In the result the application must be dismissed with taxed costs for the plaintiffs in each of the cases and it is ordered accordingly.

Application dismissed.

Government Solicitor (*C. Moresby*) for the applicant.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Phillips and Mr. Justice Madhavan Nayar.

M. KRISHNA PATTER (PETITIONER), APPELLANT,

v.

K. SEETHARAMA PATTER (COUNTER-PETITIONER), RESPONDENT.*

1926, March 11.

Limitation Act (*IX of* 1908), *art.* 182 (5)—*Application for execution of decree—Application by judgment-debtor to record satisfaction—Statement by decree-holder, objecting to judgment-debtor's application—Subsequent application by decree-holder for execution, more than three years from last application for execution—Filing of statement by decree-holder objecting to record of satisfaction, whether a step in aid of execution—Pendency of execution application, whether necessary for effectiveness of an application for a step in aid of execution.*

The filing of a statement by a decree-holder, objecting to the judgment-debtor's application to record satisfaction of the decree, is not a step in aid of execution of the decree under article 182 (5) of the Limitation Act (IX of 1908), and cannot therefore save his application for execution from being barred by limitation. *Kuppuswami Chettiar* v. *Rajagopala Aiyar*, (1922) I.L.R., 45 Mad., 466, followed.

* Appeal against Appellate Order No. 120 of 1923.

KRISHNA PATTER v. SEETHARAMA PATTER.

Quaere :—Whether an application to be a step in aid of execution should be one made in a pending execution application.

APPEAL against the order of K. A. KANNAN, Subordinate Judge of South Malabar at Calicut, in Appeal No. 38 of 1923, preferred against the order of N. A. VAIDYANATHA AYYAR, District Munsif of Valuttūr, in E.A. No. 749 of 1922 in O.S. No. 226 of 1916.

This appeal arises out of an application filed in the District Munsif's Court of Alattur to transfer a decree from that Court to another Court. The decree was passed on 30th September 1916. An application for execution was filed on 4th July 1919. During the pendency of that application, the judgment-debtor filed a petition on 1st August 1919 in that Court to record satisfaction of the decree. The decree-holder filed a statement on 18th August 1919, objecting to the record of satisfaction and praying that the judgment-debtor's petition should be dismissed. The latter petition was dismissed on 19th August 1919. The decree-holder presented the present application on the 25th July 1922 for the transfer of the decree for execution to the District Munsif's Court of Vayitri. The judgment-debtor objected to the transfer on the ground that execution of the decree was barred by limitation. The decree-holder relied on his statement of objection to the record of satisfaction, as a step in aid of execution, to save the bar of limitation. The District Munsif held that the execution of the decree was not barred and directed the transfer of the decree. On appeal, the Subordinate Judge reversed the order and dismissed the application. The decree-holder preferred this Miscellaneous Second Appeal.

K. P. Ramakrishna Ayyar for appellant.—The statement filed by the decree-holder objecting to the record of satisfaction and praying for dismissal of the judgment-debtor's petition is an application to take a step in aid of execution

See *Kewal Ram* v. *Khadim Husain*(1), *Gobind Pershad* v. *Rung Lal*(2), *Shugan Chand* v. *Ramjas*(3), *Tamiz-un-nissa Bibi* v. *Najju Khan*(4), *Ishri Rai* v. *Raghupat Narain Rai*(5).

Kuppuswami Chetty v. *Rajagopal Aiyar*(6) holds that where there is no pending execution application, there can be no application to take a step in aid of execution. The decision in *Abdul Kader Rowther* v. *Krishnan Malaval Nair*(7) decides that an adjournment is a step in aid of execution.

Reference was also made to *Lakshmiram Lallubhai* v. *Balashankar Veniram*(8), *Sheshadasacharya* v. *Bhimacharya* (9), and *Kedar Nath Dey Roy* v. *Lakhi Kanta Dey*(10).

Next there was practically a stay of execution under section 15 of the Limitation Act. A liberal construction should be placed on article 182 of the Act.

K. R. Narayana Ayyar for respondent.—There must be some positive step taken by the Court in aid or furtherance of execution, otherwise it is not an application to take a step in aid of execution. Mere opposition by decree-holder is not an application to take a step in aid of execution. See *Langtu Pande* v. *Baijnath Saran Pande*(11), *Umesh Chunder Dutta* v. *Soonder Narain Deo*(12), *Troylokya Nath Bose* v. *Jyoti Prokash Nandi*(13).

