

from the judgment of the learned Judge that he thought that the objects of the society not being the distribution of alms or charitable reliefs, the society cannot be regarded as one for charitable purposes. We cannot accept this view. It is well known that charitable purposes are not restricted to the giving of alms or other charitable reliefs, but the words have a much wider legal meaning. We do not think that the Indian Legislature makes a distinction between religious purposes and charitable purposes. The registration of the plaintiffs' society was therefore in our judgment perfectly legal, its object being to obtain possession of the mosque property and other endowed property and to manage it for the benefit of a public mosque. We accordingly allow the appeal, set aside the decree of the court below, and restore that of the court of first instance with costs in all courts.

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ISLAMIA OF
MUTTRA
v.
NASIR-U-D-
DIN.

Appeal decreed.

Before Mr. Justice Banerji.

LANGTU PANDE (OBJECTOR) v. BALJNATH SARAN PANDE
(DECREE-HOLDER).*

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January 26.

Act No. XV of 1877 (Indian Limitation Act), Schedule II, Article 179—Limitation—Execution of decree—Application not “in accordance with law”—Civil Procedure Code, section 33C—Insolvency.

Where the judgment-debtor has applied for a declaration of insolvency and proceedings in insolvency are pending on his application, no application for execution can be made against the judgment-debtor's surety. If, therefore, such application is in fact made it will not be an application “in accordance with law” within the meaning of article 179(4) of the second schedule to the Indian Limitation Act, 1877; *Chatter v. Nawal Singh* (1) and *Munawar Husain v. Jani Bijai Shankar* (2) followed.

Held, also that the resistance of the decree-holder to the judgment-debtor's application for insolvency will not amount to the taking of a step in aid of execution within the meaning of article 179.

THIS was an appeal against an order of the District Judge of Ghazipur, holding that an application for execution was not barred by limitation.

* Second Appeal No. 464 of 1905, from a decree of Lala Baijnath Sahib, Rai Bahadar, District Judge of Ghazipur, dated the 30th of March, 1905, confirming a decree of Babu Sikkar Nath Banerji, Munsif of Ballia, dated the 7th of January, 1905.

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Proceedings taken by the decree-holder (respondent in this Court) were suspended upon the statement of the judgment-debtor that he meant to apply to be declared an insolvent and upon his giving security. When he did so apply the decree-holder resisted the application and it was dismissed. Subsequently the decree-holder applied for execution against the surety of the judgment-debtor. The application was dismissed and the decree-holder was given time to and directed to take further steps in execution of the decree. He failed to do so and the application for execution was struck off.

Later, more than three years after the first application for execution, the decree-holder made a fresh application.

The Court of first instance (Munsif of Ballia) held that the application made against the surety saved limitation.

The lower appellate Court (District Judge of Ghazipur) held that the resistance offered by the decree-holder to the application of the judgment-debtor to be declared an insolvent was a step in aid of execution.

The judgment-debtor appealed.

The vakil for the respondent further urged in the High Court that the second application should be held to be in continuation of the first.

Munshi *Govind Prasad*, for the appellant.

Babu *Sital Prasad Ghosh*, for the respondent.

BANERJI, J.—The only question in this appeal, which arises out of an application for the execution of a decree, is whether the application is time-barred. The decree is dated the 5th of January, 1895. The last previous application for execution was made on the 27th of July 1901, asking for the arrest of the judgment-debtor. He was arrested on the 29th of that month, but he expressed his intention to apply to be declared an insolvent and was accordingly released on furnishing security. On the 28th of August, 1901, he applied to be declared an insolvent. That application was dismissed on the 4th of October, 1901. In the meantime the execution proceedings which had commenced with the application of the 27th of July, 1901, remained pending in the Court executing the decree. On the 16th of December, 1901, that is, after the dismissal of the application for declaration of

