1933

EMPEROR v. SHUKUL

were regularly instituted, would be extensive. There is thus little penal sanction behind the oath either. A binding oath with religious sanction behind it is one of the foundations of the administration of justice. We think if there were such an oath in India, especially in the case of villagers who provide 90 per cent. of the witnesses in criminal cases, perjury would be no more prevalent than elsewhere; and the difficulty in trying such cases would largely disappear. The pressure on the courts of justice of the mass of litigation of all kinds would also be reduced. Fewer false cases would be brought, and, if brought, fewer witnesses would be found to support them.

We now deal with the cases of individual appellants.

* * * * *

In the result, for the reasons given, we set aside the convictions and sentences of all the appellants and direct that they be set at liberty forthwith.

APPELLATE CIVIL

Before Mr. Justice Niamat-ullah and Mr. Justice Kisch

ADYA PRASAD SINGH (JUDGMENT-DEBTOR) *v.* LAL GIRJESH BAHADUR (DECREE-HOLDER)*

1933 *January*, 19

Civil Procedure Code, order XXI, rule 2(1)—*Decree-holder certifying payment—No "application" involved—Application to take a step in aid of execution—Limitation Act (IX of* 1908), *article* 182(5)—*Application by judgment-debtor filing a letter of decree-holder agreeing to give time—Acknowledgment—Limitation Act (IX of* 1908), *section* 19.

The terms of order XXI, rule 2(1) of the Civil Procedure Code involve no application, and the mere certification by the decree-holder of a payment of money under the decree is not an application to take some step in aid of execution of the decree within the meaning of article 182(5) of the Limitation Act, even if an "application", in the form of a

*First Appeal No. 57 of 1932, from a decree of Muhammad Junaid, Subordinate Judge of Basti, dated the 16th of January, 1932.

1933

ADYA PRASAD SINGH v. LAL GIRJESH BAHADUR

petition, is made by the decree-holder certifying the payment. *Chote Singh* v. *Ishwari* (1) and *Lecky* v. *Bank of Upper India* (2) dissented from.

An application was made by a judgment-debtor praying that the letter attached thereto and written by the decree-holder, agreeing to give an extension of time to the judgment-debtor in respect of the money due under the decree, might be placed on the record. The application began by a reference to the number of the case and the names of the parties, describing them as decree-holder and judgment-debtor, respectively. *Held* that the application, by itself, amounted to an acknowledgment, within the meaning of section 19 of the Limitation Act, that the applicant was a judgment-debtor of the opposite party in the specified suit and that the decree was unsatisfied; and when read with the letter, a clear admission was added that the applicant owed money under the decree and had obtained time from the decree-holder for making further payment.

Dr. *N. P. Asthana* and Mr. *B. N. Sahai*, for the appellant.

Mr. *Kamla Kant Verma*, for the respondent.

NIAMAT-ULLAH and KISCH, JJ. :—This is a judgment-debtor's appeal and the only question to be considered is one of limitation.

The decree-holder obtained a final decree for Rs.33,330-4 on the basis of a mortgage. He put the decree into execution and realized the sum of Rs.20,777. The final order on this application for execution was passed on the 10th of May, 1928. The application for execution which has given rise to the present appeal was made on the 31st of July, 1931, that is more than three years from the date of the final order on the previous application. The decree-holder, however, contended that limitation was saved by certain proceedings that took place in the execution court on the 15th of September, 1929. On that date the parties appeared before the court. The judgment-debtor paid the sum of Rs.12,000 to the decree-holder in court and was granted a receipt for the amount. The decree-holder

(1) (1910) I.L.R., 32 All., 257. (2) (1911) 8 A.L.J., 487.

thereupon presented an application to the court praying that the said payment be certified under order XXI, rule 2 of the Code of Civil Procedure. The payment was duly certified accordingly. At the same time the judgment-debtor presented to the court a letter written by the decree-holder to the effect that it had been settled between the parties that no further execution should be taken out in respect of the money due under the decree before the end of 1930. This letter was accompanied by an application by the judgment-debtor stating that he was filing the original letter written by the decree-holder relating to extension of time and praying that it be placed on the record.

