EXECUTION OF EVICTION DECREES

THE QUESTION raised before the Supreme Court in *Kashi Ram* v. *Rakesh Arora*[1] was whether certain proceedings in execution were barred by limitation. The court held that a decree of eviction from premises in a slum area obtained on the ground of *bona fide* requirement under the Delhi Rent Control Act 1958 (hereinafter referred to as the Rent Act) shall be barred by limitation if the landlord does not take steps to obtain permission of the competent authority (hereinafter referred to as the authority) under the Slum Areas (Improvement and Clearance) Act 1956 (hereinafter referred to as the Slum Act) within 12 years from the date of the passing of the decree.

The facts were few and simple. The order of eviction on the ground of *bona fide* requirement was passed by the rent controller on 15 October 1960. This was under the Rent Act. The tenant's appeal was dismissed by the rent control tribunal on 9 October 1961. In May 1962 the landlord filed an application before the authority under the Act for permission to execute the order of eviction. On 21 March 1963 the application was dismissed. On 19 April 1973, the landlord filed a second application before the authority for permission, which was granted in June 1979. On 25 September 1979 the landlord filed an application before the rent controller for execution of the decree.

The tenant filed objections under section 47 and order 21 rule 22, Civil Procedure Code. The rent controller held that the application for execution was within time. His view was upheld by the rent tribunal and the High Court. The Supreme Court overturned this view and held that since the landlord did not take any steps between 1963 and 1978 and 12 years having elapsed from the date of the decree passed in 1960, the application for execution was barred by time.

Section 19 (1) of the Slum Act, as it stood before the amendment in 1976 read as follows :

> Notwithstanding anything contained in any other law for the time being in force, no person who has obtained any decree or order for the eviction of a tenant from any building in a slum area shall be entitled to execute such decree or order except with the previous permission in writing of the Competent Authority.

The learned judges (S. Mukherjee and G.L. Oza JJ.) gave two reasons for holding that the execution application was barred by limitation. *First*, that steps for filing the application under the Act were not taken after refusal of the first application within 12 years thereof. The execution of the

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1. A.I.R. 1987 S.C. 2230.

decree for eviction which was passed on 15 October 1960 became time-barred on 14 October 1963 under article 182 of the Limitation Act 1908 (old Limitation Act). Assuming that the Limitation Act 1963 (new Limitation Act) applied, the execution was barred under article 136 as 12 years had passed from the date of the decree, *i.e.*, 15 October 1960.

Second, that as held by the Supreme Court in *Ravi Dutt Sharma* v. *Rattan Lal Bhargava*[2] the Act was inapplicable as chapter III*A* of the Rent Act had an overriding effect. The learned judges in *Kashi Ram* observed :

> If that is the position then no permission under Slum Act was at all necessary in case of a decree for bonafide requirement.... If that was so then the decree for eviction having been passed on 15th October, 1960 and the application for execution being filed on or about 25th September, 1979, was clearly barred by limitation.[3]

The court further stated :

> In the light of the decision of this Court in Ravi Dutt Sharma v. Rattan Lal Bhargava... there was no requirement of permission under the Slum Act and as such no impediment in putting the decree dated 15th October, 1960 into execution.[4]

It is respectfully submitted that both these reasons are unsound. As regards the applicability of article 182 of the old Limitation Act or article 136 of the new Limitation Act one thing is clear. Limitation will not start running until the decree becomes executable. Section 19 (1) of the Slum Act operated as a statutory bar to the executability of the decree. Until the authority gave permission the landlord was not entitled to execute the decree. He had a decree in his favour, it is true, but it was not enforceable. So he applied to the authority for permission in May 1962, which was refused. The decree, therefore, remained inexecutable.

As observed by the Privy Council in *Rameshwar Singh* v. *Homeshwar Singh*[5] article 182 of the old Limitation Act (now article 136 of the new Limitation Act), contemplates only a decree or order made in such form as to render it capable of being enforced in execution; if a further application is necessary to make the decree executable then article 181 (now article 137) applies. In that case Lord Phillimore said :

> In order to make the provisions of the Limitation Act apply, the

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2. A.I.R. 1984 S.C. 967.
3. *Supra* note 1 at 2233.
4. *Id.* at 2234.
5 A.I.R. 1921 P.C. 31

> decree sought to be enforced must be in such form as to render it capable in the circumstances of being enforced.[6]

Article 181 of the old Limitation Act provides that in the case of an application for which no period of limitation is provided it will be three years from the time "when the right to apply accrues." The Privy Council observed :

> When the Limitation Act of 1908 prescribes three years from the date of a decree or Order as the period within which it must be enforced, the language read with its context, refers only, as they have already indicated, to an order or decree made in such form as to render it capable in the circumstances of being enforced.[7]

Applying the Privy Council *dictum* it must be held that the decree of eviction in favour of the landlord became executable in June 1979 when permission was granted by the authority on the second application made by him. It is then that the right to apply for execution accrued to him. Limitation at that point of time started running. Not earlier. "It is shocking to common sense to hold that by the time cause of action arises for the first time, the decree should have had already become dead", as was put pithily in a Patna case.[8]

The basic test is this. Where the decree is not immediately executable and the right to apply for execution depends upon the fulfilment of certain conditions, *e.g.*, obtaining of permission from the authority under the Slum Act, as in this case, article 182 (now article 136) on which the Supreme Court bases itself in the alternative has no application. The only article governing the execution is the residuary article 181 (now article 137). And under article 181 limitation does not commence until permission is granted by the authority under section 19(1) of the Slum Act.

