LETTERS PATENT APPEAL.

Before Costello and Biswas JJ.

1938

Jan. 3.

SIDDHESWAR GHOSH

v.

PANCHANAN BANGAL.*

Execution proceedings—Holding—Sale set aside—Limitation—Mortgagee, whether representative of judgment-debtor—Execution case "disposed of" on satisfaction—Code of Civil Procedure (Act V of 1908), ss. 47, 151—Bengal Tenancy Act (VIII of 1885), Sch. III, Art. 6—Bengal Tenancy (Amendment) Act (Ben. IV of 1928).

The two parts of the proviso to Art. 6 of the Third Schedule of the Bengal Tenancy Act should be read together.

The Court is bound to give a reasonable and logical meaning to the proviso; and, if there is any doubt, a construction must be put upon the proviso which is in favour of, rather than against, limitation. That is a cardinal canon in relation to the interpretation of statutes prescribing a period of limitation.

"Continuity" of execution proceedings (referred to in that proviso) implies an absence of any period of time during which these proceedings are entirely dead.

The proviso really means that the decree-holder shall, at the end of the period of time during which the sale was in full effect, be in just the same position he was in before the sale took place at all, provided that there is no further break in the continuity due to his inaction. In other words, the decree-holder shall not be prejudiced by any break for which he was not responsible and which occurred by reason of matters outside his control.

Where there was a break of the proceedings from the date when the order for sale of the holding for arrears of rent was confirmed and the execution proceedings were "dismissed" down to the time when the sale was set aside more than five years later and where there was a further break of one month in the continuity of the proceedings owing to the decree-holder's dilatoriness,

held that, though the decree-holder was not responsible for the earlier break, he was responsible for the later one; for, when the sale was set aside at the instance of the mortgagee of the holding, the decree-holder ought at once to have intimated his desire to carry on the proceedings. It would be a mis-interpretation of the language of the proviso to say that in those circumstances the execution proceedings were continuing up to the time when the application for restoration was made.

Normally the period of limitation for pursuing execution is three years from the date of the decree, or the date of the appeal, as the case may be. But, if in the course of that period a sale has taken place and subsequently

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that sale has been set aside, the intervening period is not to be counted, if the decree-holder then desires to go on promptly with the execution; otherwise the total period of time within which he must set in motion proceedings for enforcing his decree is a period of three years.

A mortgagee, at whose instance the sale of a holding in executoin of a decree for arrears of rent has been set aside, is the representative of the judgement-debtor within the meaning of s. 47 of the Code of Civil Procedure.

Where the execution proceedings instituted by the decree-holder has been entirely successful, the correct order should be "disposed of on satisfaction" and not "dismissed on satisfaction",—for dismissal of an application generally implies that an application or other proceeding has failed.

APPEAL under clause 15 of the Letters Patent from a judgment of Mukherjea J.

The judgment of Mukherjea J. was given in an appeal from an appellate order made in the course of execution proceedings. The facts as well as the arguments appear sufficiently from the judgment of the Court of Appeal.

Pyari Mohan Chatterji and *Bankim Chandra Roy* for the appellants.

Narendra Kumar Das for the respondents.

COSTELLO J. This matter comes before us as an appeal under the provisions of s. 15 of the Letters Patent of this Court.

The matter came before Mr. Justice Mukherjea on April 22, 1937, and he then allowed an appeal against the decision of the Subordinate Judge, Third Court, 24-*Parganâs* dated March 23, 1936. That decision itself was given in appeal against an order of the Munsif, First Court, Barasat, dated December 19, 1935, described as having been given in Mis. Case No. 250 of 1935. This case has a long history. It started by a suit instituted in the year 1925 brought to recover a sum of money said to be due by way of rent in respect of a certain holding. The amount claimed was very considerably less than the sum of Rs. 500. We are told that it was in the neighbourhood of Rs. 150 only. Litigation has been proceeding in respect of that small sum of money over a

course of a dozen years or more. A decree in favour of the plaintiff in the suit was made on March 22, 1926. The decree-holder, who is the landlord, started execution proceedings for the enforcement of that decree on March 22, 1929, that is to say, on the last possible moment of the period of limitation prescribed for the enforcement of decrees of that character by the provisions of Art. 6 of the Third Schedule of the Bengal Tenancy Act. The matter with which we are now immediately concerned came before the Court in this way. There was an application by the present appellants (who were usufructuary mortgagees) made under s. 47 of the Code of Civil Procedure on November 22, 1935. By that application they objected to the order which had been made by the learned Munsif restoring the execution matter which had originally been instituted, as I have stated, on March 22, 1929. The order was objected to on the ground that, at the time when it was made, the execution proceedings had come to an end and that the decree-holder, who sought to have those proceedings revived, was barred by the provisions of the Article to which I have referred. In order to elucidate the points adjudicated upon by Mukherjea J., it is necessary to refer to one or two further dates. The holding in respect of which rent was claimed in the original suit was put up to sale on July 10, 1929. The sale was confirmed on January 11, 1930, and thereupon an order was recorded by the Court to the effect that the execution case was "dismissed on satisfaction". The term "dismissed" as used in this connection is perhaps somewhat unfortunate. Dismissal of an application generally implies that an application or other proceeding has failed, whereas at that stage the execution proceedings instituted by the decree-holder had been entirely successful. The holding had been sold: it had been purchased by the decree-holder and the amount due to him under the decree of March 22, 1926, had been satisfied. It would have, therefore, been more correct—and subsequent difficulties might have been avoided,—if

