cannot be reopened. Vide *Ponnusami Naicken* v. *Nadimuthu Chetti*(1) and *Aziz Khan* v. *Dani Chand*(2). The rates to which the Subordinate Judge has reduced the interest payable in default appear to be fair and reasonable and we think we should not interfere with them.

In the result both Appeals are dismissed with costs. Time for redemption is extended to a date six months from to-day.

N. R.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Ramesam.

1922, March 20.

MINOR SUBBARAYAN, BY GUARDIAN VISALAKSHI ACHI (FOURTH DEFENDANT), (APPELLANT),

v.

MINOR NATARAJAN AND TWO OTHERS, BY GUARDIAN GOURI ACHI (ASSIGNEE DECREE-HOLDER'S LEGAL REPRESENTATIVES), (RESPONDENTS).*

Civil Procedure Code (*Act V of* 1908), *sec.* 48—*Limitation Act* (*IX of* 1908), *sec.* 15 (1)—*Execution of decrees, more than twelve years old—Execution stayed by injunction or order of Court—Application made after* 12 *years—Computation of time—Deduction of time occupied by stay of execution—Applicability of section* 15 (1) *of Limitation Act—"Prescribed" in section* 15, *meaning of—"Period of limitation," meaning of—Limitation Act, sections* 4 *to* 25, *whether applicable to section* 48 *of Civil Procedure Code.*

Section 48 of the Civil Procedure Code contains an unqualified prohibition (subject to exceptions contained in clause (2)

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(1) (1917) 33 M.L.J., 302. (2) (1918) 23 C.W.N., 130 (P.C.).

* Appeal against Appellate Order No. 53 of 1921.

thereof) against execution of certain kinds of decrees more than twelve years old and is not controlled by section 15 (1) of the Limitation Act, 1908; hence an application for execution of such a decree stayed by an injunction or order of Court, filed after twelve years from the date of the decree, cannot be saved from the bar under section 48 of the Code by excluding under section 15 (1) of the Act the time during which execution was stayed.

Per SPENCER, J.—The word "prescribed" used in section 15 of the Limitation Act, means prescribed by the first schedule to the Act, though the words "in the Schedule" do not occur in the section as in sections 3 and 6 of the Act. *Govinda* v. *Umrao Singh*, (1920) 54 I.C., 279, followed.

Per RAMESAM, J.—The provisions of the Limitation Act are intended to govern the Civil Procedure Code which is a general Act; and it cannot therefore be laid down as a rule that sections 4 to 25 of the Act do not apply to the Code. *Phoolbus Koonwar* v. *Lalla Jogeswar Sahoy*, (1876) I.L.R., 1 Calc., 226 (P.C.), followed.

The period mentioned in section 48, Civil Procedure Code, is not a period of limitation in the strict sense; and consequently section 15 (1), Limitation Act, is not applicable to it.

APPEAL against the order of R. NARAYANA AYYAR, District Judge of Tanjore, in Appeal Suit No. 568 of 1919, preferred against the order of A. NARAYANA PANTULU, Subordinate Judge of Māyavaram, in E.P.R. No. 56 of 1917 (in Original Suit No. 10 of 1904, on the file of the Sub-Court of Kumbakōnam).

This Civil Miscellaneous Second Appeal arises out of an application for execution of a decree passed by the Subordinate Judge of Kumbakōnam in Original Suit No. 10 of 1904 on the file of his Court. The decree was passed on the *7th September* 1904 in favour of the original plaintiff against the first defendant for payment of a sum of money, the second defendant therein being exonerated from the suit. The original plaintiff assigned