Article 182 applies where the decree is capable of execution from the very day it is passed. But where it is so capable only after the grant of permission by the authority, the article applicable is article 181. Numerous authorities take this view.[9] *Rameshwar Singh* decided by the Privy Council in 1921 has proved to be an influential decision and lays down a sound principle. It does not appear to have been brought to the notice of the court in *Kashi Ram.*[10]

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6. *Id.* at 32.
7. *Ibid.*
8. See, *Shyam Sunder* v. *Ram Das Singh*, A.I.R. 1946 Pat. 392 at 397.
9. See, *Abdul Rashid* v. *Sitaramji*, A.I.R. 1974 All. 275 (F.B.) and *Satyanandan* v. *Rudra Raju*, A.I.R. 1963 A.P. 49.
10. *Supra* note 1.

One other question arises. Was the landlord indolent in not seeking permission under the Slum Act from 1963 to 1978 when he made a second application under that Act after refusal of the first? The learned judges seem to take the view that he was not diligent in taking "steps" or "action" for execution of the decree from 1963 to 1978. He was the author of his own misfortune, the learned judges mean to say. There is no basis for taking this view against the landlord. The Slum Act does not prescribe any limitation for applying or obtaining permission from the authority. Nor is an application to it under that Act a step in aid. No law requires that he must apply again and again and must obtain permission within 12 years from the date of the decree. On the other hand, the Limitation Acts, both of 1908 and 1963, positively provide that limitation will commence only after the decree becomes executable.

It would be absurd to hold that throughout the period of 12 years the landlord should go on applying to the authority for permission under the Slum Act. Must he do so day after day and year after year? Suppose he does, but he fails to get permission during the period of 12 years from the date of the decree. Each time he applies the authority refuses permission because the tenant is too poor to afford alternative accommodation and if evicted, he is likely to create slum. What should the court do in this matrix of facts? Should it hold that the decree has become barred by limitation because 12 years have passed? Such a view would fly in the face of law and justice. But this is what seems to have been decided in *Kashi Ram.*

The learned judges threw out the execution application of the landlord holding him guilty of inertia and indolence. To his argument that unless the circumstances changed permission under the Slum Act could not have been granted, they observed, "for the off chance of circumstances changing and thereby giving a right to apply for permission under the Slum Act, a decree cannot be kept in suspended animation."[10a] But this observation is contrary to the purpose and policy of that Act. There is no point in applying for permission over and over again unless the circumstances of the tenant change. So long as he remains poor and unable to afford an alternative accommodation, permission must be refused by the authority.

As and when fortune smiles on the tenant, the landlord can apply for permission again and the authority, after looking into the financial circumstances of the tenant, will grant permission. If fortune does not favour him and he is unable to afford an alternative accommodation the decree of eviction remains a dead letter. Such was the social thinking of 1956 when the Slum Act was passed. With the fluctuating fortunes of the tenant the landlord's case for permission is made or unmade. Means test is the only test the authority can apply. N. Rajagopala Ayyanger J. speaking for the Constitution Bench in *Jyoti Pershad* v. *Administrator*

10a. *Id.* at 2234.

for the Union Territory of Delhi[11] gave a masterly exposition of the policy and purpose of the Slum Act. He said its purpose is as follows :

> [T]o enable the poor who have no other place to go to, and who if they were compelled to go out, would necessarily create other slums in the process and live perhaps in less commodious and more unhealthy surroundings than those from which they were evicted, to remain in their dwellings until provision is made for a better life for them elsewhere.[12]

The Act afforded "interim protection for the slum dwellers until they were moved into better dwellings".[13] The slum dweller should not be evicted unless alternative accommodation could be obtained for him, the court said.

To the poor a "better life" remains a distant dream. What is wrong if the landlord waits till such time as his tenant is able to afford "better dwellings". It may be inside or outside 12 years. It does not matter. It is not an easy thing to find alternative accommodation within one's limited means. It was with a view to finding a solution to this human problem that the Slum Act was passed. It will, therefore, be right to say that under the Limitation Act the decree shall be executable on the grant of permission by the authority. And this is granted when it is satisfied that the tenant can afford a better dwelling. That is the point of time "when the right to apply accrues", to use the language of article 181.

