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nature of the suit in sub-section (1) of section 273. It would have been enough to say that barring the cases of immovable property or suits for a declaration of title to immovable properties, all suits instituted against a Cantonment Board would be governed by a rule of six months' limitation, the starting point being the date on which the cause of action arises. As My Lord the CHIEF JUSTICE has pointed out, the suit for recovery of the value of goods supplied does not fall within the description of suits mentioned in section 273, sub-section (1) of the Cantonments Act. It is not a suit for an act done by the Cantonment Authority in pursuance of the Cantonments Act or of any rule or bye-law made thereunder. It follows that the ordinary rule of limitation applies and not the special rule of limitation mentioned in sub-section (3) of section 273.

Mukerji, J.

In the case of the interpretation of what may be said to be a corresponding section in the Municipalities Act, namely, section 326 of the U. P. Municipalities Act of 1916, there is a conflict of opinion, but we are not interpreting the Municipalities Act, and I, therefore, do not feel it necessary to refer to those cases. If there be any conflict in the interpretation of section 326 of the Municipalities Act, it will be settled when another case arises.

I agree that the decision of the suit was correct and article 52 of schedule I of the Limitation Act applied.

BY THE COURT:—The application in revision is dismissed with costs.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Justice Sir Lal Gopal Mukerji

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RAM KALI AND ANOTHER (DECREE-HOLDERS) *v.* BIRBHADRAMAN TEWARI AND ANOTHER (JUDGMENT-DEBTORS)*

Limitation Act (IX of 1908), article 182—Application for execution of decree against a deceased person—Not an application "in accordance with law" nor one "to take some step in

*Civil Revision No. 123 of 1933.

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aid of execution"—Application for transfer of a decree, made when the judgment-debtor is dead—Valid application "to take some step in aid of execution"—Civil Procedure Code, sections 38, 39; order XXI, rules 3 to 9.

An application for execution, made against a deceased judgment-debtor, is not one made in accordance with law, nor does it amount to an application to take some step in aid of execution, within the meaning of article 182 of the Limitation Act. When an application for execution against a dead person is not one in accordance with law, it is impossible to hold that it is nevertheless a good application to take some step in aid of execution against the deceased.

But an application for the transfer of a decree for the purpose of execution to another court, made at a time when the judgment-debtor is dead, is a valid application to take some step in aid of execution. The taking of some step in aid of execution is obviously something different from filing an application for execution. An application for transfer of a decree is not an application for execution; a clear distinction between the two is drawn in order XXI of the Civil Procedure Code. Rules 3 to 9 of order XXI do not even require an application for transfer to specify the name of the judgment-debtor; nor do sections 38 and 39 of the Code provide that notice must be given to the judgment-debtor before the order is made.

Mr. *Gadadhar Prasad,* for the applicants.

The opposite parties were not represented.

SULAIMAN, C.J., and MUKERJI, J.:—This revision has been referred to a Division Bench by a learned Judge of this Court because of an apparent conflict between a ruling of this Court and that of the Calcutta High Court.

It appears that a money decree was obtained on the 30th of April, 1920, by Raghubir Prasad against Bachman Tewari which was being executed for some years, without complete satisfaction. On the 13th of November, 1928, Bachman Tewari died, but apparently this fact was not then brought to the notice of the decree-holder who filed an application on the 15th of December, 1928. The court below has treated this application as an application for execution, but in reality it was an application praying for the transfer of the execution of the

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decree from the court of the Judge, small causes, Gorakhpur, to the Deoria Munsifi on the ground that the judgment-debtor and his property were within the jurisdiction of that Munsifi. On the 19th of February, 1929, the court transferred the execution of the decree to the Deoria court. On the 27th of February, 1929, the decree-holder applied there for execution and notice was issued to the judgment-debtor which was returned unserved with the report that the judgment-debtor was dead. This report was put up before the court on the 19th of April, 1929, and the court ordered that the decree-holder should take necessary steps by the 29th. He failed to take any steps and the application for execution was dismissed on the 29th of April, 1929, and a certificate was sent to the Gorakhpur court. Subsequently the decree-holder died and his widow did not file any application for execution till the 11th of March, 1932. This was against Birbhadraman and Chilaman, the sons of the deceased judgment-debtor. The court below has held that the application was barred by time because it was not made within three years of any application made in accordance with law or any proper step taken in aid of execution.

