

1879  
April 23.

Before Mr. Justice Pearson and Mr. Justice Spankie.

COLLINS (DECREE-HOLDER) v. MAULA BAKHSH AND OTHERS (JUDGMENT-DEBTORS).\*

*Execution of Decree—Limitation.*

*Held* that an application to the Court which passed a decree, that it may be sent for execution to another Court, is an application to keep such decree in force within the meaning of the Limitation Act.

THE decree in this case was passed by the Munsif of Meerut on the 23rd December, 1873, and was affirmed by the Appellate Court on the 13th June, 1874. On the 22nd April, 1875, the decree-holder applied to the Munsif of Meerut under s. 285, Act VIII of 1859, for the execution of the decree by the Munsif of Bulandshahr. The Munsif of Meerut granted the certificate required by that section, and, as it appeared, made it over to the decree-holder. On the 22nd July, 1877, the decree-holder presented the certificate to the Munsif of Bulandshahr with a view to the execution of the decree. The Munsif refused to receive the certificate, and directed the decree-holder to apply for a fresh certificate. The decree-holder applied to the Munsif of Meerut for a fresh certificate and obtained it, and on the 29th January, 1878, applied to the Munsif of Bulandshahr for the execution of the decree. The Munsif held that the execution of the decree was barred by limitation, and dismissed the application. On appeal the lower appellate Court affirmed the order of the Munsif, holding that an application to transfer a decree for execution from one Court to another is not an application to keep a decree in force.

The decree-holder appealed to the High Court.

Munshi *Hanuman Prasad*, for the appellant.

Babu *Jogindro Nath Chaudhri* and Pandit *Nand Lal*, for the respondents.

The judgment of the High Court was delivered by

PEARSON, J.—The appeal must prevail. The decision of the lower Courts is opposed to numerous rulings of this Court (1) to the effect that an application to transfer a decree for execution

\* Second Appeal, No. 123 of 1878, from an order of R. M. King, Esq., Officiating Judge of Meerut, dated the 24th September, 1878, affirming an order of Muhammad Mir Badsha, Munsif of Bulandshahr, dated the 13th April, 1878.

(1) See *Husain Bakhsh v. Madge*, I. L. R., 1 All, 525.

from one Court to another is an application to keep a decree in force. We accordingly decree the appeal with costs, and reversing the orders of the lower Courts, direct the Court of first instance to proceed with the application according to law.

1879

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 COLLINS  
 v.  
 MAULA  
 BAKHSI

*Appeal allowed.*

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*Before Mr. Justice Pearson and Mr. Justice Oldfield.*

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 1879  
 April 25

RAGHU RAM AND OTHERS (JUDGMENT-DEBTORS) v. DANNU LAL (DECREE-HOLDER).\*

*Execution of Decree—Proceeding to enforce decree—Act XIV of 1859  
 (Limitation Act), s. 20—Limitation.*

Application for the execution of a decree was made on the 21st December, 1864, and in pursuance of such application the notice required by law was issued to the judgment-debtor. On the 7th February, 1865, the Court executing the decree called on the decree-holder to produce proof of the service of such notice within four days. On the 23rd February, 1865, in consequence of the decree-holder having failed to produce such proof, the Court dismissed the application. There was no proceeding either of the decree-holder or of the Court between the 7th and the 23rd February, 1865. On the 18th February, 1868, application was again made for the execution of the decree. *Held* that the proceeding of the Court of the 23rd February, 1865, striking off the former application for default of prosecution was not a proceeding to keep the decree alive, and the latter application was therefore beyond time.

THIS was an application for the execution of a decree. The facts of the case are sufficiently stated in the judgment of the High Court, to which the judgment-debtors appealed from the order of the lower appellate Court granting the application. The judgment-debtors contended that the application was barred by limitation.

Lala *Lalta Prasad*, for the appellants.

Munshi *Hanuman Prasad*, for the respondent.

The judgment of the Court was delivered by

PEARSON, J.—The question is whether the application of the 18th February, 1868, was within time. The last preceding appli-

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\* Second Appeal, No. 67 of 1878, from an order of H. A. Harrison, Esq., Judge of Mirzapur, dated the 29th April, 1878, reversing an order of Mirza Abid Ali Beg, Subordinate Judge of Mirzapur, dated the 1st March, 1876.