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adultery prevented her from pleading the credit of her husband and prevented her from getting any alimony or allowance from the husband." Therefore it appears that there is decision by the ecclesiastical court that a wife against whom a decree *nisi* for divorce has been passed on the ground of adultery is not entitled to apply for alimony and that this was the view taken by a Court of Appeal in 1888. In the absence of any authority to the contrary it would be my duty to refuse to entertain the present application.

In this country, however, having regard to the decision in *Kelly* v. *Kelly and Saunders* (1) by Sir BARNES PEACOCK it appears to be a matter of discretion. But in the present case there being no suggestion in the suit, which I tried, that the husband's conduct led to the wife's misconduct, and the wife being in fact at the present moment under the roof of the co-respondent, I think I ought not to exercise my discretion in the manner in which it was exercised by Sir BARNES PEACOCK for the reasons given by him. The application is therefore dismissed.

Application rejected.

REVISIONAL CIVIL.

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June, 12.

Before Mr. Justice Piggott and Mr. Justice Walsh.

BHAIRON PRASAD (DECREE-HOLDER) *v.* AMINA BEGAM (JUDGEMENT-DEBTOR)*

Act No. VII of 1887 (*Provincial Small Cause Courts Act*), *section* 25—*Revision—Jurisdiction of High Court—Execution of decree—Limitation—Application to court to take a step in aid of execution—Application for extension of time.*

A *bonâ fide* application made by a decree-holder praying for extension of time for the purpose of ascertaining the whereabouts of his judgement-debtor is an application to take a step in aid of execution and saves limitation. Where a Small Cause Court without any materials on the record gratuitously assumed that such an application presented by the decree-holder was not *bonâ fide*, and consequently that a subsequent application for the execution of the decree was time-barred, *it was held that there was ground for interference* by the High Court in revision.

THE first application to execute a decree passed on the 11th of February, 1909, was made on the 9th of February, 1912. Notice

* Civil Revision No. 154 of 1915.

(1) (1870) B. L. R., 71.

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of the application was issued to the judgment-debtors, but was returned unserved. Thereupon, on the 3rd of April, 1912, the decree-holder made an application stating that he was trying his best to discover the address of the judgement-debtors who were reported to have left the district, and praying for time to enable him to ascertain the same. The application was granted and time was allowed up to the 19th of April, 1912. No further steps were taken by the decree-holder, and on his failure to appear in court on the 19th of April, the application for execution was struck off. The next application for execution was made on the 1st of April, 1915. The court (Court of Small Causes at Cawnpore), was of opinion that the application of the 3rd of April, 1912, for time was not a *bonâ fide* application, and on that ground distinguished the case from that of *Pitam Singh* v. *Tota Singh* (1) and held the present application for execution barred by time. The decree-holder applied in revision to the High Court; the case came up before a single Judge, who referred it to a Bench of two Judges.

The following is the order of reference :—

BANERJI, J.—This application for revision of an order of the Judge of the Small Cause Court at Cawnpore dismissing an application for execution of a decree on the ground of limitation has been preferred by the decree-holder. He obtained his decree on the 11th of February, 1909, and made his first application for execution on the 9th of February, 1912. Upon that application notice was issued to the judgement-debtor, but it was returned unserved. On the 3rd of April, 1912, an application was made for time to apply for service on the judgement-debtor. The court granted the application and fixed the 19th of April. On that date, as the decree-holder took no steps, the application for execution was struck off.

The present application was filed on the 1st of April, 1915. It is clearly beyond time from the 9th of February, 1912, the date of the last application for execution, but the decree-holder contends that the application for time filed on the 3rd of April, 1912, was an application to take a step in aid of execution and therefore gave a fresh start for the computation of limitation and

(1) (1907) I. L. R., 29 All., 301.

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the case of *Pitam Singh* v. *Tota Singh* (1) was relied upon in support of the execution. It seems to me that an application for time, so far from being an application to take a step in aid of execution, is an application to delay execution and it seems to me to be doubtful whether limitation should be computed from the date of such application. As, however, a different view was taken in the case to which I have referred I deem it desirable that this case should be heard by a Bench of two Judges. I accordingly refer this case to a Bench of two Judges.

The case was then heard by a Division Bench.

Babu *Sheo Dihal Sinha*, for the applicant :—

An application for time to ascertain the whereabouts of the judgement-debtors, whom it is necessary to serve with notice before the execution can proceed further, is in effect one to further the execution and not to retard it. Until the address of the judgement-debtors can be ascertained the matter can go no further, and the only step the decree-holder can at the time possibly take in furtherance of the execution is to take time to enable him to make inquiries about the judgement-debtors' whereabouts. Under such circumstances an application for time is an application to the court to take a step in aid of execution, and saves limitation; *Pitam Singh* v. *Tota Singh* (1). There is no justification for the lower court's opinion that the application for time was not *bonâ fide*. This was an inference from the fact that nothing further was done by the decree-holder on the 19th of April, 1912. But at the time when the application on the 3rd of April was made it was unquestionably *bonâ fide*. It did not lose that character by what happened afterwards. His subsequent dilatoriness or negligence would not detract from the *bona fides* of the application when it was made. It cannot be conceived why the decree-holder would ask for time if the address of the judgement-debtors was known to him on the 3rd of April. He could have had no object in putting off the execution of his decree. The affidavit now filed explains the reason why nothing was done on the 19th of April, 1912.

Mr. *Ibn Ahmad*, for the opposite party :—

The application of the 3rd of April, 1912, was not an application to the court to take a step in aid of execution. The

(1) (1907) I. L. R., 29 All., 301.

court was not asked by it to do anything to further the execution of the decree. Such an application cannot give a fresh start for the computation of limitation ; *Kartick Nath* v. *Juggernath Ram* (1), *Umed Ali* v. *Abdul Karim* (2).