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the Munsif, instead of saying "dismissed on satisfaction", had used some such expression as "disposed of". The next event was that on July 24, 1934, nearly four years after the sale had been confirmed, an application was made by the mortgagees, the present appellants, for an order that the sale should be set aside. Presumably that application was of the common form kind with which we are so familiar in this Court. The sale was in fact set aside by an order made on March 30, 1935. That date is very material for our present purposes. There was an appeal against that order setting aside the sale. That appeal was dismissed on June 17, 1935. Accordingly, from that time onward at any rate, the position was that the decree-holder was back in the position in which he was before the sale ever took place. Now, one would have thought that, in those circumstances, the decree-holder would immediately have taken steps to safeguard his rights by carrying on the execution proceedings and so obtain satisfaction of his decree. But, in fact, nothing was done on the part of the decree-holder for a space of more than a month from the time when the order for setting aside the sale was confirmed on appeal, and the step which the decree-holder eventually took was in the form of an application which purported to be made under s. 151 of the Code of Civil Procedure. That application was made on July 26, 1935, and it was for the revival or restoration of the execution proceeding which nominally, at any rate, had been put an end to by the order of January 11, 1930. The question which we have to determine is whether Mukherjea J. was right in coming to the conclusion that the learned Subordinate Judge ought not to have allowed the original appeal against the decision of the Munsif. The contention of the mortgagees throughout has been that the application which purported to be made under s. 151 of the Code was barred by the provisions of the Article of the Third Schedule to the Bengal Tenancy Act to which I have already referred. One other point which had to be dealt with by the learned

Judge and he disposed of it—was the question of whether the objectors were representatives of the judgment-debtor within the meaning of that expression as used in s. 47 of the Code of Civil Procedure. I think that the learned Judge was of opinion that "the present objectors who purport to "be mortgagees under the judgment-debtor are not "competent to challenge this order". With regard to that point, it will suffice, I think, to say this that the present appellants were the very persons who made the application which resulted in the order for the setting aside of the sale; they were the successful applicants in that matter, and as far as we know, it was not then contended that they had no right to intervene and apply to have the sale set aside, and so in my view, the decree-holder cannot now be heard to say that the mortgagees were not the representatives of the judgment-debtors within the meaning of s. 47. That section provides that all questions arising betwen the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. It is obvious, and it is not disputed, that the question which was before the learned Munsif of Barasat was a question arising in relation to execution of the decree. The point was taken as to whether the present appellants were the representatives of one of the parties to the suit, namely, the original defendants. It is quite clear, I think, that the present appellants were representatives of the defendants in the suit in that they were the mortgagees of the very property in respect of which rent was being claimed as against the appellants; but, in any event, the point was raised at far too late a stage. We are unable to agree with Mukherjea J. on that point.

As regards the question of limitation, it seems tolerably certain that Mukherjea J. was himself not without some doubt as to the correctness of the decision which he has given, seeing that he desired that the

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matter should be further agitated in manner provided for by s. 15 of the Letters Patent. The learned Judge described the point which he had before him as being a short and interesting point of law which turns upon the interpretation of the proviso to Art. 6, Sch. III of the Bengal Tenancy Act. Then he sets out the facts. The whole matter, as I have previously stated, resolves itself into the question of whether the decree-holder was debarred of his remedy by way of execution proceedings at the time when he made the application on July 26, 1935, and the answer to the question depends, as Mukherjea J. stated, upon the interpretation which ought to be put upon the proviso thrust into Art. 6 of the Third Sch. to the Bengal Tenancy Act by the amending Act of 1928. Article 6, as it originally stood, was in these terms. Under the heading 'Description of Application', we find this :—

> For the execution of a decree or order made in a suit between landlord and tenant to whom the provisions of this Act are applicable, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree ; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1908.

Under the heading 'Period of Limitation', we find the words "Three years". Under the heading 'Time from which period begins to run', there are these possible points :—

> (1) The date of the decree or order ; or,
>
> (2) where there has been an appeal, the date of the final decree or order of the appellate Court ; or
>
> (3) where there has been review of judgment, the date of the decision passed on the review.

