

SPANKIE, J. —I concur.

The case having been returned to the Division Court, the Court (after stating the facts) delivered the following

JUDGMENT.—The period of three years must be computed from the date on which the last application to enforce the decree was filed. It cannot be said that the application of the 28th August, 1872, was an application to enforce the decree. It was on the contrary an application for the suspension of the proceedings. Under the circumstances the Court below was right in holding the present application barred by limitation. The appeal is dismissed with costs.

FULL BENCH.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, and Mr. Justice Spankie.

WILAYAT-UN-NISSA (DECREE-HOLDER) v. NAJIB-UN-NISSA (JUDGMENT-DEBTOR).*

Execution of Decree obtained on Bond specially Registered—Act XX of 1866 (Registration Act), ss. 52, 53, 54, 55—Appeal.

Held (STUART, C. J., dissenting) that an appeal lies from an order passed in the execution of a decree obtained under the provisions of s. 53 of Act XX of 1866 upon a bond specially registered under the provisions of s. 52 of that Act.

Ramanand v. The Bank of Bengal (1) over-ruled. Petition of Behuree (2) and Hurnath Chatterjee v. Futtick Chunder (3) dissented from.

THIS was an application for the execution of a decree which had been obtained under the provisions of s. 53 of Act XX of 1866 upon a bond specially registered under the provisions of s. 52 of that Act. The judgment-debtor objected that the application was barred by limitation, inasmuch as it was governed by art. 166, sch. ii of Act IX of 1871. The decree-holder contended that the application was within time, as it was governed by art. 166, sch. ii of Act IX of 1871. The Court of first instance held that the period of limitation applicable was that provided in art. 166, viz., one year, and not that provided in art. 167, viz., three years, and, as

* Miscellaneous Special Appeal, No. 10 of 1877, from an order of H. M. Chase, Esq., Judge of Aligarh, dated the 27th November, 1876, affirming an order of Maulvi Sami-ul-la Khan, Subordinate Judge of Aligarh, dated the 19th May, 1876.

(1) I. L. R., 1 All. 377.

(2) 7 W. R., 130.

(3) 18 W. R., 512.

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the period of one year had elapsed, rejected the application as barred by limitation.

On appeal by the decree-holder the lower appellate Court also held that the period of limitation applicable was that provided in art. 166.

The decree-holder appealed to the High Court, contending that art. 167 governed the application. The Court (TURNER and OLDFIELD, JJ.) referred to the Full Bench the question whether an appeal would lie from an order made in the execution of a decree obtained under the provisions of s. 53 of Act XX of 1866 upon a bond specially registered under the provisions of s. 52 of that Act.

Lala *Lalta Prasad*, for the appellant.

The *Junior Government Pleader* (Babu *Dwarkanath Banarji*), for the respondent.

The following judgments were delivered by the Full Bench :

STUART, C. J.—The question submitted to the Court in this reference was raised almost under identical circumstances in a case before and decided by Mr. Justice Oldfield and myself—*Ramanand v. The Bank of Bengal*(1)—and to our ruling in that case I advisedly and deliberately adhere. Indeed, the reasoning that arrives at a different conclusion is, to my mind, after an experience of thirty years in the practice of the law, absolutely unintelligible.

The provision in s. 53 of Act XX of 1866 enacts that “such decree may be enforced forthwith under the provisions for the enforcement of decrees contained in the Code of Civil Procedure,” and this lets in the Code *so far as the enforcement of decrees* made under this portion of Act XX of 1866 is concerned, but it does not follow, and it is not the law, that this s. 53 lets in and enforces the *whole* provisions of the Code of Civil Procedure, Act VIII of 1859, relating to the execution of decrees. To hold otherwise would be, in effect, to render nugatory s. 55 of Act XX of 1866 which provides that “there shall be *no appeal* against any decree or order made under s. 53, s. 54, or this section.” To that extent therefore this section forbids the application of the Code of Civil Procedure, that is, so far as *appeals* are concerned, and only imports the Code

(1) I. L. R., 1 All., 377.