the decree to one R, who in turn assigned it over to M, who was the petitioner in the original Court. The petitioner applied for execution of the decree against the properties of the first defendant who was dead and was represented by his mother as his legal representative. The legal representative of the second defendant (the latter having died) applied to be made a party to the execution petition, alleging that he had an interest in the property as reversioner of the first defendant. The Subordinate Judge allowed him to come in. But on appeal by the assignee-decree-holder, the application of the second defendant's legal representative was dismissed by the District Judge. But on further appeal to the High Court, the order of the District Judge was reversed and that of the Subordinate Judge restored. During the pendency of the appeal in the District Court, the execution of the decree was stayed by that Court, viz., from the date of the order of stay of execution, 4th August 1913, to the date of disposal of the appeal, 24th February 1914. The present application for execution was filed on the 4th March 1917, that is, more than 12 years from the date of the decree (7th September 1904). The counter-petitioner (second defendant's legal representative, impleaded as fourth defendant) pleaded, *inter alia*, that the present application for execution was barred as it was filed more than 12 years from the date of the decree, and relied on the provisions of section 48, Civil Procedure Code. The decree-holder contended that the time during which the execution of the decree was stayed by the order of the District Judge, viz., the period from 4th August 1913 to 24th February 1914, should be deducted in his favour under section 15 of the Limitation Act, and that if that was deducted, the petition was not barred. The Subordinate Judge upheld this contention and directed execution. On appeal by

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the fourth defendant, the District Judge held that the Civil Procedure Code was not a special or local law, that section 29, Limitation Act, did not prevent the application of section 15 of the Act to the provisions of section 48 of the Civil Procedure Code and he accordingly dismissed the appeal. The fourth defendant preferred this Civil Miscellaneous Second Appeal.

A. Krishnaswami Ayyar (with him *N. Muttuswami Ayyar*) for appellant.—The application for execution is barred by the twelve years' rule laid down in section 48, Civil Procedure Code. Section 48, Civil Procedure Code, is not controlled by section 15, Limitation Act. Section 48 gives the total life of a decree, not a period of limitation as under article 182 of the Limitation Act. Section 15, Limitation Act, does not apply by reason of the language of the section. There are two points arising from the language of section 15: (1) Is it prescribed under the Act? (2) Is 12 years under section 48, Civil Procedure Code, a period of Limitation? The word "prescribed" used in section 15 means prescribed by the first Schedule to the Limitation Act. Section 3 of the Act is the enacting section and is introductory to sections 4 to 25, and lays down how the latter are to be used. Section 3 contains the expression prescribed by the Schedule of the Limitation Act, and by no other law. "Prescribed" is used in the Limitation Act as meaning prescribed by Schedule 1 of the Act. That is the sense, in which "prescribed" is used in the Act though the words "by the schedule" are not always added in every section: In section 6, the context required the express use of the phrase "by the schedule"; there was a special reason for repeating it in section 6. There is direct authority that section 15 of the Limitation Act does not govern section 48 of the Civil Procedure

Code. See *Juruwan Pasi* v. *Mahabir Dhar Dube*(1) *Govinda* v. *Umrao Singh*(2), *Ramana* v. *Babu*(3). The observations in *Kumara Venkata Perumal* v. *Velayuda Reddi*(4) are only obiter. See *Shiam Karan* v. *The Collector of Benares*(5), *Shidaya Virbhadraya* v. *Satappa Bharmappa*(6) and *Dayaram* v. *Laxman*(7). .Section 29, Limitation Act, expressly says special or local law is not affected or altered by the provisions of the Act. Special law does not mean a special enactment. If a general law enacts a special period of limitation, it is a special provision of limitation and is therefore a special law within section 29, Limitation Act. Simply because limitation finds a place in the general law of Civil Procedure Code, the provision does not become general law. See *Narasimha Deo Garu* v. *Krishnachendra Deo Garu*(8).

T. V. Muttukrishna Ayyar for respondent.—The general rules of the Limitation Act are applicable to all suits, etc., unless they fall under a special or local law under section 29. "Prescribed" is not defined in section 2 which is the definition section of the Limitation Act. The Legislature has expressly defined "prescribed" in section 2, clause (16), of the Civil Procedure Code for the purposes of the Code, but not defined it under the Act. In some sections of the Act "prescribed by the Schedules" are used. If the appellant's contention is correct, section 29 is unnecessary. Section 3 simply says in particular cases falling under the Schedule to the Act, Courts are bound to dismiss them, subject to the provisions of sections 4 to 25. It does not say in cases not falling under the schedules, Sections 4 to 25 are not to be applied to them.