Reference was made to the following cases:—*Rangachariar* v. *Subramania Chetty*(14), *Masilamani Mudaliar* v. *Sethusami Aiyar*(15), *Balaguruswami Naiken* v. *Guruswami Naiken*(16).

JUDGMENT.

This is an appeal against an order of the Subordinate Judge of South Malabar at Calicut who, reversing the order of the District Munsif, held that the decree-holder-appellant's application to transfer the decree in O.S. No. 226 of 1916 from the Alattur

(1) (1883) I.L.R., 5 All., 576. (2) (1894) I.L.R., 21 Calc., 23.
(3) (1910) 5 I.C., 292. (4) (1918) I.L.R., 40 All., 668.
(5) (1921) 19 A.L.J., 641. (6) (1922) I.L.R., 45 Mad., 466.
(7) (1915) I.L.R., 38 Mad., 695. (8) (1915) I.L.R., 39 Bom., 20.
(9) (1913) I.L.R., 37 Bom., 317. (10) (1917) 40 I.C., 1005.
(11) (1906) I.L.R., 28 All., 387 (390).
(12) (1889) I.L.R., 16 Calc., 747. (13) (1903) I.L.R., 30 Calc., 761.
(14) (1920) 12 L.W., 9. (15) (1918) I.L.R., 41 Mad., 251.
(16) (1925) 48 M.L.J., 506.

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District Munsif's Court to the District Munsif's Court of Vayitri for execution was barred by limitation. A prior petition for execution, E.P. No. 458 of 1919, had been presented on the 4th of July 1919. In the course of that petition an application was put in by the judgment-debtor to record satisfaction of the decree on the 1st of August 1919. A statement was then filed by the appellant on the 18th of August 1919 praying that the judgment-debtor's petition to record satisfaction of the decree should be dismissed. The present application for transfer was made on the 25th of July 1922. If time is calculated from the date of E.P. No. 458 of 1919, it is admitted that the present application is barred by time; but it was contended before the Subordinate Judge that the written statement of objections filed on the 18th of August 1919 should be taken as "a step in aid of execution" under article 182 (5) of the Limitation Act and that if time is calculated from that date the present application is not barred. In *Kuppuswami Chetty* v. *Rajagopala Aiyar*(1), it was held that a statement filed by a decree-holder objecting to the judgment-debtor's application to enter up satisfaction of the decree is not a step in aid of execution. Relying on that decision, the learned Subordinate Judge overruled the appellant's contention and dismissed his petition.

The same contention has again been pressed before us; and the learned vakil for the appellant has tried to distinguish the case in *Kuppuswami Chetty* v. *Rajagopal Aiyar* (1) on the ground that there was no pending execution application in that case, arguing from this fact that if there was a pending application in that case the learned Judges would have arrived at a different

(1) (1922) I.L.R., 45 Mad., 466.

conclusion. He has also argued on the authority of various decisions that a statement of objections filed by the decree-holder in circumstances like the present should be held to be a step in aid of execution under article 182 (5) of the Limitation Act.

The facts of the case in *Kuppuswami Chetty* v. *Rajagopala Aiyar*(1) were as follows. The decree was dated the 2nd May 1916 and the only prior execution petition presented by the appellant decree-holder was dismissed on the 7th of September 1916. Admittedly the execution petition out of which the appeal arose was presented out of time, but it was said, as in the present case, that prior to the application for execution the judgment-debtor had put in a petition for entering up satisfaction of the decree and that in connexion therewith the decree-holder had filed a counter-statement denying the receipt of money and praying that the petition should be dismissed. It was contended that the application to reject the petition to record satisfaction of the decree was a step in aid of execution, but this contention was overruled. In the course of his judgment, AYLING, J. (who delivered the leading judgment) stated thus:

> "The article 182 (5) classes together an application for execution and an application to take step in aid of execution and the latter words appear to be intended to cover an application, which is not an initial application for execution, but is an application to take some step to advance the execution proceedings, which is already pending, namely, application to bring to sale properties already under attachment (page 469) . . . But whatever case may be made out for an application made in connexion with a pending execution petition as one for taking a step in aid or furtherance of it, an application made at a time when no execution petition is pending stands on an obviously different footing."

(1) (1922) I.L.R., 45 Mad., 466.