It is admitted by both sides that originally the period of limitation commenced to run from March 22, 1926. Therefore, under the main provisions of Art. 6, the period of limitation would expire on March 22, 1929, and, therefore, the initiation of the execution proceedings was only just in time. No question arises about

that. We have to consider the effect of the proviso, which runs thus :—

> Provided that, where a sale in execution for arrears of rent is set aside on application, the proceedings in execution shall continue and the time between the date of such sale and the date of the order setting it aside shall be excluded from the period of limitation provided by this Article.

We need not pause to comment on the inaccurate and ungrammatical language of the early part of the proviso which speaks of "Execution for arrears of rent" instead of "Execution of a decree for arrears of rent" : That is by the way. The real point is how to reconcile the first part of the proviso with the second part of the proviso. Apparently, the first part of the proviso would seem to indicate that, once execution proceedings have been properly started, they continue to remain in existence indefinitely even if a sale has taken place and the sale has been set aside; in other words, an order confirming a sale—even where there is a subsidiary order dismissing or disposing of the execution case—does not put an end to the execution proceedings. Mr. Das, who argued on behalf of the decree-holder, said that the word "continue" necessarily and inevitably implies that the execution proceedings have so much vitality left in them that after the sale has been set aside at any point of time, or at any rate at any point of time within the ensuing three years, it is still open to the decree-holder to come before the Court and ask the Court to resurrect the proceedings into full activity. If the proviso had stopped after the expression "shall continue" without the additional part, *viz.*, "and the time between the "date of such sale and the date of the order setting "it aside shall be excluded .....", no difficulty would have arisen. But the Court is bound to give a reasonable and logical meaning to the proviso; and, if there is any doubt, a construction must be put upon the proviso which is in favour of rather than against limitation. That is a cardinal canon in relation to the interpretation of statutes prescribing a period of limitation. Mukherjea J. in order to escape from the difficulty created by the word "continue" as used in

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the proviso, has sought to divide up the proviso into two parts, and he has held that the second part of the proviso must relate to a set of facts different from that to which the first part of the proviso relates. That is a view to which we cannot subscribe. We are able to differ from Mukherjea J. with less reluctance because it is obvious that he himself thought that there was some uncertainty as to whether the decision he came to was correct or not. "Continuity" implies the existence of a state of facts or some situation which persists without any break. Therefore, "continuity" of execution proceedings implies an absence of any period of time during which those proceedings are entirely dead. It seems to us, therefore, that the only reasonable interpretation to put upon the proviso is to say that it really means that the decree-holder shall at the end of the period of time during which the sale was in full effect be in just the same position he was in before the sale took place at all, provided there is no further break in the continuity, due to his own inaction. In other words, the decree-holder shall not be prejudiced by any break for which he was not responsible and which occurred by reason of matters outside his control. In the present instance, there was, of course, a break of the proceedings from the date when the order for sale was confirmed and the execution proceedings were "dismissed" (as the Judge calls it) down to the time when the sale was set aside more than five years later. For that break the decree-holder was not responsible and he is entitled to say "I applied to have the prop-"erty put up to sale; it was sold and my decree "appeared to be satisfied. Any subsequent proceed-"ings were the outcome of an application on the part "of the judgment-debtor for which I was not "responsible". But unfortunately for the decree-holder there was a further break in the continuity of the proceedings for which the decree-holder was responsible, for, when the sale was set aside, the decree-holder ought at once to have intimated his desire to carry on the proceedings he initiated on

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March 22, 1929. Instead of that, the decree-holder did nothing for a space of more than one calendar month. It would be a misinterpretation of the language of the proviso to say that in those circumstances the execution proceedings were continuing up to the time when the application under s. 151 was made. The two arms of the proviso should be read together, and in my view, it comes to this that normally the period of limitation for pursuing execution is three years from the date of the decree or the date of the appeal, as the case may be. But, if in the course of that period a sale has taken place, and subsequently that sale has been set aside, the intervening period is not to be counted, if the decree-holder then desires to go on with the execution; otherwise, the total period of time within which the decree-holder must set in motion proceedings for enforcing his decree is a period of three years. In that view of the matter, we come to the conclusion that the opinion expressed by the learned Subordinate Judge of the Third Court of 24-*Parganâs* in his judgment dated March 23, 1936, is substantially correct, and with all respect we are unable to agree with the view taken by Mukherjea J. We think that this appeal must be allowed, as we are of opinion that the appeal against the decision of the learned Subordinate Judge should have been dismissed and we order accordingly. The successful party is entitled to costs of the proceedings before us and before Mukherjea J.

BISWAS J. I agree.

Appeal allowed.

G. S.