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(1) (1918) I.L.R., 40 All., 198 at 203.
(2) (1920) 54 I.C., 279.
(3) (1914) I.L.R., 37 Mad., 186.
(4) (1914) 27 M.L.J., 25.
(5) (1920) I.L.R., 42 All., 118.
(6) (1918) I.L.R., 42 Bom., 367.
(7) (1911) 13 Bom. L.R., 284.
(8) (1919) 10 L.W., 156.

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Article 181, Limitation Act, shows that section 48 prescribes a period of limitation. "Prescribed" occurs in sections 12, 13, 14, 15, 16, 19 and 22, and "prescribed by Schedule" occurs in sections 3 and 6.

Ramana v. *Babu*(1) only holds section 6 (minority section) will not affect section 48, Civil Procedure Code; applicability of other sections of the Act are left open. Civil Procedure Code is not a special or local law within section 29, Limitation Act. Privy Council in *Phoolbas Koonwur* v. *Lalla Jogeshur Sahoy*(2) holds that the Civil Procedure Code is not a special but general law and is followed in *Kumara Venkata Perumal* v. *Velayuda Reddi*(3). Reference was made to *Peary Mohan Aich* v. *Arunda Charan Biswas*(4) *Moro Sadashiv* v. *Visaji Raghunathji*(5) *Srinivasa Ayyangar* v. *Secretary of State*(6) and *Baranashi* v. *Bhabadeb*(7).

[RAMESAM, J.—Does section 19, Limitation Act, apply to section 48, Civil Procedure Code?]

T. V. Muttukrishna Ayyar.—Yes; the period of twelve years will be extended by acknowledgment under section 19 of the Act. In any event on general principles, the provisions of section 15 (1) of the Act should be applied to cases falling under section 48, Civil Procedure Code.

A. Krishnaswami Ayyar, in reply.—The decision in *Mahanth Krishna Dayal Gir* v. *Musst Sakina Bibi*(8), holds that section 19 of the Limitation Act does not apply to section 48, Civil Procedure Code. Section 29 of the Act is only a proviso to other sections. From the proviso, the application of the enactment portion (section 3) cannot be

(1) (1914) I.L.R., 37 Mad., 186.
(2) (1876) I.L.R., 1 Calc., 226.
(3) (1914) 27 M.L.J., 25.
(4) (1891) I.L.R., 18 Calc., 631.
(5) (1892) I.L.R., 16 Bom., 536.
(6) (1915) I.L.R., 38 Mad., 92.
(7) (1921) 34 C.L.J., 167.
(8) (1915) 20 C.W.N., 952.

extended to other cases, *West Derby Union* v. *Metropolitan Life Assurance Society*(1).

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General principles of the Limitation Act were held not applicable to the six months' time allowed for petition to appeal to the Privy Council under the former Civil Procedure Code. See *Thurairajah* v. *Jainilabdeen Rowthan*(2), *Veeranima* v. *Abbiah*(3) and *Kullayappa* v. *Lakshmipathi*(4).

SPENCER, J.

SPENCER, J.—In disposing of an execution petition the Sub-Court of Māyavaram in an Order passed on 9th April 1919, which the District Judge of Tanjore confirmed on Appeal, extended the period of twelve years; after which section 48, Civil Procedure Code, declares that no order for the execution of a decree shall be made upon any fresh application. This twelve years' period has been extended by the executing Court by the addition of a period equal to that during which a stay of execution of the decree was once obtained by an order of Court in 1913.

I am of opinion that this is not permissible by law, and that section 48, Civil Procedure Code, which contains an unqualified prohibition against execution of decrees more than twelve years old, is not controlled by section 15 of the Indian Limitation Act.

Section 15 of that Act speaks of the computation of periods of limitation with reference to the periods prescribed in the Schedule to the Act. Though the words "in the Schedule" do not occur in this section or in section 19, as they do in sections 3 and 6, the word "prescribed" can in applying the Act to suits under the general law refer to nothing else. This is the meaning

(1) (1897) A.C., 647. (2) (1895) I.L.R., 18 Mad., 484.
(3) (1895) I.L.R., 18 Mad., 99.
(4) (1889) I.L.R., 12 Mad., 467 (471).