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It is argued that two conclusions follow from these extracts—(1) that an application to be a step in aid of execution should be one made in a pending execution application and (2) that if there was a pending execution application in that case as in the one before us, then the learned Judges would have certainly held that the statement of objections filed by the decree-holder to the recording of satisfaction would be a step in aid of execution. As regards the first conclusion sought to be deduced from the judgment, no doubt the decision in *Balaguruswami Naicken* v. *Guruswami Naicken*(1) supports the appellant's contention; but it is not necessary to discuss the correctness of that conclusion in this case as admittedly here there is a pending execution application. If we really had to decide the question we should hesitate to accept this decision without further consideration of the matter in the light of all the decided cases of our Court which have not been referred to in *Kuppuswami Chetty* v. *Rajagopala Aiyar*(2). It seems to us that the remarks referred to were made by the learned Judge only to distinguish those cases wherein questions of a similar nature arose in connexion with pending execution applications. As regards the second conclusion sought to be deduced from that judgment, we have no doubt that the appellant's contention cannot be accepted because the learned Judge's decision is based upon an interpretation of the decree-holder's objection petition in view of what he considers should be the meaning of the expression "applying to take some step in aid of execution," for, the learned Judge states at page 470,

"The petition, Exhibit E, may tend to prevent the Court placing an obstacle in the way of future execution of the decree; but it does not ask the Court to take any step in aid of

(1) (1925) 48 M.L.J., 506. (2) (1925) I.L.R., 45 Mad., 466.

execution. Supposing it to be successful, execution of the decree is no further advanced than it was before the petition was presented."

This shows that even if there was a pending execution application, the learned Judge would have come precisely to the same conclusion because in his view the decree-holder did not by filing his objection statement ask the Court to take any step in aid of execution. We respectfully accept this view.

According to the third column of article 182 (5) of the Limitation Act, time for execution is to be calculated from

"the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree or order."

The latter part of this clause specifies the date of applying to the Court asking it to take some step in aid of execution of the decree or order as the date from which the period of limitation should be computed and not the date of the petitioner's taking some step in aid of execution. If this distinction is well kept in mind, much of the diversity of the views among the various High Courts as regards the meaning of the expression "applying to take some step in aid of execution" can easily be explained. As pointed out by OLDFIELD, J., in *Rangachariar* v. *Subramania Chetty*(1)

"It is material that the starting point under article 182, Schedule 1 of the Limitation Act, is not the taking of a step in aid of execution, but the application to take such a step."

In the same judgment SESHAGIRI AYYAR, J., refers to the same matter thus:

"Two things are essential. There must be an application and that application must ask the Court to take a step in aid of execution . . . The bare fact that a party took some steps would not be enough."

(1) (1920) 12 L.W., 9 at 10.

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The distinction we are referring to is nowhere better pointed out than in *Raghumundun Misser* v. *Kallydut Misser*(1). In that case the learned Judges were considering whether an application by a decree-holder for leave to bid at a sale in execution of the decree is a step in aid of execution within the meaning of the Limitation Act, XV of 1877, Schedule 2, article 179 (corresponding to article 182 of the present Limitation Act). In coming to the conclusion that it is not such a step the learned Judges state:

"We do not think an application of this kind is an application seeking the action of the Court in execution of the decree. It may be in one sense a step in aid of execution of the decree, but it is not a step by the Court. Before a judgment-creditor can get any benefit he must show that he asks the Court to take some step in aid of execution. A step taken by the judgment-creditor himself is not . . . sufficient."

This case has been followed in *Kuppuswami Chetty* v. *Rajagopala Aiyar*(2). If this distinction is borne in mind, it is obvious that a statement of objections filed by the decree-holder objecting to the recording of satisfaction cannot in any way be considered to be a step in aid of execution. By filing the statement the decree-holder does not ask the Court to take any step in aid of execution. In the words of AYLING, J., in *Kuppuswami Chetty* v. *Rajagopala Aiyar*(2)

"Supposing it to be successful, execution of the decree is no further advanced than it was before the petition was presented."

We will now discuss the cases referred to by the learned vakils on both sides.

In *Kewal Ram* v. *Khadim Husain*(3) it was held that

"an application by a decree-holder praying that the objections taken by the judgment-debtor to the sale of property

(1) (1896) I.L.R., 23 Calc., 690 at 692. (2) (1922) I.L.R., 45 Mad., 466.
(3) (1883) I.L.R., 5 All., 576.

belonging to him in execution of the decree should be disallowed and the sale be confirmed, is an application from the date of which the period of limitation for a subsequent application for execution of the decree may be computed."

