1895

ABDULLAH v. SALABU.

took a very wide view of the word 'superintendence,' holding it to include powers of a judicial and *quasi*-judicial character. Looking to the extraordinary nature of this case, we have no doubt that it is our duty under the circumstances to set aside the order of the 14th of May, 1894, and to direct the Subordinate Judge to do his duty and to complete the case in accordance with the forms contained in the Code of Civil Procedure. In doing this he must also be guided by the order of the District Judge sent to his predecessor on the 6th of May, 1890. Costs of the application to be costs in the cause.

Application allowed.

APPELLATE CIVIL.

1895
June 8.

Before Mr. Justice Aikman.

HAR SARUP (DECREE-HOLDER) v. BALGOBIND AND ANOTHER (OBJECTORS).*

Execution of decree—Limitation—Act No. XV of 1877 *(Indian Limitation Act) Schedule (ii), Article* 178*—Application for execution of a different nature from preceding application.*

A decree-holder in execution of his decree applied, on the 11th January 1888, for arrest of the judgment-debtor. On the 25th February 1888, in consequence of the record of the case being required in the High Court, the Court executing the decree struck off that application *suo motu*. On the 23rd February 1892 the decree-holder again applied for execution of his decree, but this time by attachment and sale of the judgment-debtor's property. *Held* that the second application could not be regarded as a continuance of the former application, and that execution of the decree was time-barred. *Krishnaji Raghunath Kothavle* v. *Anandrav Ballal Kolhalkar* followed. (1)

THE facts of this case sufficiently appear from the judgment of the Court.

Babu *Jogindro Nath Chaudhri* and Munshi *Madho Prasad* for the appellant.

Messrs. *T. Conlan, Abdul Majid,* and *W. K. Porter* for the respondents.

Second Appeal No 682 of 1894 from an order of H. F. D. Pennington, Esq., Additional Judge of Moradabad, dated the 2nd May 1894, modifying an order of Bábu Gokul Prasad, Offg. Munsif of Moradabad, dated the 29th August 1892.

(1) I. L. R., 7 Bom., 293.

1895

HAR SARUP v. BALGOBIND.

AIKMAN, J.—This is an appeal by a decree-holder from a decision of the District Judge of Moradabad holding that the execution of a decree which had been passed in the appellant's favour had become time-barred. The decree bears date the 14th of September 1880, and was one against Sita Ram. The present application for execution with which we are concerned in this appeal was presented on the 23rd of February 1892. The last preceding application bears date the 11th of January 1888, *i.e.*, upwards of three years before the date of the present application. Consequently the application which the decree-holder now seeks to enforce is time-barred, unless there is something to take it out of the provisions of Article 179 of Schedule (II) of the Indian Limitation Act, 1877.

It is contended on behalf of the decree-holder appellant that circumstances do exist which render his decree still capable of execution. What those circumstances are must now be stated.

On the 11th of January 1888 an application was made for execution of the decree by arrest of the judgment-debtor, Sita Ram. In some previous proceedings in execution Sita Ram had objected that he was only liable to the extent of one-half of the amount decreed. This objection had been overruled, and an appeal had been filed by Sita Ram in the High Court. In consequence of this appeal to the High Court the record of the original suit had been called for from the Court of first instance (the Munsif of Moradabad). On the 25th of February 1888 the Munsif passed an order on the decree-holder's application of the 11th of January 1888 to the following effect:—"Let the record be sent to the District Judge and the application be struck off the list of pending applications."

It may be said at once that this was an improper order to pass. The fact that the record of the original case had been called for was no reason whatever for striking off a lawfully-made application to execute. However, the Munsif passed this order on his own authority and the decree-holder took no objection to it. The appeal of the judgment-debtor was dismissed by this Court on the 9th of December 1891, and on the 23rd of February following the decree-holder presented the application which we are now con-

cerned with. Had this application been one asking the Court to proceed with his previous application of the 11th of January 1888, I should have had no hesitation in following the principle of the decision in *Raghubans Gir* v. *Sheosaran Gir* (1) but, unfortunately for the decree-holder, he presented what must be held to be a fresh application for execution and not an application to continue the proceedings on the application which he had previously filed. The application of the 11th of January 1888 was for realization of the decretal amount by arrest of the judgment-debtor: the present application was one for the execution of the decree by attachment and sale of the judgment-debtor's property. In the case referred to the application was one asking that the case might be proceeded with according to the previous application. The learned Judges held that Article 171 applied, and that limitation ran from the date when the record was returned to the Munsif's Court on disposal of the proceedings in the appellate Court, but they said :—"We think a distinction may certainly be drawn between an application of this nature and one of the nature of a fresh application for the execution of the decree." The case of *Krishnaji Raghunath Kothavle* v. *Anandrav Ballal Kolhalkar* (2), is also in the respondents' favour. In that case the first application had been to attach immovable property: the second application was one for the arrest of the judgment-debtor. It was held there that the execution process last applied for was distinct in its nature from the former one and was in no way connected with it, and that it could not be regarded as one in continuance of the former proceedings. The present case is similar, the only difference being that here the application for the arrest of the judgment-debtor was first made and that for attachment was made subsequently. Following these rulings I am compelled to hold that the learned District Judge was right in deciding that the appellant's decree was time-barred. Affirming the order of the lower appellate Court, I dismiss this appeal with costs.

Appeal dismissed.

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(1) I. L. R., 5 All., 243. (2) I. L. R., 7 Bom., 293.