APPELLATE CIVIL.

Before Mr. Justice King and Mr. Justice Krishnaswami Ayyangar.

1938, September 27.

NANDURI SRIRAMACHANDRA RAO (PETITIONER—PLAINTIFF), APPELLANT,

v.

CHINTAMANIBHATLA VENKATESWARA RAO AND TWO OTHERS (COUNTER-PETITIONERS—DEFENDANTS 2, 6 AND 7), RESPONDENTS.*

Indian Limitation Act (IX of 1908), art. 182—Ex parte decree—Order refusing to set aside—Appeal against, by some of defendants—Judgment allowing, extending its benefits to other defendants also subject to a specified condition to be complied with within a specified time—Condition not complied with by them and ex parte *decree therefore standing confirmed against them as and from expiry of that time—Execution of decree against them—Starting point of limitation for—"Appeal" in column III of article—Meaning of.*

An application made to a Subordinate Judge to set aside an *ex parte* decree passed on 5th March 1930 was dismissed by him and against that order of dismissal defendants 1 and 3 to 5 in the suit appealed to the High Court. On 20th October 1932 the High Court gave judgment allowing the appeal and extending its benefits to defendants 2, 6 and 7 also on condition that they deposited the decree amount within three months. That deposit was not however made, and so as against defendants 2, 6 and 7 the *ex parte* decree stood confirmed as from 20th October 1932. On 15th August 1935 the decree-holder filed an application to execute the decree against defendants 2, 6 and 7.

Held that the period of three years prescribed by article 182 of the Limitation Act ran from 20th October 1932, the date of the appellate decree of the High Court, and not from 5th March 1930, the date of the *ex parte* decree, and that the application of 15th August 1935 was not barred by limitation.

* Appeal Against Order No. 419 of 1936.

"Appeal" in column III of article 182 means "an appeal in the suit which is likely to affect the decree sought to be executed" and not merely an appeal against the actual decree or order sought to be executed.

Firm Dedhraj Lachminarayan v. *Bhagwan Das*(1) followed.

Koyakutti v. *Veerankutti*(2) approved.

Nagendranath De v. *Sureshchandra De*(3) referred to.

Fakir Chand Mandal v. *Daiba Charan Parni*(4) not followed.

APPEAL against the order of the Court of the Subordinate Judge of Vizagapatam, dated 15th April 1936 and made in Execution Petition No. 108 of 1935 in Original Suit No. 24 of 1929.

Y. Suryanarayana for appellant.

B. V. Ramanarasu for respondents.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by KING J.—This appeal arises out of an application by the decree-holder in Original Suit No. 24 of 1929 on the file of the Principal Subordinate Judge, Vizagapatam, to execute against defendants 2, 6 and 7 the decree which he obtained against them *ex parte* on 5th March 1930. There was an application to the Subordinate Judge to set aside this *ex parte* decree which was dismissed. Against this order of dismissal defendants 1 and 3 to 5 appealed to the High Court. On 20th October 1932 the High Court gave judgment allowing the appeal, and extending its benefits to defendants 2, 6 and 7 also on condition that they deposited the decree amount within three months. This deposit was not however made, and so as against defendants 2, 6 and 7 the *ex parte* decree stood confirmed as from 20th October 1932. The present application for execution was made on 15th August 1935. It has been dismissed by the learned

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(1) (1937) I.L.R. 16 Pat. 306. (2) (1937) I M.L.J. 407.
(3) (1932) I.L.R. 60 Cal. 1 (P.C.). (4) (1927) I.L.R. 54 Cal. 1052.

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Subordinate Judge as being filed more than three years after the date of the decree and the question before us is whether that order of dismissal is in accordance with law.

The law which applies to these facts is formulated in article 182 of the Limitation Act. The description of the application in column 1 is :

"For the execution of a decree or order of any Civil Court . . ."

The period of limitation in column II is three years. The "time from which period begins to run" in column III is :

"1. The date of the decree or order, or

2. (Where there has been an appeal) the date of the final decree or order of the appellate Court . . ."

If the first date is to be chosen in the present case, the execution application is clearly barred ; if the second, it is clearly within time, and the very simple question for our determination is whether the words "where there has been an appeal" apply to the present case or not.

Simple, however, as these words are, they have been in the past interpreted in two distinct ways. According to the first interpretation "appeal" can and must mean only an appeal against the actual decree or order sought to be executed. The second interpretation gives it a wider meaning which for the present we may best express in the words of VENKATARAMANA RAO J. in *Koyakutti* v. *Veerankutti*(1) as

"an appeal in the suit which is likely to affect the decree sought to be executed."

Although this more liberal interpretation was adopted more than fifty years ago in *Narsingh Sewak Singh* v. *Madho Das*(2) and *Lutful Huq v. Sumbhudin Pattuck*(3),

(1) (1937) 1 M.L.J. 407. (2) (1882) I.L.R. 4 All. 274.
(3) (1881) I.L.R. 8 Cal. 248.

the current of authority thereafter set strongly against it, so that by 1927 the learned Judges who decided *Fakir Chand Mandal* v. *Daiba Charan Parni*(1) were able to hold that the first view was both "clear upon principle" and "concluded by authority". Then came the decision of the Privy Council in *Nagendranath De* v. *Sureshchandra De*(2) and of the four cases decided since then, *Nagappa Bandappa* v. *Gurushantappa Shankrappa*(3), *Firm Dedhraj Lachminarayan* v. *Bhagwan Das*(4), *Ahammad Kutty* v. *Kottekkat Kuttu*(5) and *Koyakutti* v. *Veerankutti*(6), only one has failed to take the more liberal view.