This judgment simply records this opinion and does not contain any discussion of the question. It is conceded that the decision in *Kuppuswami Chetty* v. *Rajagopala Aiyar*(1) is opposed to this view. This decision was followed by the Allahabad High Court in *Shugan Chand* v. *Ramjas*(2). In *Tamiz-un-nissa Bibi* v. *Najju Khan*(3), the latest decision of the Allahabad High Court brought to our notice, it was held that an application to the Court executing a decree asking that certain objections to the execution of the decree be rejected is a step in aid of execution within the meaning of article 182 (5) of the 1st Schedule of the Limitation Act. Here also the judgment does not contain any discussion of the question. In *Langtu Pande* v. *Baijnath Saran Pande*(4) it was held that the mere filing of an answer by the decree-holder resisting an application for a declaration of insolvency filed by the judgment-debtor cannot be deemed to be an application to take a step in aid of execution within the meaning of article 179. This view is opposed to the earlier and the later decisions of the same Court.

In *Umesh Chunder Dutta* v. *Soonder Narain Deo*(5) it was held that the appearance of a decree-holder by his pleader to oppose an application made by the judgment-debtor to set aside a sale in execution of the decree is not an application within the meaning of article 179 of Schedule 2 of the Limitation Act to take a step in aid of execution. The learned Judges stated that

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(1) (1922) I.L.R., 45 Mad., 466. (2) (1910) 5 I.C., 292.
(3) (1918) I.L.R., 40 All., 668. (4) (1906) I.L.R., 28 All., 387.
(5) (1889) I.L.R., 16 Calc., 747.

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"The application contemplated by that article of the Limitation Act is an application to get some order of the Court in furtherance of the execution of the decree. The appearance of the pleader cannot be regarded as such an application."

The decisions in *Raghunundun Pershad* v. *Bhugoo Lall*(1) and *Raghunundun Misser* v. *Kallydut Misser*(2) also take a similar view of article 179, Schedule 11 of the Limitation Act. These cases have been followed in *Kuppuswami Chetti* v. *Rajagopala Aiyar*(3) as regards the interpretation of the article in question. (See also *Troylokya Nath Bose* v. *Jyoti Prokash Nandi*(4).) On the facts, the decision in *Gobind Pershad* v. *Rung Lal*(5) can be distinguished. In that case it was held that an application by a decree-holder, praying that a petition of the judgment-debtor to set aside the sale of property belonging to him should be rejected and the sale be confirmed, is an application falling within the meaning of article 179 (4) of Schedule 2 of the Limitation Act of 1877. The facts of the case show that after the sale was confirmed the judgment-debtor applied for a review of the order confirming the sale and the review was granted in spite of the objections of the decree-holder who appeared and opposed it. Subsequently the decree-holder put in an application praying that the judgment-debtor's application to set aside the sale might be rejected at the same time applying for confirmation of the sale. In view of the "review order" that was passed against the decree-holder, we are inclined to think that the decree-holder's application was in furtherance of execution proceedings. The decision in *Kedar Nath Dey Roy* v. *Lakhi Kanta Dey*(6) is also distinguishable. In that case the judgment-debtor raised objections to the delivery of

(1) (1890) I.L.R., 17 Calc., 268.
(2) (1896) I.L.R., 23 Calc., 690.
(3) (1922) I.L.R., 45 Mad., 466.
(4) (1903) I.L.R., 30 Calc., 761.
(5) (1894) I.L.R., 21 Calc., 23.
(6) (1917) 46 I.C., 1005.

possession by the commissioner and the Court found it necessary to determine the standard of measurement and for that purpose to take evidence in the matter. An application was then made by the decree-holder for summoning witnesses. It was held that this was a step in aid of execution within the meaning of article 182 (5). It is clear from the facts that in the opinion of the Court execution could not proceed without determining the standard of measurement. In this view the application to file a list of witnesses may be deemed to be a step in aid of execution. The learned Judges in arriving at this conclusion follow the prior decisions of their Court already referred to. In *Brojendra Kishore Roy* v. *Dil Muhmud Sarkar*(1), when the decree-holder applied for execution of his decree the judgment-debtor put in an objection to its execution. Both parties having been directed by the Court to adduce evidence in support of their respective cases, the decree-holder filed a list of witnesses and intimated to the Court that he was ready to proceed with his case. The Court held that the filing of the list of witnesses and intimating to the Court that he was ready to proceed with the case implied an application on the part of the decree-holder to the Court to take the evidence which he was prepared to adduce and repel the objection taken by the judgment-debtor, and in effect this should be taken to be an application to the Court to take some step in aid of execution. This decision to some extent supports the appellant. Excepting this decision the Calcutta High Court has taken a view consistently opposed to the contentions of the appellant.