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given by this Court to the section in *Narasimha Deo Garu* v. *Krishnachendra Deo Garu*(1) and by the Allahabad High Court in *Juravan Pasi* v. *Mahabir Dhar Dube*(2) as explained by *Shiam Karan* v. *The Collector of Benares*(3). I am aware that article 181 of the Schedule speaks of section 48, Civil Procedure Code, as providing "a period of limitation." But section 48 has nothing to do with the periods of limitation prescribed in the Schedule to the Limitation Act and *has no connexion with the process of computation of time according to the nature of the cause of action in particular suits*. For, as may be seen by its position in a Code of Procedure in the part that is headed "execution," it enacts a rule of procedure for all executing Courts. The effect of that rule is to put an absolute term of twelve years on the right of decree-holders to apply to execute their decrees. See the observations of JWALA PRASAD, J., in *Mahanth Krishna Dayal Gir* v. *Musst Sakina Bibi*(4). The only exceptions to the absolute term fixed by the section are those mentioned in proviso 2 to the section itself. The precise question which we have to decide is, considering its importance, singularly barren of authority, but there is one reported case in *Govinda* v. *Umrao Singh*(5), which accords with the view which in my judgment is most reasonable. In *Kumara Venkata Perumal* v. *Velayuda Reddi*(6) SADASIVA AYYAR, J., was inclined to hold that the general provisions of the Limitation Act relating to exclusion of time governed the provision in section 48 of the Civil Procedure Code, but the learned Chief Justice did not pronounce an opinion on this point of law, as he refused on the facts of that case to extend the time, without deciding whether it would be legal to do so.

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(1) (1919) 10 L.W., 156 at pp. 156 and 167.
(2) (1918) I.L.R., 40 All., 198.
(3) (1920) I.L.R., 42 All., 118.
(4) (1916) 20 C.W.N., 952.
(5) (1920) 54 I.C., 279.
(6) (1914) 27 M.L.J., 25.

On the other hand the decision in *Ramana* v. *Babu*(1) is opposed to the opinion of SADASIVA AYYAR, J.

Reference has been made in the arguments on both sides to section 29, Limitation Act.

I consider that this section does not affect the matter one way or the other. It relates to special or local laws which contain special provisions of their own for the limitation of certain proceedings taken to obtain reliefs provided therein. It does not include the Civil Procedure Code in its scope.

The Appeal is allowed with costs throughout and the execution petition is dismissed as out of time.

RAMESAM, J.

RAMESAM, J.—The point for decision in this case is, whether in computing the period of twelve years in section 48 of the Civil Procedure Code, section 15 (1) of the Limitation Act can be applied. The question has been ably and exhaustively argued by the vakils on either side. I confess I find considerable difficulty in coming to a conclusion.

The first point argued for the appellant is that the sections of the Limitation Act 4 to 25 apply only to periods prescribed in the Schedule to the Act. He contends that this is the natural construction that follows on reading the sections from section 3 onwards. As a matter of drafting, it was found unnecessary to repeat in the later sections, the words "by the first Schedule" after "prescribed" as they were mentioned in section 3 and their repetition in each section would be awkward. They are expressly repeated in section 6, as reference had to be made to the third column. When confronted with the question—"what is the need for section 29, if his contention is right?"—his suggestion is that there may

(1) (1914) I.L.R., 37 Mad., 186.

