a person who has nothing to lose, while the other party will be put to expense in defending himself. These considerations prevent us from holding that the Court is helpless in the matter of admitting suits or appeals *in forma pauperis*, whatever the merits of the case may be, if once pauperism is established. A person coming to Court as a pauper has the less reason to complain against this construction of the rule so far at any rate as appeals are concerned, because he has had one chance of litigating his claim in the Court of first instance, and, unless we are satisfied beyond doubt that the rule-making authority intended to give him a second chance, without any expenditure on court-fees, we are not disposed to extend the indulgence unconditionally.

A.S.V.

APPELLATE CIVIL.

Before Sir Owen Beasley, Kt., *Chief Justice, and Mr. Justice King.*

1934, August 21.

CHIKKA VEERAPPA SETTI (RESPONDENT), APPELLANT,

v.

SARKARU MUNISAMI ACHARI AND FOUR OTHERS (APPELLANTS), RESPONDENTS.*

Limitation Act (IX of 1908), art. 182 (5)—Step in aid of execution—Batta application filed under O. XVI, r. 1, Code of Civil Procedure (Act V of 1908), for summoning witnesses to disprove plea of satisfaction of decree by judgment-debtor if.

A decree-holder put in an execution application for the transfer of the decree to another Court for execution. The

* Letters Patent Appeal No. 27 of 1933.

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judgment-debtors contested the application saying that the decree had been fully satisfied. The decree-holder filed a batta application under Order XVI, rule 1, of the Code of Civil Procedure asking the Court to summon witnesses for the purpose of showing that the judgment-debtors' objection that the decree had been satisfied was untrue.

Held that the batta application was a step in aid of execution within the meaning of article 182 (5) of the Indian Limitation Act.

To summon witnesses with the object of removing the judgment-debtors' objection clearly aids execution.

Abdul Quddus v. *Sayed Ahmad Hussain*, A.I.R. 1923 All. 415, *Sheo Sahay* v. *Jamuna Prasad Singh*, (1924) I.L.R. 4 Pat. 202, and *Ram Chand* v. *Dyal Singh*, A.I.R. 1929 Lah. 335, followed.

APPEAL preferred under Clause 15 of the Letters Patent to the High Court against the judgment and order of PAKENHAM WALSH J., dated 13th December 1932 and made in Appeal against Appellate Order No. 114 of 1929 preferred to the High Court against the order dated 8th October 1928 and made in Appeal Suit No. 35 of 1928 on the file of the Sub-Court, Chittoor (Register Execution Petition No. 787 of 1926 in Original Suit No. 434 of 1919, District Munsif's Court, Madanapalli).

A. C. Sampath Ayyangar for appellant.

M. S. Ramachandra Rao for *B. Somayya* for respondents.

Cur. adv. vult.

JUDGMENT.

BEASLEY C.J.

BEASLEY C.J.—The question for consideration in this appeal is whether an execution petition filed on 22nd November 1926 was barred by limitation. The executing Court found it barred; the lower appellate Court found it not barred and

PAKENHAM WALSH J. in second appeal found that it was barred.

Briefly the facts are as follows. The decree-holder in Original Suit No. 434 of 1919 in the District Munsif's Court, Madanapalle, put in an execution application on 20th August 1923 for the transfer of the decree to the District Munsif's Court of Chittoor for execution. The third and sixth defendants contested the application saying that the decree was fully satisfied. Transfer of the decree for execution was eventually ordered on 7th December 1923. The execution petition of the 22nd November 1926 was admittedly barred unless something had been done subsequent to the date of the application of 20th August 1923 which saved limitation. The article of the Limitation Act in question is article 182, clause 5, and the appellant in the lower appellate Court and the second appellate Court contended that he had taken a step in aid of execution of the decree within three years before the filing of the execution petition on the 22nd November 1926. Three steps were relied upon. The first was a batta application, Exhibit B, put in on 27th November 1923, the second was a vakalath put in in the appeal preferred by the judgment-debtors against the transmission of the decree, and the third was an affidavit (Exhibit C). The plaintiff had been ordered to produce his accounts and in Exhibit C stated that he had not those accounts in his possession and in the third paragraph of Exhibit C stated "as prayed for in the petition, orders are necessary for taking out execution." PAKENHAM WALSH J. took the view that none of these steps were steps in aid of execution of the decree.