The Bombay cases relied upon by the appellant need not be discussed in detail. The latest decision of

(1) (1918) 44 I.C., 604.

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that Court is *Lakshmiram Lallubhai* v. *Balashankar Veniram*(1), in which it was held that an appeal against an order adjudging the judgment-debtor an insolvent was a step in aid of execution. This has been expressly dissented from in *Kuppuswami Chetty* v. *Rajagopala Aiyar*(2). In *Sheshadasacharya* v. *Bhimacharya*(3) an application filed by the decree-holder for extension of time to produce an extract from the Collector's record ordered by the Court to be filed within a particular date but which was not so filed, was held to be a step in aid of execution. With all deference to the learned Judges, we cannot accept this conclusion or the reasoning on which it is based.

Thus far we have discussed the decisions of the other Courts brought to our notice. Our own High Court has always held the position that an application to be a step in aid of execution, must be one in furtherance of execution proceedings. We have already indicated the interpretation put upon the article by the learned Judges in *Rangachariar* v. *Subramania Chetty*(4). Having reference to the facts of the case, the decision in *Kunhi* v. *Seshagiri*(5) does not really help the appellant. In that case it was held that an application by a judgment-creditor to the Court which passed a decree for a certificate that a copy of the Revenue Register of the land is necessary to enable him to obtain such a copy from the Collector's office and thereupon to execute the decree by attaching the land, is a step in aid of execution within the meaning of article 179 (4). INNES, J., pointed out that

"The production of the copy of the register was a necessary preliminary to execution and the application made by the

(1) (1915) I.L.R., 39 Bom., 20. (2) (1922) I.L.R., 45 Mad., 466 at 471.
(3) (1913) I.L.R., 37 Bom., 317. (4) (1920) 12 L.W., 9.
(5) (1882) I.L.R., 5 Mad., 141.

decreeholder to the Subordinate Judge's Court would enable him to obtain it."

In this view the application was one in furtherance of execution proceedings and was a step in aid of execution. The decision in *Abdul Kader Rowther* v. *Krishnan Malaval Nair*(1) no doubt supports the appellant. There it was held that an application by a decree-holder for an adjournment to enable him to adduce further evidence was a step in aid of execution. We may point out that AYLING, J., in *Masilamani Mudaliar* v. *Sethuswami Ayyar*(2) found it impossible to concur with this view. The latest decision of our own Court is the one in *Balaguruswami Naicken* v. *Guruswami Naicken*(3) already referred to in another connection. The facts of the case are as follows. A mortgage-decree in favour of the plaintiffs was passed on the 14th of September 1916 and an execution application was filed on the 25th of September 1917. It was dismissed on the 17th of October 1917. The application that gave rise to the appeal was dated the 9th of March 1920. A certain sum of money in Court was paid to the decree-holder by order, dated the 31st of March 1920, and a cheque was actually issued on the 1st April 1920. The money in Court had been paid by a mortgagee of the judgment-debtor who had been directed to pay off the decree amount. The decree-holder relied to save his application from the bar of limitation on the date of the order for payment out to him of the money in Court. The learned Judges held that the application by the decree-holder is not a step in aid of execution. They base their decision on two grounds, (1) that in the circumstances of the case an application for an order for payment out by the Court is not a step in aid of

(1) (1915) I.L.R., 38 Mad., 695. (2) (1918) I.L.R., 41 Mad., 251 at 253.
(3) (1925) 48 M.L.J., 506.

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execution and (2) that as there was no pending execution application the order relied upon could not be considered to be a step in aid of execution. As regards the latter ground, we have already expressed our opinion. It is not necessary to discuss the first ground either as the decision, if correct, certainly supports the view that the application we have got to deal with in the present case is not a step in aid of execution. If we hold that the application in that case amounts to a step in aid of execution our opinion cannot help the appellant because as we have already pointed out his objection application cannot in any sense be deemed to be one in furtherance of execution proceedings.

The cases examined above show that there has been much diversity of opinion as regards the interpretation of the expression "applying to take some step in aid of execution." In our opinion, the decision in *Kuppuswami Chetty* v. *Rajagopala Aiyar*(1) interprets that expression correctly, and the weight of authority is in support of that interpretation. That decision must govern the present case. In this view the filing of statement by the decree-holder in this case objecting to the judgment-debtor's application to record satisfaction of the decree is not a step in aid of execution and cannot therefore save his last application from being barred by limitation. We therefore dismiss this appeal with costs.

K.R.

(1) (1922) I.L.R., 45 Mad., 466.