

ORIGINAL CIVIL.

Before Ameer Ali J.

SREE NARAIN KAYAN

v.

BHAGWAN DAS CHURIWALLA*.

1939

July 12

Limitation—*Acknowledgment of decree, not given to decree-holder, if saves limitation—Indian Limitation Act (IX of 1908), s. 19 ; Sch. I, Art. 183.*

An acknowledgment of liability in respect of a decree of High Court, which is sufficient under s. 19 of the Limitation Act, will extend the period of limitation for execution of the decree, even where such acknowledgment is not given to the decree-holder as required under Art. 183.

Article 183 does not control or limit the scope of s. 19 of the Limitation Act.

Tugan Mull v. Ladhu Lal (1) dissented from.

Arjee Prabappa Chetti v. Koneti Desikachari (2) referred to.

APPLICATION.

The facts of the case appear sufficiently from the judgment.

Khaitan for the applicant. The acknowledgment of the decree contained in the judgment-debtor's petition for insolvency saves limitation: ss. 3 and 19 of the Limitation Act. Acknowledgment under s. 19 need not be made to the creditor. Article 183 does not limit the operation of s. 19.

J C. Sett for the respondent. In view of the special language of Art. 183 that acknowledgment made to the decree-holder gives a fresh starting point s. 19 must be excluded. The provisions of Art. 183 regarding acknowledgment are exhaustive and self-contained and should be read independently of s. 19. *Tugan Mull v. Ladhu Lal* (1); *Arjee Prabappa Chetti v. Koneti Desikachari* (2).

*Application in Original Suits, No. 1539 of 1924 and No. 819 of 1925.

(1) (1930) I. L. R. 10 Pat. 213. (2) [1925] A. I. R. (Mad.) 1131.

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AMEER ALI J. I am much indebted to Mr. Sett for his argument, but my view is otherwise. The decree in this case is dated March 9, 1927. The application for execution is dated May 15, 1939. Hence, in the absence of any extension, the application is barred. The fact relied upon for such extension is an entry of this debt in the list of creditors signed by the defendants who applied to the Official Assignee on August 18, 1927.

If s. 19 applies and that is to be treated as an admission, the application would be within time. In my view, this is an admission within the meaning of s. 19 of the Limitation Act. The only question is whether s. 19 applies. Mr. Sett's contention is that, by reason of the special language of the proviso in the third column to the schedule against item 183, s. 19 must be excluded. I do not so read the Act. It is clear from explanation 3 of s. 19 that the section as a whole does not cease to operate on decree. It applies to execution proceedings.

The proviso contained in the third column against item 183 is no doubt in different terms. It provides for certain things not in s. 19. It is in some ways wider than s. 19; in other ways narrower, for instance, it seems to provide that an acknowledgment must be made to the creditor and not otherwise.

As regards s. 19, that is not the law in India.

It is to be noticed that the proviso relates directly to the fixing of the *terminus a quo* for the period of limitation mentioned in the preceding column. S. 19 is general. I do not myself see why or how s. 19 is to be controlled or limited by the language of the proviso to col. 3, item 183. No doubt the two matters may be independent, but it does not follow that the scope of s. 19 should be narrowed by the proviso.

I have not considered the question whether, even under the proviso to item 183, an acknowledgment

made in this form can be treated as an acknowledgment made to the creditor. I have proceeded on the assumption that it is nct.

In my view s. 19 applies. There is here an acknowledgment within s. 19 and the applicant is entitled to execution.

Mr. Sett has been good enough to cite to me two cases: *Tugan Mull v. Ladhu Lal* (1) which appears to treat the provision I have referred to independent of s. 19 and also the case *Arjee Prabappa Chetti v. Koneti Desikachari* (2) which latter case does not seem to give us very much assistance on the point.

The application therefore is allowed. The applicant will add his costs to his claim. Certified for counsel.

A. C. S.

Application allowed.

(1) (1930) I. L. R. 10 Pat. 213.

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