous application for execution filed in the year 1921. We hold that the learned District Judge is right in the view he has taken in this respect. It is well-established that an application for execution of a decree may be treated as one in continuation or for revival of a previous application for execution, similar in scope and character, the consideration of which had been interrupted by objections and claims subsequently proved to be groundless or had been suspended by reason of an injunction or like obstruction. The finding of the learned District Judge, in our judgment, is a finding of fact and cannot be challenged by the respondent judgment-debtors.

The learned District Judge, however, held that her application of the 20th April, 1933, was an application for reviving Title Execution Case No. 135 of 1921, and came within the purview of Article 181 of the Limitation Act, and inasmuch as the right to apply accrued on the 10th June, 1929, when the injunction was dissolved, it was barred by time.

The question before us in this appeal is whether this view is correct. Mr. Das, appearing on behalf

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of the judgment-debtors, has raised a further point in support of the order appealed against. He says that, after the amendment of section 15 of the Limitation Act in 1908, the doctrine of revival of execution proceedings can no longer be invoked and a decree-holder is only entitled to get a deduction of the time during which he had been restrained by an injunction from executing his decree. He says that the application for execution would have been in time if filed within three years of the date of the attachment effected in Title Execution Case No. 135 of 1921 (which was certainly before the 19th June, 1922), that being the last step in aid of execution plus the time during which the injunction order passed in title suit No. 66 of 1922 was in force. If this contention be accepted certainly the decree-holder is hopelessly out of time.

This further point taken by Mr. Das may be conveniently taken up first.

Section 15 of the Limitation Act of 1877 applied only to suits, and limitation in case of a suit only was extended when its institution was stayed by an injunction. When the law stood thus it was held that, where an application for execution of a decree was stayed by an injunction, the time during which the injunction was in force could not be excluded in computing limitation, but the court relieved the decree-holder by treating the application for execution made after the discharge of the injunction as an application to revive or continue the previous application for execution, if it was similar in nature and scope. This doctrine could have no possible application and would not have assisted the decree-holder where an injunction was passed against him before he had made any application for execution or when there was no application for execution pending. The position was the same when the second application for execution was not similar in nature and scope to the earlier application for execution. In 1908, the scope of section 15 was enlarged by making the section applicable also to applications for execution, and thereby the hardships

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caused to decree-holders in the two classes of cases last mentioned was removed. But we do not think that the enlargement of the scope of section 15 by the Act of 1908, has superseded the principle that a later application can, in certain circumstances, be treated as an application for revival or in continuation of the earlier application. Section 15 contemplates the filing of an application for execution and does not in terms apply to any other application. If, therefore, an application is made by the decree-holder, after the removal of the bar to execution, to revive or continue an application for execution which could not have been, by reason of the bar, proceeded with, such an application not being in terms a fresh application for execution does not in our judgment come within the section. We agree entirely with the reasons given by Lindsay, Sulaiman and Mukerji JJ. on this point in the case of *Chhattar Singh* v. *Kamal Singh* (1). We, accordingly, overrule this point urged by Mr. Das.

The question that remains to be determined, then, is whether Article 181 applies to the application made by the appellant before us on the 20th April, 1933. The Allahabad High Court has taken the view that the said Article applies: *Balwant Singh* v. *Budh Singh* (2), *Madho Prasad* v. *Draupadi Bibi* (3), *Sat Narain Lal* v. *Ganga Jal* (4). The Full Bench of the same Court has adopted the same view in *Chhattar Singh's* case (1), although the said question did not arise and was conceded by the decree-holder's advocate, as the application for revival of the execution proceedings was made within three years of the date of the discharge of the injunction. The Patna High Court has also taken the same view. See *Hajo* v. *Har Sahay Lal* (5). This view proceeds upon the basis, (and in our judgment can only be supported on that basis) that a decree-holder, under these circumstances, is bound under the law to apply for continuation of

(1) (1926) I. L. R. 49 All. 276.
(2) (1920) I. L. R. 42 All. 564.
(3) (1921) I. L. R. 43 All. 383.
(4) [1926] A. I. R. (All.) 409; 94 Ind. Cas. 1005.
(5) [1926] A. I. R. (Pat.) 62; 89 Ind. Cas. 992.

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the executing proceedings after the removal of the bar. When an execution case is still pending, but cannot be proceeded with further by reason of an injunction, and had been "struck off the file", or is removed by an order which does not terminate it finally but has the effect of only removing it from the list of pending cases, we do not see why it must be said that the decree-holder is bound to apply for revival of the said proceedings after the removal or discharge of the injunction. His application, in substance, only conveys to the court the information that the bar has been removed. It is also the duty of the court to have in sight all undisposed cases and when the bar is removed to direct the party to take necessary steps for further progress of the case. For these reasons we do not agree with the view of Allahabad and Patna High Courts.

In the case of *Madhabmani Dasi* v. *Lambert* (1) Mookerjee and Carnduff JJ. after noticing the doctrine of revival of execution proceedings, when the bar to execution had been subsequently removed, make the following observations at page 805 of the report :—

> The only reasonable view we can take of the proceedings under such circumstances is that the application of 10th February, 1910, was in continuation of the application of the 8th July, 1909, which was in substance for revival of the applicaton of the 9th September, 1908, which had been dismissed on the 19th December, 1908. In this view no question of limitation arises.