In the light of these proceedings it was contended by the decree-holder:—

Firstly, that his application for the payment of Rs.12,000 to be certified by the court was an application to take a step in aid of execution within the meaning of sub-clause (5) of article 182 of the first schedule of the Limitation Act and, therefore, his present application for execution was within time.

Secondly, that the application of the judgment-debtor accompanied by the letter of the decree-holder granting time to the end of 1930 was an acknowledgment of liability in respect of the amount due under the decree within the meaning of section 19 of the Limitation Act and so gave rise to a fresh period of limitation.

Thirdly, that the payment of Rs.12,000 by itself gave rise to a fresh period of limitation under section 20 of the Limitation Act, inasmuch as the payment was acknowledged by the judgment-debtor by writing over his signature on the receipt issued by the court for the payment made before it that he had received his portion of the receipt.

The learned Subordinate Judge has accepted all the contentions of the decree-holder and dismissed the judgment-debtor's objection that the application for

1933

ADYA PRASAD SINGH v. LAL GIRJESH BAHADUR

execution was time barred. The correctness of the view taken by the court below on each of the three points has been questioned before us.

With regard to the first point, in our opinion the finding of the court below cannot be upheld. It is true that in certain cases this Court, as well as other High Courts in India, had taken the view that an application by the decree-holder certifying a payment out of court and praying that such payment be recorded by the court is an application to take a step in aid of execution. *Chote Singh* v. *Ishwari* (1) and *Lecky* v. *Bank of Upper India* (2) cited by the court below are two of such cases. In our opinion these decisions can no longer be regarded as laying down good law in view of the decision of their Lordships of the Privy Council in *Shri Prakash Singh* v. *Allahabad Bank* (3). In that case it was laid down that "the mere certification by the decree-holder of a payment to him out of court by the judgment-debtor under order XXI, rule 2(1), is not an application within the meaning of article 181 of schedule I of the Indian Limitation Act." Their Lordships further observed that an application made by the Bank decree-holder certifying certain payments made to it "is no more than a request that the court will carry out the provisions of the rule and record the payments . . . and the mere fact that the document was called an 'application' and was in the form of a petition cannot . . . alter the real nature of the procedure and convert what was really no more than a certificate of certain payments into an 'application' within the meaning of article 181."

It is contended on behalf of the respondent that this case related to an application under article 181 of the Limitation Act and that their Lordships expressly refrained from expressing any opinion on the view

(1) (1910) I.L.R., 32 All., 257. (2) (1911) 8 A.L.J., 487.
(3) (1928) I.L.R., 3 Luck., 684 (698).

taken in certain cases in India that where a decree-holder had proceeded to certify a payment which had been made out of court in satisfaction of a decree, he had taken a step in aid of execution of the decree within the meaning of article 182(5) of the Indian Limitation Act. This is, no doubt, true, but the decision of their Lordships must be regarded as conclusive on the question that the terms of order XXI, rule 2(1) involve no application and that certification under that clause is not an application under article 181. Such being the case we find it impossible to hold that a petition to the court merely to record under the same clause a payment certified by the decree-holder is an application within the meaning of article 182, sub-clause (5). The same view has been taken by a Bench of the Rangoon High Court in *Maung Tun Hlaing* v. *U Aung Gyaw* (1), by a Full Bench of the Calcutta High Court in *Amar Krishna Chaudhuri* v. *Jagat Bandhu Biswas* (2) and by a Full Bench of the Oudh Chief Court in *Ram Bharose* v. *Ramman Lal* (3). In all these cases the effect of the decision in *Shri Prakash Singh* v. *Allahabad Bank* (4) was considered and it was held that mere certification by the decree-holder of a payment of money under the decree is not an application to take some step in aid of execution of the decree within the meaning of sub-clause (5) of article 182 of the Limitation Act.

