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assuming that the matters abovementioned were irregularities, they do not, in our opinion, justify the order setting aside the sale, inasmuch as we are not satisfied that the judgment-debtors have suffered any substantial loss by the sale.

Their Lordships then dealt with the evidence, and came to the conclusion that the judgment-debtors did not sustain any substantial loss in consequence of the sale, and set aside the order of the Court below, and directed that the application under section 311 be dismissed with costs.

S. C. C.

Appeal allowed.

Before Mr. Justice Trevelyan and Mr. Justice Beverley.

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RAGHUNUNDUN MISSER (DECREE-HOLDER, APPELLANT) v. KALLYDUT MISSER (JUDGMENT-DEBTOR, RESPONDENT.) *

Limitation Act (XV of 1877), Schedule II, Article 179—Application for leave to bid—Step in aid of execution of a decree.

An application by the decree-holder for leave to bid at the sale in execution of the decree is not a step in aid of execution within the meaning of the Limitation Act, Schedule II, Article 179.

Toree Mahomed v. Mahomed Mubood (1) and *Ananda Mohan Roy v. Hara Sundari* (2), referred to. *Bansi v. Sikree Mal* (3) dissented from.

ON the 30th January 1895 the decree-holder, Raghunundun Misser, made an application to the Court of the Munsif at Sewan, in the District of Sarun, which passed the decree, for the purpose of obtaining a certificate for execution in the jurisdiction of the Munsif of Rampore Baulia. The judgment-debtor objected that the last application for execution, dated 3rd September 1891, having been made more than three years before the present application, the latter was barred by limitation. The decree-holder contended that there was an application made by him on the 30th January 1892, asking the Court's permission to bid at the sale in execution, and that this was a step in aid of execution within the meaning of Article 179, Schedule II of the Limitation Act, XV

* Appeal from Appellate Order No. 344 of 1895, against the order of Babu Ananta Ram Ghose, Subordinate Judge of Sarun, dated the 17th of August 1895, affirming the order of Babu P. C. Roy, Munsif of Sewan, dated the 25th of April 1895.

(1) I. L. R., 9 Calc., 730.

(2) I. L. R., 23 Calc., 196.

(3) I. L. R., 13 All., 211.

of 1877. Both the Courts below held that the application was barred by limitation.

The decree-holder appealed to the High Court.

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Babu *Satis Chandra Ghose* for the appellant.—The case of *Toree Mahomed v. Mahomed Mabood* (1), on which the lower Courts rely, does not decide the present question. There the payment of a Court fee was held not to be a step in aid of execution. In the case of *Ananda Mohan Roy v. Hara Sundari* (2) their Lordships said that there ought to be an application, and the present case is distinguishable from the case relied on by the lower Courts, as there was an application; see also *Rajkumar Banerjee v. Rajlaxhi Dabi* (3), *Aghore Kali Debi v. Prosunno Coomer Banerjee* (4). The discretionary power of refusing or granting an application of this kind was given to assist the decree-holder in executing his decree, and such an application was in furtherance of the application under section 235. *Chowdhry Paroosh Ram Das v. Kali Puddo Banerjee* (5), *Umesh Chunder Dutta v. Soonder Narain Deo* (6). The case of *Bansi v. Sikree Mal* (7) is directly in point.

M. Mahomed Mustapha Khan for the respondent was not called upon.

The judgment of the High Court (TREVELYAN and BEVERLEY, JJ.) was as follows :—

The only question which arises in this case is whether an application for leave to bid is an application to the Court to take a step in aid of execution within the meaning of Article 179 of the Limitation Act. This question has before been considered by other Benches of this Court. In the case cited to us, *Toree Mahomed v. Mahomed Mabood* (1), which has been acted upon by the lower Court in this case, the learned Judges, Mr. Justice MacDonell and Mr. Justice Tottenham, distinctly say at the top of page 732 that an application of this kind “ would not

(1) I. L. R., 9 Calc., 730.

(2) I. L. R., 23 Calc., 196.

(3) I. L. R., 12 Calc., 441.

(4) I. L. R., 22 Calc., 827.

(5) I. L. R., 17 Calc., 53.

(6) I. L. R., 16 Calc., 747.

(7) I. L. R., 13 All., 211.

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give a fresh startling point." It is perfectly true that it may not have been necessary for them to have gone so far as to express an opinion upon that question in that particular case, still it was a question which seems to have been argued before them, and their decision on this point might well arise from the circumstances of the case. This decision has been cited with approval in another case, *Ananda Mohan Roy v. Hara Sundari* (1). With reference to the other cases we find no expression of disapproval of this decision. As against it, there is a decision of Mr. Justice Young, sitting alone in a case *Bansi v. Sikree Mal* (2), reported in the Allahabad High Court Reports. The learned Judge has not given his reasons why he differs from the view taken by the Calcutta High Court, but merely says that he takes a different view. As matters stand, the decisions of this Court, so far as we can see, are uniform. We are not prepared to say in any way that, if the matter came to us afresh, we should arrive at a conclusion different from that expressed by the learned Judges, who decided the case of *Toree Mahomed v. Mahomed Mabcod* (3). We do not think an application of this kind is an application seeking the action of the Court in execution of a decree. It may be in one sense a step in aid of execution of the decree, but it is not a step by the Court. Before a judgment-creditor can get any benefit, he must show that he asks the Court to take some step in aid of execution. A step taken by the judgment-creditor himself is not, as is pointed out in one of the cases to which we have referred, sufficient.

An application for leave to bid is not, as far as we can see, in any way a step in aid of execution. It is merely an order made to remove the restriction which the Code of Civil Procedure has placed upon the action of the judgment-creditor. The sole object of it is to remove that restriction and not to enforce the decree. For these reasons we dismiss the appeal with costs.

S. C. C.

Appeal dismissed.

(1) I. L. R., 23 Calc., 196.

(2) I. L. R., 13 All., 211.

(3) I. L. R., 9 Calc., 730.