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I will proceed to consider the first step relied upon which is also the first in order of date. The batta application (Exhibit B) was one made under Order XVI, rule 1, Civil Procedure Code, asking the Court to summon persons to attend and give evidence. It is common ground that these witnesses were required by the appellant for the purpose of showing that the judgment-debtors' objection that the decree had been satisfied was untrue. The appellant's contention is that this objection or obstruction to execution by the judgment-debtors had to be removed before the decree could be executed and that, by presenting the batta application to the Court, he was asking the Court to do something which would help to remove the obstruction to execution and allow execution to go on and that the batta application therefore was a step in aid of execution. It is admitted by the respondents that there are no decisions of the Madras High Court in which an exactly similar state of facts has been considered. On the other hand, there are nine decisions of other High Courts, all of them directly bearing on this point, and in all of which it has been held that this and similar steps were steps in aid of execution of the decree within the terms of article 182 (5) of the Indian Limitation Act. I propose, first of all, to deal with these decisions. The first of these is *Kedar* v. *Lakhi*(1). There, an application for execution of a decree for possession of certain property had been made and the judgment-debtor filed an objection which rendered it necessary to ascertain the standard of measurement and for that purpose the decree-holder applied for

(1) (1917) 26 C.L.J. 115.

summons upon his witnesses. It was held that the application made by the decree-holder for summoning witnesses was an act in furtherance of his application for execution and was, therefore, a step in aid of execution within the meaning of article 182 (5) of Schedule I of the Indian Limitation Act. The next is *Brojendra Kishore Roy Choudhury* v. *Dil Mahmud Sarkar*(1). There, in execution proceedings the judgment-debtor put in an objection and the Court ordered the parties to adduce evidence in support of their respective cases. The decree-holder filed a list of witnesses and stated that he was ready to proceed with his case and it was held that this implied an application to the Court to take the evidence which he was prepared to adduce to repel the objection taken by the judgment-debtor and was an application to the Court to take some step in aid of execution. In *Hatimulla* v. *Sukhamoy Chaudhari*(2) it was held that, where a judgment-debtor presented a petition saying that there was an adjustment of the decree and the decree-holder attended Court with witnesses to contest that case, this act on the part of the decree-holder should be taken to be an application to the Court to take a step in aid of execution. In *Ram Lakhan Singh* v. *Lala Mewa Lal*(3) the facts were slightly different. There, execution proceedings were consigned to the record-room by an order passed behind the back of the decree-holder without any default on his part and without any decision; and it was held that a further application made by the

(1) (1918) 22 C.W.N. 1027. (2) A.I.R. 1930 Cal. 304.
(3) A.I.R. 1922 All. 433.

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decree-holder was really a continuance of the older application and came within article 182 (5). In *Abdul Quddus* v. *Sayed Ahmad Hussain*(1) which is directly in point it was held that, where in execution of a simple money decree a certain property was attached and objection was preferred by the judgment-debtor and the decree-holder put in his application to summon witnesses in reply to the objection, this application for summoning witnesses was a step in aid. In *Umar Din* v. *Ghulam Muhammad*(2) it was held that an application by the decree-holder to summon witnesses to resist an objection by the judgment-debtor was a step in aid. In *Ram Chand* v. *Dyal Singh*(3) there was an application by the decree-holder to get rid of the objections raised by the judgment-debtor and an application for extension of time in complying with the orders of the Court and it was held that these were steps in aid of execution. In *Sheo Sahay* v. *Jamuna Prasad Singh*(4), where the facts were similar to those here, in the judgment of the Court it is stated :

> "There can hardly be any doubt that the decree-holders are entitled to regard any step taken by them to remove the obstacle thrown by the judgment-debtor in their way to the realization of their decree as a step in aid of execution."

In *Jagdeo Narain Singh* v. *Rani Bhubaneshwari Kuer*(5) it was held that the filing of a list of witnesses in order to contest an application made by the judgment-debtor to set aside an execution sale was a step in aid of execution within the meaning of article 182 (5) of the Limitation Act. These decisions bear directly upon this point and express

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(1) A.I.R. 1923 All. 415.
(2) A.I.R. 1927 Lah. 653.
(3) A.I.R. 1929 Lah. 335.
(4) (1924) I.L.R. 4 Pat. 202.
(5) (1928) I.L.R. 7 Pat. 708.

with no uncertain voice the opinion of four of the Indian High Courts.

On the respondents' side reliance was placed upon two decisions of this High Court. The first was *Kuppusawmi Chettiar* v. *Rajagopala Aiyar*(1). There, a decree-holder filed an objection to the judgment-debtor's application to enter up satisfaction of the decree. No application for execution was pending then and it was held that the decree-holder's statement in objection was not a step in aid of execution especially when no application for execution was pending. At page 471, AYLING J. says :—

> "But whatever case may be made out for an application made in connection 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. A man cannot be said to take some step in aid of a petition which has not been initiated."