We, therefore, hold that limitation was not saved by the decree-holder's application to have the payment of Rs.12,000 recorded by the court.

On the second point it is contended on behalf of the judgment-debtor that his application requesting that the letter of the decree-holder granting him time should be placed on the record does not amount to an acknowledgment of liability within the meaning of section 19 of the Limitation Act. The learned counsel for the judgment-debtor argues that it is only giving

(1) A.I.R., 1930 Rang., 64.
(2) (1931) I.L.R., 59 Cal., 760.
(3) (1932) I.L.R., 7 Luck., 590.
(4) (1928) I.L.R., 3 Luck., 684.

1933

ADYA PRASAD SINGH v. LAL GIRJESH BAHADUR

information to the court that the decree-holder has granted time to the judgment-debtor and that it does not amount to an acknowledgment of liability. We are unable to accept this contention. The application begins by a reference to the number of the case and the names of the parties, describing them as decree-holder and judgment-debtor, respectively, and then recites that "in the above case I am filing the original letter relating to extension of time written by the decree-holder, with the prayer that it may be placed on the record." It is signed by the judgment-debtor. The letter was attached to the application. It is clear from the circumstances in which the application was made that the letter referred to therein must be regarded as forming part of the application. The letter recites that it has been settled between the parties that no further execution shall be taken out in respect of the money still due under the decree before the end of 1930. The application cannot be read otherwise than as admitting the contents of the letter and filing it in court as a guarantee that the decree-holder shall observe the terms of the agreement recorded therein. It is clear to us that all the events of the 5th of September, 1929, were closely connected together and what actually took place was that, as a result of an agreement between the parties, on the judgment-debtor paying Rs.12,000 the decree-holder consented to take no further proceedings to execute his decree before the end of 1930. In the light of Explanation I to section 19 of the Limitation Act it seems to us that the application, even if considered by itself, cannot be construed otherwise than as an acknowledgment that the applicant was a judgment-debtor in a suit in which the opposite party was the decree-holder and that the decree was unsatisfied, which is a sufficient acknowledgment of liability to satisfy the requirements of section 19. When the application is read with the letter, as we hold that it must be read, a clear admission

1933

ADYA PRASAD SINGH v. LAL GIRJESH BAHADUR

is added that the applicant still owes the decree-holder money under the decree and has obtained a respite from the decree-holder up to the end of 1930 for making further payment. This is a clear acknowledgment of liability.

In our opinion, therefore, the court below was right in holding that the application of the judgment-debtor of the 5th of September, 1929, started a fresh period of limitation from that date.

As we have held that the application for execution is within time in view of the judgment-debtor's acknowledgment of liability under the decree on the 5th of September, 1929, it is unnecessary for us to go into the question whether the signature of the judgment-debtor on the receipt for payment of the Rs.12,000 gave start to a fresh period of limitation within the meaning of section 20 of the Act.

The result is that the appeal fails and is dismissed with costs.

Before Mr. Justice Niamat-ullah and Mr. Justice Bennet

GUR PRASAD KAPOOR AND OTHERS (DEFENDANTS) *v.* RAMESHWAR PRASAD AND OTHERS (PLAINTIFFS)*

1933 *January*, 19

Companies Act (VII of 1913), section 20—Articles of association, alteration of—Increasing the number of directors provided for by the articles—Special resolution, whether necessary.

One of the articles of association of a company provided as follows: "Until otherwise determined by a general meeting, the number of directors shall not be less than five, nor more than nine." By a resolution passed at a general meeting of the shareholders the number of directors was increased to 16. *Held* that the alteration was valid and no special resolution was required therefor. The right construction of the article was that it was open to the shareholders to vary the number of directors therein referred to without in any way necessitating an alteration in the article itself.

*First Appeal No. 211 of 1932, from an order of Syed Iftikhar Husain, Additional District Judge of Cawnpore, dated the 7th of November, 1932.