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insolvency, the decree-holder made an application for execution against the surety of the judgment-debtor. This application was dismissed on the 18th of December, 1901. On that date the decree-holder was ordered to take further steps in execution of his decree, and he was given time to do so till the 21st of December. He took no further steps, and thereupon the execution case was struck off the file on the ground that there was no prosecution of the application for execution on behalf of the decree-holder and that neither he nor his pleader was present. This order was made either on the 21st or 23rd December, 1901, it does not clearly appear. The present application for execution was instituted on the 28th of September, 1904. This application was clearly made beyond three years of the date of the previous application, namely, the 27th July, 1901. The judgment-debtor contends that the application is time-barred. The Court of first instance held that the application of the 16th of December, 1901, asking for execution against the surety saved the operation of limitation. The lower appellate Court was of opinion that the resisting of the judgment-debtor's application for declaration of insolvency was a step in aid of execution. It is clear that the application against the surety presented on the 16th of December, 1901, cannot be regarded as "an application in accordance with law" within the meaning of article 179, paragraph (4), schedule II of the Limitation Act. Having regard to the provisions of section 336 of the Code of Civil Procedure no application could be made for execution against the surety, inasmuch as the judgment-debtor had applied to be declared an insolvent. This was held in the numerous cases cited under that section in O'Kinealy's Edition of the Code of Civil Procedure, p. 608 (6th Edition). This Court held in *Chatter v. Nawal Singh* (1) that the expression "in accordance with law in article 179, schedule II of the Limitation Act, means applying to the Court to do something in execution which by law that Court is competent to do, and if the decree-holder asked the Court to do something which from his direct knowledge of fact or from his presumed knowledge of law he must have known that the Court was incompetent to do, that could not be treated as an application

(1) (1889) I. L. R., 12 All., 64.

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in accordance with law. This case was followed in *Munawar Husain v. Jani Bijai Shankar* (1). Therefore the application of the 16th of December, 1901, was not an application in accordance with law and could not save the operation of limitation. As for the resisting of the application for declaration of insolvency, it appears that the decree-holder filed an answer to the application in which he said that the judgment-debtor was not a fit person to be declared insolvent and adduced certain evidence in support of his allegation. It does not appear that he filed any application to take any step in aid of execution. I am unable to hold that the mere filing of an answer to an application for declaration of insolvency can be deemed to be an application to take a step in aid of execution within the meaning of article 179. The learned vakil for the respondent has been unable to refer me to any authority in support of the view of the Court below. He contends, however, that the present application for execution must be deemed to be an application in continuance of the previous application of the 27th of July, 1901, and should not be deemed to be a fresh application for execution under article 179. This might have been a valid argument if the previous execution proceedings had been kept in abeyance or struck off owing to the filing of the application for declaration of insolvency. As I have already said, the proceedings in the execution case were stayed by the Court pending the disposal of the application for declaration of insolvency, but the Court did not remove the case from the list of pending applications for execution. After the dismissal of the application for declaration of insolvency on the 4th of October, 1901, the Court gave the decree-holder an opportunity to take further steps. In fact by its order, dated 18th December, 1901, to which I have referred above, it directed the decree-holder in specific terms to take further steps by the 21st of that month. He failed to carry out the Court's order and the case was struck off not because the application for declaration of insolvency had been filed, but because after the dismissal of that application the decree-holder made default in prosecution and did not appear. Under such circumstances it cannot be said

(1) Weekly Notes, 1905, p. 132.

that the present application is an application to proceed with the previous application which was kept in abeyance on the interposition of a bar. The present application is certainly one within the purview of article 179, schedule II, of the Limitation Act, and as it was not made within three years of any of the dates mentioned in the third column against that article, it was clearly time-barred. I accordingly allow the appeal, set aside the orders of the Courts below, and dismiss the application for execution with costs in all Courts.

Appeal decreed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkill.

SHIB SINGHI AND OTHERS (DEFENDANTS) v. GANDHARP SINGH
(PLAINTIFF).*

Civil Procedure Code, section 596—Application for leave to appeal to His Majesty in Council—Limitation Act No. XV of 1877 (Indian Limitation Act), sections 5 and 12).

Held that neither section 5 nor section 12 of the Indian Limitation Act, 1877, applies to applications under section 596 of the Code of Civil Procedure for leave to appeal to His Majesty in Council. *Jawahir Lal v. Narain Das* (1). *In the matter of the petition of Sita Ram Kesho* (2) *Moroba Ram Chandra v. Ghanasham Nilkant Nudkarni* (3) and *Anderson v. Periasami* (4) followed.

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

Dr. *Satish Chandra Banerji*, for the applicant.

Munshi *Gulzari Lal*, for the opposite parties.

STANLEY, C.J. and BURKITT, J.—It is admitted that the application for leave to appeal to His Majesty in Council is time-barred unless either section 5 or section 12 of the Indian Limitation Act is applicable to such applications. Article 177 of the second schedule to the Act limits a period of six months from the date of the decree for the admission of such an appeal. The application for leave to appeal was not made within this period, but the applicant relies upon the sections of the Act to which we have referred as justifying the admission of the

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* Privy Council Appeal No. 23 of 1905.

(1) (1878) I. L. R., 1 All., 644.

(2) (1892) I. L. R., 15 All., 14.

(3) (1894) I. L. R., 19 Bom., 301.

(4) (1891) I. L. R., 15 Mad., 159.