It was unnecessary there to express any opinion upon the point whether a statement filed in opposition to a judgment-debtor's objection in execution proceedings can be a step in aid of execution. This case is clearly distinguishable from the present case for the reason that there was no execution petition pending and further in this case we are not dealing with the mere filing of a statement but with an application made to the Court to summon witnesses. In my opinion, this case is of no assistance to the respondents. The other case is *Krishna Patter* v. *Seetharama Patter*(2). There, it was held that the filing of a statement by a decree-holder objecting to the judgment-debtor's application to record satisfaction of the

(1) (1921) I.L.R. 45 Mad. 466. (2) (1926) I.L.R. 50 Mad. 49.

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decree is not a step in aid of execution of a decree; and *Kuppusawmi Chettiar* v. *Rajagopala Aiyar*(1) (already referred to) was followed. Here again, no application to the Court had been made to summon witnesses. There had been merely the filing of a statement. In the course of the judgment, PHILLIPS and MADHAVAN NAIR JJ. refer to a passage from the judgment of SESHAGIRI AYYAR J. in *Rangachariar* v. *Subramania Chetty*(2) where he says:

> "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."

Reliance is also placed by him on a passage from the judgment in *Raghunundun Misser* v. *Kallydut Misser*(3). What was being considered in that case was 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. The passage relied on is as follows:—

> "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 steps in aid of execution. A step taken by the judgment-creditor himself is not . . . sufficient."

PHILLIPS and MADHAVAN NAIR JJ. then say:

> "This case has been followed in *Kuppusawmi Chettiar* v. *Rajagopala Aiyar*(1). 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."

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(1) (1921) I.L.R. 45 Mad. 466. (2) (1920) 12 L.W. 9, 10.
(3) (1896) I.L.R. 23 Calc. 690, 692.

The learned Judges therefore emphasise the very important distinction that there is between cases such as the one under appeal and cases similar to *Krishna Patter* v. *Seetharama Patter*(1). The judgment-creditor must show that he asks the Court to take some steps in aid of execution. Merely filing a statement is not asking the Court to take a step in aid of execution. In the present case, the judgment-creditor has asked the Court to take some step. The question is, would that step aid execution? To summon witnesses with the object of removing the judgment-debtor's objection, in my view, clearly aids execution. I do not think that I can put the point better than BHIDE J. does in *Ram Chand* v. *Dyal Singh*(2). He there says :

"The expression step in aid has not been defined in the Limitation Act but I am unable to see any good reason why an application by the decree-holder to get rid of the objections raised by a judgment-debtor which stand in the way of execution of his decree should not be looked upon as a step in aid. When objections are raised to execution by a judgment-debtor a decree-holder has first to get rid of them for the further progress of the proceedings. In fact he will not be able to take any positive action for attachment, sale, etc., until and unless the objections are removed. An application for resisting or removing the objection, therefore, does aid execution in this manner and I do not see why it should be excluded from the scope of article 182 (5), Limitation Act."

PAKENHAM WALSH J. in his judgment says :—

"I entirely agree with the reasoning of the learned Subordinate Judge that if the counter itself, the most important document without which none of the subsequent proceedings in execution could take place, is not a step in execution none of the subsequent steps in removing the obstruction can be steps in aid."

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(1) (1926) I.L.R. 50 Mad. 49. (2) A.I.R. 1929 Lah. 335, 336.

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With respect I am unable to follow this line of reasoning, namely, that, because something earlier is not a step in aid, something later which follows it therefore cannot be. It may be that the counter-affidavit without anything more leaves the execution proceedings where they are, but the summoning of witnesses carries the case well beyond that stage and leaves the Court in a position to decide upon the evidence of the witnesses summoned whether the execution should proceed or not which a mere affidavit may not do. An application to the Court with this object in view is a different thing altogether from the mere filing of an affidavit. As I have stated before, there are no decisions of this High Court directly bearing on this point and, in the absence of any, I am content to follow the decisions of the four other High Courts which do bear directly on the point and to which reference has already been made. I think that it is most desirable that upon such a question as this the High Courts in India should be in agreement and, furthermore, those decisions, in my opinion, are founded on obvious commonsense. Both the second appellate Court and the first Court were in error here. In view of my opinion on this first point, it is unnecessary to discuss the other points relied upon by the appellant as limitation has been saved by the presentation of the batta application. The result is that this Letters Patent Appeal must be allowed with costs here and in second appeal and the order of the Subordinate Judge restored and the petition remanded to the execution Court for disposal according to law.

KING J.—I agree.

A.S.V.