Before Mr. Justice Mitter and Mr. Justice Norris.

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May 18.

JUGMOHUN MAHTO (JUDGMENT-DEBTOR) *v.* LUCHMESHUR SINGH (DECREE-HOLDER).*

Limitation—Execution of decree—Limitation applicable to execution of decree passed when Act XIV of 1859 was in force—Disability of decree-holder—Minority—Limitation Act (XIV of 1859, ss. 11, 14 and 20 and XV of 1877, s. 7).

In execution of a decree, dated the 29th April 1862, certain proceedings were taken which terminated on the 5th September 1866, when the execution case was struck off the file. Between that date and the 25th September 1882 no further proceedings were taken. On the latter date an application was made for execution. The decree-holder was a minor when the decree was passed and did not attain his majority till the 25th September 1879.

Held, that the words to "bring an action" as used in s. 11, Act XIV of 1859, must be taken to be synonymous with the words to "bring a suit" and that the word "suit" must be construed in the same way as the word "suit" used in s. 14, and following the decision of the majority of the Full Bench in *Huro Chunder Roy Chowdhry* v. *Shoorodhonee Debia* (1) must be taken to include execution proceedings; *Muthoora Doss* v. *Shambhoo Dutt* (2) dissented from.

Held, therefore, that as Act XIV of 1859 was applicable to the case previous to the date on which Act XV of 1877 came into operation; and as under s. 11 the decree-holder was entitled to have the time during which he was a minor deducted from the period during which limitation was running against him, his right to execution was not barred when Act XV of 1877 came into force, and that being so, and the present application being made within three years of the date on which he attained his majority, execution of the decree was not barred. *Gurupadapa Basapa* v. *Virbhadrapa Irsangapa* (3) discussed; *Behary Lall* v. *Goberdhun Lal* (4) dissented from; *Nursingh Doyal* v. *Hurryhur Saha* (5); *Shumbhu Nath Saha Chowdhry* v. *Guru Churn Lahiry* (6) approved.

THIS appeal arose out of an application for execution of a decree, dated the 29th April 1862, passed in favor of the Maharajah of Durbungah. When the decree was obtained the Maharajah was

* Appeal from Appellate Order No. 57 of 1884, against the order of A. C. Brett, Esq., Judge of Tirhoot, dated 22nd of January 1884, affirming the order of Babu Koylash Chunder Mookerji, the Subordinate Judge of that district, dated 10th of March 1883.

(1) 9 W. R., 402.
(2) 20 W. R., 53.
(3) I. L. R., 7 Bom., 459.
(4) I. L. R., 9 Calc., 446; 12 C. L. R., 431.
(5) 6 C. L. R., 489.
(6) 6 C. L. R., 437.

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a minor, and it was not disputed that he attained his majority on the 25th September 1879. The present application for execution was made on the 25th September 1882, and it appeared that certain proceedings had been taken in execution between the years 1862 and 1866, but that those proceedings terminated on the 5th September 1866 when the case was struck off the file, and that between that date and the present application no proceedings of any kind had been taken.

The first Court decided the question of limitation in favor of the decree-holder, on the ground that Act XV of 1877 was applicable to the case, and that under s. 7 of that Act the decree-holder was allowed three years after attaining his majority, and that the present application was made within that period, the 25th September 1879 being excluded from such period under the provisions of s. 12.

In the lower Appellate Court it was contended on behalf of the judgment-debtor that, inasmuch as the Limitation Acts of 1859 and 1871 did not save applications for execution from being affected by the ordinary periods of limitation on the ground of minority of the decree-holder, but only "suits," the right to apply for execution in the present case was gone before the Act of 1877 was passed and that s. 7 of the latter Act could not apply, and the right could not be revived. The Court, however, held that Act XV of 1877 was applicable to the case, on the ground that the law applicable to proceedings in execution is not the law in force at the date of the institution of the suit, but the one in force at the time of the application as laid down in *Gurupadapa Basapa* v. *Virbhadrapa Irsangapa* (1), and as the decree-holder could not have applied for execution before that Act came into force, and as the application was made within the time limited by it, he was entitled to have the decree executed.

The appeal was accordingly dismissed with costs.

Against that decision the judgment-debtor now specially appealed to the High Court.

Baboo *Behari Lall Mitter* for the appellant.—The decree being one passed in the year 1862, the Limitation Act applicable is Act XIV of 1859, and s. 7 of Act XV of 1877 has no application

(1) I. L. R., 7 Bom., 459.