Although the *obiter* in that case that Article 181 of the Limitation Act does not apply to an application for a final decree in a mortgage suit, when the preliminary decree had been passed, after the Civil Procedure Code of 1908 had come into force, was dissented from by Sir Lawrence Jenkins in the case of *Amlook Chand Parrack* v. *Sarat Chunder Mukerjee* (2) affirmed by the Judicial Committee *sub nomine Munna Lal Parrack* v. *Sarat Chunder Mukerji* (3), the principle there laid down that there is no scope for

(1) (1910) I. L. R. 37 Calc. 796, 805. (2) (1911) I. L. R. 38 Calc. 913.
(3) (1914) I. L. R. 42 Calc. 776 ; L. R. 42 I. A. 88.

the application of limitation to pending proceedings has not in our judgment been doubted either by the Judicial Committee or by decisions of this Court binding on us. That principle had been formulated by Wilson J. in an old case [*Kedarnath Dutt* v. *Harra Chand Dutt* (1)] and has been repeatedly followed in this Court and has the merit of being fundamentally right. We, accordingly, hold that the view taken by the Madras High Court on the question which we have to decide is the correct view, and to applications of the nature which we have before us there is no rule of limitation prescribed [*Chalavadi Kotiah* v. *Poloori Alimelammah* (2), *Subba Chariar* v. *Muthuveeran Pillai* (3)].

Two cases of this Court have been cited before us by the learned advocate for the respondent, which, it is said, militate against the view we are taking. They are *Lal Gobind Nath Shah Deo* v. *Bhikar Sahu* (4) and *Akshaykumar Ray Chaudhuri* v. *Abdul Kader Khan* (5). In the first mentioned case the "applica-"tion for revival" of the execution proceedings was made within three years of the date, when, what was considered by the executing court as an order for stay of execution, was removed. The observations of Richardson and Newbould JJ. that Article 181 was applicable to the application were therefore *obiter dictum*. In the case of *Akshaykumar Ray Chaudhuri* (5) the matter was not argued but was conceded by the advocate for the decree-holder, who seemed to have concentrated his attention on the question as to whether limitation ran from the date of the order of the first court reversing the court sale or from the date of the appellate court's affirmatory order. The cases on the subject were not cited from the bar and the learned Judges in support of their observations that "it is well known.....that an application for reviving "execution proceedings is governed by Article 181", cited no authority nor noticed any. They cited the

(1) (1882) I. L. R. 8 Calc. 420.
(2) (1907) I. L. R. 31 Mad. 71.
(3) (1912) I. L. R. 36 Mad. 553.
(4) (1913) 20 Ind. Cas. 439.
(5) (1929) I. L. R. 57 Calc. 860.

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case of *Madho Ram* v. *Nihal Singh* (1) in support of the other proposition that limitation ran not from the date of the appellate order but from the date of the original order which the appellate court had confirmed. The value of the decision in *Akshaykumar's* case (2) on the point we have to decide, regarded as a precedent, is in our judgment weak. We, accordingly, hold that the application of the appellant before us had been wrongly thrown out by the courts below. We, accordingly, allow the appeal, send the case back to the court of first instance with directions to that court to proceed with the execution case No. 135 of 1921.

The appellant will have her costs of this Court and of the courts below. Hearing fee is assessed at two gold mohars.

HENDERSON J. I agree, and only desire to say this: It could hardly be contended with any show of reason that an application which was filed in time, can subsequently become barred by limitation. It has, however, sometimes been held that, after the removal of an injunction staying execution and further proceedings, the decree-holder is bound to file a petition for permission to go on with his case within three years. This implies that a duty is cast upon the decree-holder to file such a petition. With great respect to the learned Judges, who have taken that view, we are of opinion that such a petition is entirely redundant, and the decree-holder cannot be prevented from going on with his pending case in the ordinary way. Indeed in some cases, it is not necessary for the decree-holder to do anything at all. For example, if the court has directed the issue of a notice under the provisions of Order XXI, rule 22, and before such notice is actually issued further proceedings are stayed, it is obviously for the court, of its own motion, as soon as the bar is removed, to issue the notice. Again if the judgment-debtor, after receipt of such notice, has been granted time to file objections and

(1) (1915) I. L. R. 38 All. 21. (2) (1929) I. L. R. 57 Calc. 860.

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before that time has expired, further proceedings are stayed, the next step after the removal of the injunction would lie with the judgment-debtor. The result is that when a decree-holder files a petition asking the court that a pending case may be proceeded with, the court should enquire whether there is in fact such a case pending or not. If there is, the decree-holder is obviously entitled to go on with it. If there is not the application is clearly misconceived and would fail. But in neither case can any question of limitation arise.

Turning to the present case, there is a concurrent finding that the present appellant did in fact ask to go on with a pending case. The order of the learned Munsif that the case is dismissed for the present has no real meaning and could not reasonably be interpreted as a final dismissal of the execution case. The only object of such an order appears to be to remove the case from the pending list so that it may not be shown in the periodical returns. In this connection I desire to emphasize what has fallen from my learned brother, with regard to the impropriety of passing such orders.

*Appeal allowed.*

S. M.