The second ground of decision, namely, that in 1978, "the law under the Slum Act had altered" and "in any event no permission was required to execute the decree. Therefore, the second application was unnecessary," is equally untenable. The court did not properly appreciate the effect of the decision in *Ravi Dutt*.[14] The Rent Act was amended in 1976 by the Delhi Rent Control Amendment Act 1976. It introduced chapter III*A* and a new procedure of "summary trial of certain applications" modelled on the provisions of order 37 of the Code of Civil Procedure, Section 25(*B*) which it enacted for the first time, laid down a "Special procedure for the disposal of applications for eviction on the ground of bona-fide requirement" under which it is necessary for the tenant to obtain leave to contest the application for eviction from the controller. The Supreme Court held in *Ravi Dutt* that chapter III*A* has an overriding effect on the Slum Act. But what was overlooked by the learned judges in *Kashi Ram*[15] was that the Slum Act is made inapplicable only to cases decided under sections

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11. (1962) 2 S.C.R. 125.
12. *Id.* at 143.
13. *Id.* at 144.
14. *Supra* note 2.
15. *Supra* note 1.

25(*B*) and 25(*C*) of chapter III*A*. In *Ravi Dutt* Ali J., speaking for the court, said :

> Once it is recognised that the newly added sections [Sec. 14A, 25(*A*), 25(B) and 25(C)] are in the nature of special law intended to apply to special classes of landlords, the inevitable conclusion would be that the application of the Slum Act stands withdrawn to that extent and any suit falling within the scope of the aforesaid sections 14(1)(e) and 14A would not be governed or controlled by S. 19 (1) (a) of the Slum Act.[16]

The court further said :

> It is therefore, clear from the new provisions in the Amending Act that the procedure indicated therein was intended to have overriding effect and all procedural laws were to give way to the new procedure. Applications under S. (14)(1)(e) therefore, clearly fell within the protective umbrella of the new procedure in Chapter III A.[17]

The result of the decision in *Ravi Dutt* is that the Slum Act is rendered inapplicable to the extent it is inconsistent with the procedure in chapter III*A* of the Rent Act. It is not therefore, necessary for the landlord to obtain permission of the authority under section 19 of the Slum Act before instituting a suit for eviction falling within section 14(1)(*e*) read with section 25(*B*) of chapter III*A* of the Rent Act.

The truth is that the court misread and misapplied *Ravi Dutt*. It was applied to an eviction decree of 1960 to which it had no application. Two things must be remembered in this connection. *First*, the landlord's decree was passed on 15 October 1960 under the old procedure. He did not institute the eviction suit under the new procedure of section 25(*B*) to which chapter III*A* of the Rent Act applies. This chapter was introduced by the Amendment Act. To the decree of 1960 the Slum Act is fully applicable.

Second, it was necessary for the landlord to obtain permission of the authority without which he could not put the decree into execution. Under chapter III*A* it is not necessary for the landlord to do so under section 19 of the Slum Act before instituting an eviction suit under the new procedure of section 25(*B*). But the Amendment Act nowhere says that to decrees under the old procedure the Slum Act shall not apply and a landlord who obtained a decree for eviction on the ground of *bona fide* requirement in 1960 can execute it without obtaining previous permission of the authority. To that extent the law remained unchanged. Ali J. clearly said in *Ravi Dutt* that the application of the Slum Act stands withdrawn to

16. *Supra* note 2 at 970.
17. *Id.* at 971.

the extent only that permission is now not required in eviction suits brought under the new procedure of section 25(*B*) of the Rent Act. This vital distinction between the old and the new procedure the court failed to notice. The Amendment Act introduced the new provisions in chapter III*A* "for simplifying the procedure for eviction of tenants in case the landlord requires the premises *bona fide* for his personal occupation", as was stated in its objects and reasons. It came into force with effect from 1-12-1975 and therefore to things done and decrees passed before that date the Slum Act was applicable. This is the true scope and extent of the Amendment Act as explained in *Ravi Dutt*.

So the landlord in *Kashi Ram* was not entitled to the benefit of the Amendment Act. His fate was sealed. The legal impediment to the executability of his decree remained in his way. He continued to suffer from the disability of the decree being unenforceable without the permission of the authority. There was no alteration in law so far as he was concerned. For him it was necessary to obtain such permission under section 19 of the Slum Act. He made one application in 1962 which was refused, but on a second application made in 1978 permission was given in 1979, in which year itself, the landlord applied for execution. In 1987 the court told him he was out of time as he was guilty of inaction and inertia for 12 years from the date of the decree. After prolonged litigation and having fulfilled all the conditions of the Rent Act, the landlord obtained a decree of ejectment against the tenant. But the court took the view that his decree had become 'stale' and 'obsolete'. This is a startling conclusion. The decree-holder was held responsible for delay that was no fault of his.

With regard to the maintainability of a second application to the authority under the Slum Act the learned judges observed: "We are inclined to the view that an application might lie if it was within the period of limitation." But this is begging the question. Limitation does not run until the decree sought to be enforced is in such form as to render it capable of being enforced, as the Privy Council pointed out in *Rameshwar Singh*.[18] A second application will always lie if there is a change in the circumstances of the tenant.

If the Privy Council decision had been brought to the notice of the court it can be stated with confidence that the decision in *Kashi Ram*. would have been the other way. It is respectfully submitted that the view taken by the court in this case is incorrect and requires reconsideration.

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18. *Supra* note 5.

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