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to the case. Under the Act of 1859 the right to execution was barred, as under that Act the decree-holder was not entitled to any extension of time on the ground of minority as he would be now under the provisions of Act XV of 1877, and as the decree was barred before the latter Act came into force the right to execution cannot be revived

In support of these contentions, the following authorities were cited :—

Mungul Pershad Dichit v. *Grija Kant Lahiri* (1) ; *Behary Lall* v. *Goberdhun Lall* (2) ; *Muthoora Dass* v. *Shumbhoo Dutt* (3) ; *Shumbhu Nath Saha Chowdhry* v. *Guru Churn Lahiry* (4) ; *Nursingh Doyal* v. *Hurryhur Saha* (5) ; *Gurupadapa Basapa* v. *Virbhadrapa Irsangapa* (6).

Baboo *Mohesh Chunder Chowdry* (with him Baboo *Ram Charan Mitter*) for the respondent.

The Limitation law applicable to the case is Act XV of 1877 (*Gurupadapa Basapa* v. *Virbhadrapa Irsangapa* (6), and the right to take out execution was not barred before that Act came into force. Though it may be said that under s. 20 of Act XIV of 1859 the right was barred before Act XV of 1877 was passed, that is not so, for s. 20 of Act XIV of 1859 must be read in conjunction with s. 11 of that Act. Under the latter section, if at the time when the "right to bring an action" first accrues, the person entitled to such right is under a disability, the "suit" may be brought by him within the same period after the disability ceases. The words "right to bring an action" is merely another way of expressing "right to sue," and the word "suit" is used in the same section in the same sense as the word "action." Now in s. 14 the word "suit," is used in precisely the same sense as the word "action" is now in s. 11, and as used in that section it has been held by the majority of a Full Bench of the Court in the case of *Huro Chunder Roy Chowdhry* v. *Shoorodhonee Debia* (7) to include any proceeding instituted in

(1) L. R., 8 I. A., 123 ; I. L. R., 8 Calc. 51.
(2) I. L. R., 9 Calc. 446 ; 12 C. L. R., 431.
(3) 20 W. R., 53.
(4) 6 C. L. R., 437.
(5) 6 C. L. R., 489.
(6) I. L. R., 7 Bom., 459.
(7) 9 W. R., 402.

a Court of Justice, and would thus include a right to sue out execution. Therefore the words "right to bring an action" in s. 11 much be construed in the same way and not in their restricted sense, and if *that* is done, they would include a right to apply for execution. Then the decree-holder would under that section be entitled to three years, after he had attained his majority, in which to apply for execution, and as he did not attain his majority till the 25th September 1879, the right was not barred when Act XV of 1877 came into force. The period allowed under that Act is the same, and as the present application was made within that period the decision of the lower Courts is correct.

Baboo *Behari Lal Mitter* in reply.

The judgment of the High Court (MITTER and NORRIS, JJ.,) was as follows:—

MITTER, J. (NORRIS, J., concurring.)—The question for decision in this case is whether the execution of a decree, dated 29th April 1862, is barred by the law of limitation or not; the present application for its execution being made on the 25th September 1882. When the decree was obtained the decree-holder was a minor and his estate was in the Court of Wards. It appears that certain proceedings relating to the execution of the decree were taken between the years 1862 and 1866, and on the 5th September 1866 the execution case was struck off. Between that date and the present application no proceeding was taken either by the Court of Wards, or by the decree-holder after he attained his majority; which the Courts below have found was on the 25th September 1879. The lower Courts have decided this question of limitation in favor of the decree-holder. It has been held that s. 7 of the Limitation Act of 1877 entitles the decree-holder to make his application within three years from the date on which he attained majority. If the Limitation Act of 1877 is the Act applicable to this case, it is not disputed that the present application is within time.

It was not disputed, probably because it has now been conclusively settled, that either the day on which the decree-holder attained his majority or the day on which the application for execution is made, must be excluded from computation. One