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be suits to which the Limitation Act may apply though the suits may be occasioned by proceedings under special Acts (e.g., declaratory suits occasioned by proceedings under Madras Act IV of 1897 or suits necessitated by proceedings under Madras Act III of 1905) and in such cases both the Acts may apparently apply, and to remove the conflict, section 29 has been enacted. He explains the decision in *Lingayya* v. *Chinna Narayana*(1) where the learned Judges give an independent meaning to the word "affect" (apart from the word "alter" in section 29) as referring to the operation of sections 4 to 25, by saying that neither the arguments nor the judgments dealt with sections 4 to 25 in themselves and they proceeded on the assumption that these sections may apply to other Acts and were confined to a consideration of section 29 only. Seeing that the word "affect" was not in the Act of 1871 and was specially introduced in the Act of 1877 and continued in the present Act, I find it difficult to accept the last explanation. The argument of the appellant, with reference to the construction of the word "prescribed" in sections 4 to 25, is supported by *Jurawan Pasi* v. *Mahabir Dhar Dube*(2) and *Shiann Karan* v. *The Collector of Benares*(3), but by no other cases. Even if I am inclined to accept it, I cannot, as I feel bound by the decision of the Privy Council in *Phoolbas Koonwur* v. *Lalla Jogeshur Sahoy*(4) where it was held that the provisions of the Limitation Act were intended to govern the Civil Procedure Code which was a general Act. The fact that the Acts considered in that case were the Acts of 1859 makes no difference. Nor does the consideration that, so far as the disability of minority is concerned, section 6 of the Limitation Act must now be confined to

(1) (1918) I.L.R., 41 Mad., 169 (F.B.). (2) (1918) I.L.R., 40 All., 198.
(3) (1920) I.L.R., 42 All., 118 at p. 124. (4) (1876) I.L.R., 1 Calc., 226 (P.C.).

the Limitation Act only [see *Prem Nath Tiwari* v. *Chatarpal Man Tiwari*(1), *Ramana* v. *Babu*(2) and *Moro Sadashiv* v. *Visaji Raghunathji*(3)] afford a ground for distinguishing *Phoolbas Koonwur* v. *Lalla Jogeshur Sahoy*(4); for, these rulings are based on the particular language of section 6. The principle of *Phoolbas Koonwur* v. *Lalla Jogeshur Sahoy*(4), viz., that the Civil Procedure Code is a general law and hence periods of limitation in it are governed by the Limitation Act, was followed in *Peary Mohun Aich* v. *Arunda Charan Biswas*(5) and was approved of by SADASIVA AYYAR, J., in *Ramana* v. *Babu*(2); (though not necessary for the decision) and so far I agree with them. But this agreement with SADASIVA AYYAR, J., in *Ramana* v. *Babu*(2) (which was a case on section 48) does not necessarily imply the conclusion that the provisions of the Limitation Act apply to section 48 of the Civil Procedure Code, as I shall presently show. I must therefore negative the first contention of Mr. Krishnaswami Ayyar that sections 4 to 25 of the Limitation Act do not apply to the Civil Procedure Code.

The second point argued by him is that the period of twelve years is not a period of limitation within the meaning of section 15 of the Act. What is meant by a period of limitation? In the first place it probably does not include mere periods of extension, such as the period of two years under section 31 of the Limitation Act, [*Dayaram* v. *Laxman*(6)], and the period of three years referred to in section 3 of the Limitation Act [*Narasimha Deo Garu* v. *Krishnachandra Deo Garu*(7) which is an authority only for this proposition]. Also it is obvious that the phrase "period of limitation" can be used in two

(1) (1915) I.L.R., 37 All., 638. (2) (1914) I.L.R., 37 Mad., 186.
(3) (1892) I.L.R., 16 Bom., 536. (4) (1876) I.L.R., 1 Calc., 226 (P.C.).
(5) (1891) I.L.R., 18 Calc., 631. (6) (1911) 13 Bom. L.R., 284.
(7) (1919) 10 L.W., 156.