“for the enforcement of decrees.” The ruling of the Calcutta High Court therefore in 7 W. R. 130 and 18 W. R. 512 is clearly right.

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It is suggested that the prohibition against appeals in s. 55 is intended only to apply to orders passed under that and the two previous sections, and not to decrees in course of execution under the Civil Procedure Code. But no such distinction is admissible in this case. The Civil Procedure Code, so far as it relates to the enforcement of decrees, is, by the sections in question, 53, 54, and the first part of s. 55, made part of Act XX of 1866, only limited by the proviso of the first part of s. 55 which takes away all appeals. In all other respects the Code of Procedure for the enforcement of decrees applies, and this is the meaning of Act XX of 1866 in regard to all decrees and orders whatsoever passed “in any proceeding under this part of the Act,” as s. 54 provides. The proceeding which is the subject of the reference before us is an order passed on an application for the execution of a decree under s. 53 of the Act, and the order of the Subordinate Judge was that the decree was barred by lapse of time, and this is clearly an order within the meaning of s. 55, which takes away all right of appeal whatever.

PEARSON, J.—I am of opinion that the orders in execution of the decree given under s. 53 of Act XX of 1866 are not passed under that section, but under the Civil Procedure Code, which that section makes applicable to them, and are appealable under the Code.

TURNER, J.—With every respect for the opinions of those learned Judges who have entertained a different view, I am of opinion that the words “there shall be no appeal against any decree or order made under ss. 53, 54, or this section,” are to be construed as confined to decrees or orders passed under the express provisions of the sections of the Act, and that they do not prohibit appeals from orders passed when the decree is in course of execution under the provisions of the Procedure Code. It was evidently intended that in certain cases of special registration a bond-holder should be enabled to go to the Court and obtain an *ex parte* and final decree without having recourse to a suit. To carry out this intention the Legislature provided that the decree so passed should not be open to appeal. But to guard against hardship and injustice the law gave the Court which passed the decree powers to set aside its decree or stay execution, and declared those powers also should not be open to appeal.

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Where a person has executed a bond consenting at the time of registration that it should be registered in such a manner that the bond-holder may at once obtain a decree, it is intelligible that the law should declare the decree final unless the alleged executant of the bond could show cause why the decree should be stayed. But the reasons which induced the Legislature to declare such decrees and orders final do not extend to orders passed under the provisions of the Civil Procedure Code for the execution of such decrees. Construing the terms of s. 55 strictly, they do not deprive the parties to the decree of such rights of appeal as the Code of Civil Procedure declares to attach to orders in execution passed under the provisions of that Code.

It is a more difficult question whether the execution of the decrees obtained under the Registration Act, 1866, is governed by cl. 166 or cl. 167, sch. ii of the Limitation Act, 1871. They are not mere decisions of a Civil Court, but on the other hand they are not decrees or orders passed in a regular suit. They are decrees passed without the formalities prescribed for regular suits. They resemble decrees passed on awards filed under the provisions of the Procedure Code. It has I believe never been doubted that the execution of decrees passed on awards is governed by cl. 167 and not cl. 166, and I consider that cl. 167 is equally applicable to decrees obtained under the special provisions of the Registration Act of 1866.

SPANKIE, J.—I concur in the views expressed by Mr. Justice Turner on the point expressly referred.

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Before Sir Robert Stuart, Kt., Chief Justice. Mr. Justice Pearson, Mr. Justice Turner, and Mr. Justice Spankie.

JAI SHANKAR AND ANOTHER (DECREE-HOLDERS) v. TETLEY (JUDGMENT-DEBTOR).*

Execution of Decree obtained on Bond specially Registered—Act XX of 1866 (Registration Act), ss. 52, 53—Limitation—Act IX of 1871 (Limitation Act), sch. ii. arts. 166, 167.

Held that art. 167, and not art. 166, sch. ii of Act IX of 1871, applies to an application for the execution of a decree made under the provisions of s 53 of Act

* Miscellaneous Regular Appeal, No 34 of 1877, from an order of Maulvi Sami-ul-la Khan, Subordinate Judge of Aligarh, dated the 16th April, 1877.