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of those two days being excluded the application is made on the last day allowed by law, if the law is such as has been contended for by the learned vakeel for the respondent. Against the judgment two points have been made before us—*First*, that the decree being a decree of the year 1862, when the Limitation Act of 1859 was in force, s. 7 of the Limitation Act of 1877 has no application. In support of this contention the learned vakeel for the appellant has relied upon the well-known decision of their Lordships of the Judicial Committee of the Privy Council in the case of *Mungul Pershad Dichit* v. *Grija Kant Lahiri* (1); he has further relied upon the decision of this Court in *Behary Lall* v. *Goberdhun Lall* (2). In this latter case this Bench held, upon the authority of *Mungal Pershad Dichit's case*, that an application for execution made after the Limitation Act of 1877 came into force, in a suit which was pending at the time when Act XIV of 1859 was in operation, must be governed by the provisions of the latter Act. It was contended that if the law laid down in this last mentioned case be correct, then the lower Courts are not right in applying the provisions of s. 7 of the Limitation Act of 1877, but that the law applicable was the Limitation Act of 1859. That being so, it was further contended that under the Limitation Act of 1859, the execution was barred by limitation, because under that Act, it was contended, the decree-holder was not entitled to any indulgence on the ground of minority, and in support of that contention the ruling in the case of *Muthoora Dass* v. *Shumbhoo Dutt* (3) was cited. The next point that was made was that the present application is barred by limitation, because at the time when the Act of 1877 came into force, the decree was altogether barred by limitation, and that contention is also based upon the ground that under Act XIV of 1859 the decree-holder is not entitled to any indulgence on the ground of minority. It was contended that if, in the year 1877 when Act XV of that year came into operation, the present decree was not capable of being enforced, nothing in the Act itself would revive the

(1) L. R., 8 I. A., 123; I. L. R., 8 Calc., 51.
(2) I. L. R., 9 Calc., 446; 12 C. L. R., 431.
(3) 20 W. R., 53.

right to take out execution, which right had then been extinguished under the old law. In support of this contention the learned vakeel for the appellant has relied upon two decisions of this Court, *Shumbhu Nath Saha Chowdhry* v. *Guru Churn Lahiry* (1) and *Nursingh Doyal* v. *Hurryhur Saha* (2). As regards the first contention, the learned vakeel for the respondent, as well as the lower Courts, rely upon a decision of the Bombay High Court in *Gurupadapa Basapa* v. *Virbhadrapa Irsangapa* (3). In that case the learned Judges dissented from the view laid down in *Behary Lall* v. *Goberdhun Lall* (4). This latter decision was a decision of this Bench, and I am free to confess that I overlooked in that case one important point, *viz.*, whether or not, at the time when the Limitation Act of 1877 came into operation, there was any proceeding pending within the meaning of s. 6 of Act I of 1868. The learned Judges of the Bombay High Court say: "In the case quoted, *Behary Lall* v. *Goberdhun Lall*, 'proceedings' are identified with 'suit,' but we think that where a decree has been obtained, the application for execution initiates a new set of proceedings." As to "proceedings" being identified with "suit" it seems to me that we held that proposition to be correct on the authority of the Privy Council decision in *Mungal Pershad Dichit's* case, and after hearing arguments in this case, and after considering the judgment quoted, I still adhere to that opinion, *viz.*, that an application for execution of a decree is an application in the suit which resulted in the decree. That was distinctly held in *Mungal Pershad Dichit's* case, and we are bound by that decision. But at the same time it seems to me that, although it is an application in that suit, it may not be an application in a pending proceeding. The suit having matured into a decree could not properly be said to be pending thereafter. A proceeding to be a pending proceeding after the decree, must be initiated by an application for execution. But after a suit terminates in a decree, if nothing further is done, it cannot be said to be a pending proceeding. It is on that ground that I think we were not right in the deci-

(1) 6 C. L. R., 437.
(2) 6 C. L. R., 489.
(3) I. L. R., 7 Bom. 459.
(4) I. L. R., 9 Calc., 446; 12 C. L. R., 431.

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sion in *Behary Lall* v. *Goberdhun Lall* (1). There we assumed as a fact that the proceedings were pending, although there was nothing on the record to show that anything in the shape of proceedings were pending. Then, as regards the next contention, it seems to us that the view taken by this Court, if I am permitted to say so, in the decisions in *Shumbhu Lall Saha Chowdhry* v. *Guru Churn Lahiry* (2), *Nursingh Doyal* v. *Hurryhur Saha* (3) is quite correct, and I entirely concur in that view, not because the words "right to sue" in s. 2 of Act XV of 1877 necessarily mean "right to sue out execution," but because from the provisions of that section and other sections in that Act it is clear that it was the intention of the Legislature to extend the provisions of that section to proceedings in execution also. Mr. Justice Pontifex, at page 493 referring to s. 2, Act XV of 1877, says: "No doubt there is some foundation for this argument," *viz.*, (the argument which was urged then, that the words used were 'to revive any right to sue,' and that these words did not include a right to take out execution,) "from the imperfect language used in the Act, but we think that s. 2 at least indicates the policy of the Act." Upon this ground it was held that it was the intention of the Legislature (as far as it could be gathered from that section and other sections of the Act) to extend the provisions of s. 2 of the Act to applications for execution also. We, therefore, come to the conclusion that if it can be shown that this application, if made just the day before Act XV of 1877 came into operation, would have been barred, then s. 7 of the Act of 1877 would have no application. The question therefore is whether the decree was barred on that date. Now, upon this point it is quite clear that the law to be looked at is Act XIV of 1859, because that has been held by the Judicial Committee of the Privy Council in *Mungal Pershad Dichit's* case. The decree is dated 1862, when Act XIV of 1859 was in force; and, although there had been an intermediate Limitation Act in 1871, it was held by their Lordships of the Judicial Committee that, if the decree is dated at a time when Act XIV was in force, that Act alone would govern the application for execution of