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senses, (1) a strict and (2) a loose sense. In the strict sense it means, such a period that a proceeding to which it is sought to be applied will be in time if filed within the period and beyond time if filed after it. It has a double characteristic. Most periods of limitation, e.g., all those mentioned in the Schedule of the Limitation Act, in many special and local laws, and the periods of fifteen days in Order XXI, rule 84, and thirty days in Order XXI, rule 89 of the Civil Procedure Code, and even the periods of two years in section 15 of the Easements Act, are periods of limitation in this sense. But the period in section 48 of Civil Procedure Code is not a period of limitation in this sense. For, an application for execution of a decree (of the kind mentioned in section 48) will in general not be in time if filed within twelve years. It will be out of time unless it is within three years from any of the dates mentioned in the third column of article 182. To an application for execution of a decree article 182 has first to be applied, and if it is found not wanting when tested by article 182, then section 48, Civil Procedure Code will operate as a further test. It is in the nature of a strict period of limitation that it is capable of extension by the general sections of the Limitation Act, particularly by sections 19 and 20, to an indefinite extent; and in the case of application for execution, the period in article 182 is capable of extension to an indefinite extent also by the use of the various provisions in the third column of article 182. It is upon such an extension that section 48, Civil Procedure Code acts as a check. Its operation is secondary in the sense that it operates on the working out of article 182. So viewed, it is a period of limitation in a looser sense; and it is clear that when the legislature described the period in section 48 as a period of limitation in article 181 of the Limitation Act it is only the looser sense that was

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intended. It is not that certain kinds of applications were dealt with by article 182 and certain others by section 48 of the Civil Procedure Code, which is the impression produced by a too literal reading of the word "or" in articles 181 and 182. I confess that I do not see what purpose was served by the mention of section 48, Civil Procedure Code, in articles 181 and 182; for all applications governed by section 48 are applications for execution falling within article 182 and it would be enough in article 181 to stop with "elsewhere in this Schedule" without mentioning section 48 of Civil Procedure Code. Again article 182 produces the impression that section 48, Civil Procedure Code, must be first applied and then article 182. But we know this to be not so. I find it difficult to conceive of a case where the result will be different if all reference to section 48, Civil Procedure Code, is omitted in articles 181 and 182 altogether. Be that as it may, it is clear that article 181 refers only to the looser sense of the phrase "period of limitation."

Having arrived at this conclusion, we have next to see in what sense it is used in section 15 of the Limitation Act. On this question, one has to find the sense in which it is used, as best as he can. It may be, that it is used in the looser sense in section 11 (3) of third Schedule of the Civil Procedure Code [*Shiam Karan* v. *The Collector of Benares*(1)] and in section 48 of the Deccan Agriculturists Relief Act [*Shidaya Virabhadraya* v. *Satappa Bharmappa*(2) and *Dayaram* v. *Laxman*(3)], but these cases cannot help us for the sections 5 and 7 to 25 of the Limitation Act. In those sections, it seems to have been used in the stricter sense, [*Jurawan Pasi* v. *Mahabir Dhar*

(1) (1920) I.L.R., 42 All., 118 at p. 124.
(2) (1918) I.L.R., 42 Bom., 367. (3) (1911) 13 Bom. L.R., 284.

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Dube(1)]. In *Mahantta Krishna Dayal Gir* v. *Musst Sakina Bibi*(2) it was held that section 19 of the Limitation Act does not apply to the period in section 48 of the Civil Procedure Code. CHAMIER, C.J., does not give any special reason. JWALA PRASAD, J., says section 48 is a rule of procedure. I do not agree with him if he meant to say that the period in section 48 is not a period of limitation at all. For the legislature has described it as a period of limitation in article 181, *Shiam Karan* v. *The Collector of Benares*(3), but I think he meant to say that it is not such a period in the stricter sense. This aspect was not discussed by SADASIVA AYYAR, J., in *Ramana* v. *Babu*(4). I therefore agree with my learned brother that the Appeal should be allowed.

In this view it is unnecessary to discuss the third contention of the appellant that section 15 (1) cannot help him as the stay order in this case was obtained by himself, *Maharaja Kesho Prasado Singh Bahadur* v. *Harban Lal*(5).

I concur in the order of my learned brother.

K.R.

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(1) (1918) I.L.R., 40 All., 198 at p. 203.
(2) (1915) 20 C.W.N., 952.
(3) (1920) I.L.R., 42 All., 118 at p. 124.
(4) (1914) I.L.R., 37 Mad., 186. (5) (1920) 55 I.C., 85.