is a compact one must be accepted and the plaintiff is entitled to pre-empt the whole of that plot: *Abdul Shakur* v. *Abdul Ghafur* (1).

We accordingly dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Mukerji and Mr. Justice Ashworth.

PEARE MOHAN PRASAD (DECREE-HOLDER) *v.* RAGHUNATH LAL AND ANOTHER (JUDGEMENT-DEBTORS).*

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Civil Procedure Code, order XXI, rule 2, *sub-rule* (3)—*Act No. IX of* 1908 (*Indian Limitation Act*), *section* 20—*Execution of decree—Limitation—Certification of previous payments.*

If a decree-holder's application for execution is barred by limitation, he cannot save the situation by pleading a previous payment of interest alleged to have been made before limitation had expired and asking the court to certify such payment then and there, i.e., when execution was already time-barred. *Baijnath* v. *Panna Lal* (2), *Gokul Chand* v. *Bhika* (3), *Chattar Singh* v. *Amir Singh* (4), *Eusuffzeman Sarkar* v. *Sanchia Lal Nahata* (5), *Pandurang* v. *Jagya* (6), *Masilamani Mudaliar* v. *Sethuswami Ayyar* (7), and *Sheikh Elahi Bux* v. *Nawab Lall* (8), referred to.

THE facts of this case were, briefly, as follows:—

The decree-holder obtained the decree in question on the 29th of October, 1919. The first application for execution was made on the 18th of March, 1922. The second application was made on the 12th of October, 1925, that is to say, more than three years after the date of the first application. On the face of it, the application would be time-barred. The decree-holder however, alleged in the application for execution that between the

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*Second Appeal No. 1321 of 1926, from a decree of Ali Ausat, District Judge of Ghazipur, dated the 8th of April, 1926, confirming a decree of S. Zillur Rahman, Munsif of Ballia, dated the 19th of December, 1925.

(1) (1910) 7 A.L.J., 641.
(2) (1924) I.L.R., 46 All., 635.
(3) (1914) 12 A.L.J., 387.
(4) (1916) I.L.R., 38 All., 204.
(5) (1915) I.L.R., 43 Calc., 207.
(6) (1920) I.L.R., 45 Bom., 91.
(7) (1917) I.L.R., 41 Mad., 251.
(8) (1919) 4 Pat. L.J., 159.

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14th of May, 1923, and the 22nd of September, 1925, he received several payments towards interest, and his case is that these payments save limitation. The court refused to execute the decree for want of a certificate of payment on behalf of the decree-holder. Thereupon, on the 14th of October, 1925, the decree-holder made an application certifying the payments. The judgement-debtor appeared (it appears without any notice) and contended that the application for execution was time-barred. Both the courts below held that the application was time-barred, and the decree-holder appealed.

Pandit *Ambika Prasad Pande*, for the appellant.

Munshi *Shiv Dihal Sinha*, for the respondents.

THE judgement of MUKERJI, J., after setting out the facts as above, thus continued :—

In this Court the learned counsel for the appellant, who has argued the case extremely well, has put forward before us two contentions in support of his appeal. His first contention is that the statement contained in the application for execution, that certain payments towards interest had been received prior to the execution application and on certain specified dates, would serve the purposes of certification, as contemplated by order XXI, rule 2 (3). His second contention is that, at any rate, his certificate of the 14th of October, 1925, that payments had been received, would be good enough for the purpose of removing the bar imposed by order XXI, rule 2 (3).

As regards the first point, the learned counsel has frankly admitted that the trend of rulings in this Court is against him. He has quoted the rulings that are against him and these rulings are all mentioned in the latest ruling on the point, viz., *Baijnath* v. *Panna Lal* (1). He has argued that the first case in this Court,

(1) (1924) I.L.R., 46 All., 635.

viz., *Gokul Chand* v. *Bhika* (1), does not go entirely against him inasmuch as KNOX, J. mentioned it as an important matter that the factum of payment was not mentioned in the proper column in the execution application. In the cases of *Chattar Singh* v. *Amir Singh* (2) and *Baijnath* v. *Panna Lal* (3), the learned counsel pointed out, the expressions " certified " and " recorded " have been mixed up by the addition of the word " and " in the judgements, while there is the word " or " in the Code itself—order XXI, rule 2 (3). He has also pointed out that almost all other High Courts have held that a contemporaneous statement as to payment with the application for execution itself is good enough to satisfy the provision of sub-rule (3), rule 2, order XXI, Civil Procedure Code. He has quoted for his authority the cases of *Eusuffzeman Sarkar* v. *Sanchia Lal Nahata* (4), *Pandurang Balkrishna Golvankar* v. *Jagya Bhau Bhagat* (5), *Masilmani Mudaliar* v. *Sethuswami Ayyar* (6) and *Sheikh Elahi Bux* v. *Nawab Lall* (7).