(1) I. L. R., Calc., 446; 12 C. L. R. 431.
(2) 6 C. L. R., 437. (3) 6 C. L. R., 489.

decree. We, therefore, come to the consideration of the question whether under Act XIV of 1859 the decree-holder would have been barred if he had made his application in the year 1877. The answer to this question depends upon the construction to be put upon ss. 11 and 20 of the Limitation Act of 1859. Section 20 says: "No process of execution shall issue from any Court not established by Royal Char ter to enforce any judgment, decree or order of such Court, unless some proceeding shall have been taken to enforce such judgment, decree or order, or to keep the same in force within three years next preceding the application for such execution." That is the general position, *viz.*, that unless there is some proceeding taken within three years next before the application it would be held to be barred by limitation. It was pointed out in some cases decided under the old Act, that there is a defect in the language of the section, and that it really means that no process of execution shall issue from any Court not established by Royal Charter unless an application for execution shall have been made within three years from the date of the decree, &c. Now, in this case, if s. 20 applies, there is no doubt that the application was barred by limitation, because the date of the decree is 29th April 1862, and the last proceeding taken was struck off on the 25th September 1866, and nothing was done between that date and the date when the Act of 1877 came into operation. Therefore, clearly, under s. 20 the application made on that date should have been held to be barred by limitation. Therefore, unless the decree-holder was entitled to rely upon s. 11 of the Limitation Act of 1859, the present application must be held barred. Upon this point the learned vakeel for the respondent relied upon a Full Bench decision in *Huro Chunder Roy Chowdhry* v. *Shoorodhonee Debia* (1); that was a decision upon the construction of s. 14 of the Limitation Act of 1859. The same difficulty arose in applying s. 14 to execution proceedings as in applying s. 11, and it was held by the majority of the Court in that case that the word "suit" must not be construed in a restricted sense, and that it means any proceeding instituted in a Court of Justice. Having regard to the arguments used in support of this conclusion I do not see any distinction between the construc-

(1) 9 W. R., 402.

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tion to be put as regards this point upon s. 14 and s. 11. No doubt in s. 14 the words used are: "The time during which the claimant, or any person under whom he claims, shall have been engaged in prosecuting a suit upon the same cause of action against the same defendant, or some person whom he represents, *bonâ fide* and with due diligence, &c.," and in s. 11 the words used are: "If at the time when the right to bring an *action* first accrues the person to whom the right accrues is under a legal disability, the action may be brought by such person." But it seems to me that the words "to bring an action," may be converted into the words "right to bring a suit," and that is also clear because in the section itself the word "suit" has been subsequently used as a substitute for the word "action." If we give effect to the argument upon which this broad construction was put on the word "suit," then we are compelled to come to the same conclusion as to the construction to be put upon s. 11 as the learned Judges in the last mentioned case came to as to the construction to be put on s. 14. Therefore it seems to me that s. 11 also applies to execution proceedings. No doubt this view is opposed to that expressed in the decision in *Muthoora Dass* v. *Shumhboo Lall* (1) and the cases there cited, but the decision in *Huro Chunder Roy Chowdhry* v. *Shoorodhonee Debia* (2) being a Full Bench decision, and we agreeing with the reasons given in that judgment, are not bound by the decision and the decisions cited therein. For these reasons I am of opinion that under Act XIV of 1859 the decree had not been barred by Limitation at the time when Act XV of 1877 came into force. There is only one point which remains to be noticed, *viz.*, that when the Act of 1877 came into operation the decree-holder was not in a position to execute the decree as he was then under the guardianship of the Court of Wards; but this would not prejudice his rights; it has been so held by the Privy Council in the case of *Phoolbas Koonwur* v. *Lalla Jogeshur Sahoy* (4).

On these grounds I am of opinion that the decisions of the lower Courts are correct. The appeal will be dismissed with costs.

Appeal dismissed.

(1) 20 W. R., 53.
(2) 9 W. R., 402.
(3) 20 W. R., 53.
(4) I. L. R., 1 Calc., 226.