The failure of the decree-holder even to appear in court on the 19th of April, 1912, the date on which the time granted to him expired, shows that he was not in earnest about the matter, and his conduct justified the inference that he was not acting *bonâ fide*. Even if the decision of the lower court be wrong no interference in revision is called for. It has been held that a wrong decision on a question of limitation is not a ground for interference in revision under section 25 of the Provincial Small Cause Courts Act ; *Sarman Lal* v. *Khuban* (3), *Ramgopal Jhoonjhoonwalla* v. *Joharmall Khemka* (4).

Babu *Sheo Dihal Sinha*, was not heard in reply.

PIGGOTT, J.—This is an application against a decision on the execution side of the learned Judge of the Court of Small Causes at Cawnpore. The question before the court below was whether a certain application for execution was within time. It was within time if a previous application by the decree-holder made on the 3rd of April, 1912, was an application to the proper court to take a step in aid of execution. The application of the 3rd of April, 1912, has been read to us. It is to the effect that the decree-holder is doing his best to discover the address of the judgement-debtor, a *pardanashin* lady, and her son and as he has hitherto failed to do so, he asks the court for time to enable him to prosecute his inquiries further. He was given time to the 19th of April, 1912; but as he had taken no steps in the interval and failed to appear before the court on the 19th of April, 1912, his application was struck off. The attention of the learned Judge of the court below was duly called to the decision of this Court in *Pitam Singh* v. *Tota Singh* (5). He appears to have fully realized that he was bound to follow that decision. He distinguished it on the ground that the present decree-holder's application of 3rd of April, 1912, was not in his opinion made in good faith. He gives no reason for

(1) (1899) I. L. R., 27 Calc., 285. (3) (1894) I. L. R., 17 All., 422.

(2) (1908) I. L. R., 35 Calc., 1060. (4) (1912) I. L. R., 39 Calc., 473.

(5) (1907) I. L. R., 29 All., 301.

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this opinion and we were unable to discover any such reason on examining the record. We eventually decided to give the parties time to file affidavits explaining their position. An affidavit has to-day been filed on behalf of the decree-holder. He states that he was incapacitated by illness shortly after his application of the 3rd of April, 1912, was granted, and was consequently unable to take any steps or to attend the court on the date fixed. After that he continued to make inquiries as to the whereabouts of the judgement-debtors and presented his further application for execution as soon as he had been able to discover their correct address.

This affidavit is not contradicted. I think under the circumstances the decision of the court below did not proceed on a pure question of law. It was arrived at by gratuitously assuming a question of fact against the decree-holder. On this ground I would allow this application, set aside the order of the court below and remand the case to that court with directions to re-admit the application for execution to its pending file and to proceed with it according to law.

WALSH, J.—I agree. I think it is impossible to hold that an honest application to extend time, that is, to prevent limitation running against you, is not a step in aid of execution. It is not easy to see what object any decree-holder can have in an application for time, unless it is to assist himself in execution of his decree. Mr. Justice BANERJI thought that there was a conflict between the decisions of the Calcutta High Court, and this Court on this question. It is extremely difficult to ascertain with certainty from the reports whether this is so or not. The view attributed to the Calcutta Court has its origin in a case where the point was not necessary for the decision and where there would have been good reason for holding, if it were necessary, that the application for time was neither necessary nor *bonâ fide*, and was rightly rejected. And if the view taken in the Calcutta decision really is, and there is nothing in the reports inconsistent with it, that an application for time, if it is shown by subsequent events not to have been a genuine application at all, may properly be held not to have been a step in aid of execution, I should agree with it, but the decision in this Court which my brother PIGGOTT

has already referred to put the case on clear, and, I think, absolutely unassailable ground. If it is *bonâ fide*, it is clearly in aid of execution. The result is that *primâ facie* such an application is in aid of execution until it is shown to be *malâ fide*. I do not think there is really any conflict between these cases.

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BY THE COURT.—The application is allowed, the order of the court below set aside, and the case remanded to that court with directions to re-admit the application for execution to its pending file and to proceed with it according to law. The decree-holder is entitled to his costs.

Application allowed.

Before Mr. Justice Muhammad Rafiq.

EMPEROR *v.* KASHI SHUKUL AND ANOTHER.*

1916 *June*, 13.

Criminal Procedure Code, section 476—Practice—Order for prosecution for perjury—Court bound to set out assignments of perjury alleged—Civil Procedure Code, section 115—Revision—Material irregularity.

Held that when a civil court makes an order under section 476 directing that a person should be prosecuted for perjury, such court is bound to set forth in its order the specific assignments of perjury alleged against the accused. Failure to do so is a material irregularity within the meaning of section 115 of the Code of Civil Procedure.

THE facts of this case were as follows :—

One Kashi Shukul brought a suit against Rameshar Misra for recovery of money on the basis of a *chitthi*, or letter, dated the 16th of March, 1911. The defendant denied the writing of the *chitthi* and the passing of the consideration. The Munsif who tried the suit held the claim to be false and the *chitthi* not genuine.

He accordingly dismissed the suit on the 16th of September, 1914. Several months afterwards, the defendant applied for sanction to prosecute the present applicants on charges of forgery and perjury. On the 3rd of May, 1915, this application was refused, but a notice was issued to the present applicants by the Munsif who tried the suit to show cause why an order for their prosecution should not be made. The notice was given presumably under section 476 of the Code of Criminal Procedure. Subsequently, another Munsif came in place of the Munsif who had tried the

* Civil Revision No. 51 of 1916.