Speaking for myself, I am of opinion that the contention of the learned counsel for the appellant ought to prevail. I would state my reasons very briefly, for I do not propose to decide the point according to the opinion held by me individually. The reason is this that my learned brother is against the view I am just going to propound, and the view I am taking is against the trend of authorities in this Court. In the circumstances, it would not be of much use for me to raise my voice in favour of a new interpretation, although that interpretation has found favour with other courts. The reasons for my opinion are these. There is a clear distinction between a decree-holder certifying payment and a judgement-debtor alleging payment. Order XXI,

(1) (1914) 12 A.L.J., 387. (2) (1916) I.L.R., 38 All., 204.
(3) (1924) I.L.R., 46 All., 635. (4) (1915) I.L.R., 43 Calc., 207.
(5) (1920) I.L.R., 45 Bom., 91. (6) (1917) I.L.R., 41 Mad., 251.
(7) (1919) 4 Pat. L. J., 159.

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Mukerji, J.

rule 2 does not, in itself, deal with any rule of limitation. It says that where a decree-holder has received payment, or a decree has been adjusted, *it is the duty* of the decree-holder to inform the court of the fact. Then it goes on to say that where a judgement-debtor has made a payment or there has been an adjustment of a decree, the judgement-debtor is *at liberty* to bring the matter to the notice of the court and ask the court to call upon the decree-holder to show cause why such alleged payment or adjustment should not be recorded as certified, that is to say, as certified by the decree-holder. In the first case a certificate by the decree-holder would be a statement against the decree-holder himself, and *primâ facie*, there would be some truth in the statement. In the second case a payment alleged by the judgement-debtor is always a statement in his favour, and it would be necessary before making a record of that statement to verify it. The rule, therefore, provided for a notice to the decree-holder and a decision, if necessary. We need not suppose that the Legislature was blind to the fact that the statement by the decree-holder that he had received payment might, in some cases, be to his own advantage and to the disadvantage of the judgement-debtor. The Legislature did not provide any rule of limitation for the decree-holder to certify, although it did provide for a short period of limitation where the judgement-debtor's application is concerned. It follows that the decree-holder is at liberty to certify the payment at any time he likes. In any case he is at liberty to certify the payment within three years of the payment, if article 181 of the first schedule of the Limitation Act applies. That being so, it would be open to the decree-holder to notify to the court, at any time before he makes his application for execution, that he has received a payment. Now, the question is whether he cannot notify the factum of the payment to the court

simultaneously with his application for execution. Sub-rule (3) of rule 2, order XXI, says: "A payment . . . which has not been certified . . . shall not be recognized by any court executing the decree". The meaning of this would be that when the court has to consider whether it should recognize an alleged payment, it will have to see whether that payment is certified or not. Where the payment has been alleged in the execution application itself, it would be doing no violence to the language of the law if it be said that the court, at the time of considering the question, would find that the decree-holder has already certified the payment. I need not point out that in every case of a certificate, how long so ever made before the execution application, if the judgement-debtor contests the allegation of payment, the decree-holder has always to prove it.

For the foregoing reasons I was inclined to accept the appellant's appeal and to allow the appellant an opportunity to prove whether he has actually received the alleged payments towards interest or not; but, as already stated, my voice would be too feeble to be effective and I do not propose to record a dissentient judgement for purely academic purposes.

The second contention of the learned counsel for the appellant is, in my opinion, untenable. The certificate, under the language of sub-rule (3), rule 2, order XXI, has always to precede the application for execution and cannot follow it.

In the result I would dismiss the appeal with costs.

ASHWORTH, J.—I concur in the dismissal of the appeal but for different reasons. Section 22 of the Limitation Act enacts that a fresh period of limitation shall be computed from the time when payment of interest on a debt is made. Order XXI, rule (3), Civil Procedure Code, enacts that an uncertified payment shall

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not be recognized by any court executing the decree. Reading these two provisions together, I hold that an execution court must compute limitation from the date not of payment but of certification. To do otherwise would be recognizing, to some extent, an uncertified payment. When, then, a decree-holder applies for execution he can only invoke a payment certified before execution became time-barred.

Ashworth J.

This is the view which has been taken by this High Court in several decisions, though it was not based on the precise reason that I have set forth. As that view accords with reasons commending themselves to me, I see no reason for departing from the position taken up hitherto by this High Court.

I would, however, point out that this view does not involve the extension of the period of limitation beyond the period prescribed from the date of actual payment. The view contracts the period of limitation by exclusion (at the beginning of such period) of the period between payment and certification but does not lengthen it at the other end.

I would hold, therefore, that both the applications now in question are time-barred.

BY THE COURT.—The appeal is dismissed with costs.

Appeal dismissed.