With all respect to the learned Judges in *Fakir Chand Mandal* v. *Daiba Charan Parni*(1) we are unable to see how the narrower view which they upheld is "clear upon principle." The only principle we can discover in the rulings cited for the respondents is that the words "where there has been an appeal" must be taken in their context, that is to say, with reference to the words in column I of article 182. But it does not necessarily follow that because a decree or order is mentioned in column I, the appeal which is mentioned in column III must be *against* that decree or order. It is equally logical to say that it must be something which *affects* that decree or order, and, after all, the Legislature has refrained from saying, what it could have said with ease if that had been its intention, "where there has been an appeal against that decree or order."

The true principles which, we think, should govern this interpretation are set out in the judgment of the

(1) (1927) I.L.R. 54 Cal. 1052.
(2) (1932) I.L.R. 60 Cal. 1 (P.C.).
(3) (1932) I.L.R. 57 Bom. 388.
(4) (1937) I.L.R. 16 Pat. 306.
(5) (1932) I.L.R. 56 Mad. 458.
(6) (1937) 1 M.L.J. 407.

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Privy Council in *Nagendranath De* v. *Sureshchandra De*(1). On page 5 their Lordships say :

"There is no definition of appeal in the Code of Civil Procedure, but their Lordships have no doubt that any application by a party to an appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptation of the term, and that it is no less appeal because it is irregular or incompetent."

On page 6 they say :

"The question must be decided upon the plain words of the article . . . There is, in their Lordships' opinion, no warrant for reading into the words quoted any qualification either as to the character of the appeal or as to the parties to it ; the words mean just what they say. The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions, equitable considerations are out of place, and the strict grammatical meaning of the words is, their Lordships think, the only safe guide. It is at least an intelligible rule that, so long as there is any question *sub judice* between any of the parties, those affected shall not be compelled to pursue the so often thorny path of execution, which, if the final result is against them, may lead to no advantage."

Now it is true that their Lordships were not dealing with an actual appeal against an order refusing to set aside an *ex parte* decree, as we are here, but with an appeal against the decree itself which was sought to be executed, and the immediate result of their decision was to hold that, even if such an appeal were irregular in form and one to which the judgment-debtors were not parties, it was none the less an appeal within the meaning of article 182. But the principles contained in the passages quoted are, we think, wide enough to cover the present case and other cases of a similar nature. In *Firm Dedhraj Lachminarayan* v. *Bhagwan Das*(2) it was held that the definition of an appeal given by their Lordships would apply to an appeal

(1) (1932) I.L.R. 60 Cal. 1 (P.C.). (2) (1937) I.L.R. 16 Pat. 306.

against an order refusing to set aside an *ex parte* decree—and with this we respectfully agree. And it is, of course, obvious that the "intelligible rule" laid down by their Lordships in the concluding sentence of the second passage quoted must apply to the facts of the present case, where the success of an appeal against an order refusing to set aside an *ex parte* decree has precisely the same effect in regard to execution as a successful appeal against that decree itself.

The principles of the Privy Council ruling have also been applied to two other somewhat similar situations—in *Nagappa Bandappa* v. *Gurushantappa Shankrappa*(1) to an appeal against an order granting a review of the original decree, and in *Koyakutti* v. *Veerankutti*(2) to an appeal against a preliminary decree in a mortgage suit which is not itself executable. The only case in which the principles of *Nagendranath De* v. *Sureshchandra De*(3) have apparently not been followed is *Ahammad Kutty* v. *Kottekkat Kuttu*(4) where also the appeal was against a preliminary decree. But it is significant that MADHAVAN NAIR J. who decided that case did so, not on the ground that the final decree actually obtained in that suit was not in fact imperilled by the appeal, but on the ground that there was nothing to prevent the plaintiff from applying for a fresh final decree (*see* page 465). Such an argument, even if accepted, could of course obviously not apply to an appeal against an order refusing to set aside an *ex parte* decree.

It was argued for the respondents by Mr. Ramanarasu that the narrower interpretation of the word "appeal" must be accepted for if we choose the wider one, we would be bound to apply it to a situation in which there had been a separate suit to set aside

(1) (1932) I.L.R. 57 Bom. 388.
(2) (1937) 1 M.L.J. 407.
(3) (1932) I.L.R. 60 Cal. 1 (P.C.).
(4) (1932) I.L.R. 56 Mad. 458.

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a decree on some such ground as that of fraud, and the filing of an appeal against a decree in *that* suit. That is a situation with which we have not now to deal and may well we think be left until it arises. Meanwhile it is not difficult to perceive a clear distinction between an appeal arising from an order in the very suit whose decree is sought to be executed and an appeal from a decree in quite a different suit. We do not therefore feel deterred by the consideration of that particular hypothetical case from expressing our respectful agreement with *Firm Dedhraj Lachminarayan* v. *Bhagwan Das*(1) which is a direct authority on the present facts. We accordingly allow this appeal and setting aside the order of the learned Subordinate Judge direct that Execution Petition No. 108 of 1935 be restored to file and be disposed of on its merits. Costs in the execution petition to abide the result. The respondents must pay the appellant's costs of the appeal.

A.S.V.

(1) (1937) I.L.R. 16 Pat. 306.