In the first place, we must point out that there has been a misapprehension in treating the application of the 15th of December, 1928, as an application for execution. As already noted, it was an application praying that the execution of the decree be transferred to the Deoria court. It was accordingly an application for taking a step in aid of execution and not an application for execution itself.

In *Madho Prasad* v. *Kesho Prasad* (1) it was held that "Applications for the execution of a decree made after the death of the judgment-debtor and without either any representative of the judgment-debtor being brought upon the record or there being any subsisting attachment of the property against which execution is sought

(1) (1897) I.L.R., 19 All., 227.

are not good applications for the purpose of saving limitation." The Calcutta High Court appears to have dissented from this ruling in *Bipin Behari Mitter* v. *Bibi Zohra* (1), following some earlier cases and a case of the Madras High Court in *Samia Pillai* v. *Chockalinga Chettiar* (2). With great respect, we are unable to agree to the view expressed by the Calcutta High Court and we think that the ruling in *Madho Prasad's case* laid down the correct law. It is impossible to hold that if an application for execution is not an application in accordance with law, having been against a person who is dead, it is nevertheless a good application to take some step in aid of execution against the deceased. There would be no object in drawing a distinction in article 182 between an application made in accordance with law and taking steps in aid of execution, if the same application for execution while not fulfilling the first requirement were to be a good application for the second purpose. When a person is dead, proceedings for execution taken against him cannot be regarded as any valid proceedings at all. The taking of some step in aid of execution is obviously something different from the mere filing of an application for execution which in itself is not in accordance with law.

But in the present case we have already pointed out that the application of the 15th of December, 1928, was really not one for execution of the decree, but one for taking a step in aid of execution. Under sections 38 and 39 of the Civil Procedure Code courts are empowered to send decrees for execution to other courts. They may either proceed *suo motu* or proceed on the application made by the decree-holder. These sections do not provide that notice must be given to the judgment-debtor before the order is made. Similarly, there appears to be a clear distinction drawn in order XXI between applications for transfer of execution of a decree,

(1) (1908) I.L.R., 35 Cal., 1017. (2) (1893) I.L.R., 17 Mad., 76.

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dealt with in rules 3 to 9, and applications for execution of decrees, dealt with in rule 10 and the following rules. The first set of rules do not even lay down that the name of the judgment-debtor should be specified nor is it necessary that the mode of the execution should be specified. On the other hand, rule 11 requires particulars to be supplied when an application for execution is made and they include the mode in which the assistance of the court is required, as well as the name of the person against whom execution of the decree is sought. The decree-holder, in applying for the transfer of the decree to another court, was merely asking the court to transfer the execution of the decree as it stood, and which decree was not dead simply because the judgment-debtor was dead. We are therefore of opinion that an application for the transfer of the execution of a decree made at a time when the judgment-debtor is dead is a valid application to take steps in aid of execution. It cannot be said that no proceeding taken when the judgment-debtor is dead can be such a valid step. We may give the instance of an application for substitution of names of heirs which is to be made after the death of the deceased judgment-debtor.

But even this aspect of the matter does not help the decree-holder. Time began to run from the date of the order made by the court on the 19th of February, 1929, on the application for taking steps in aid of execution which had been filed on the 15th of December, 1928. More than three years expired before the present application was made, so this is of no avail to the decree-holder.

The application for execution made on the 27th of February, 1929, in the Deoria court was undoubtedly an application for execution made against a dead person, and was in our opinion not in accordance with law. Differing from the view taken in Calcutta and Madras and following the ruling of our own Court, we must hold that this application for execution which was not

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in accordance with law did not amount to an application for taking steps in aid of execution. Accordingly the decree-holder did not get a fresh start from the 29th of April, 1929, when this application for execution was ultimately dismissed. The present application, not being within three years of any order on any application in accordance with law for execution or on any valid application for taking step in aid of execution, is barred by time.

The application is accordingly dismissed with costs.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Justice Sir Lal Gopal Mukerji

SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT) *v.* SONKALI (PLAINTIFF)*

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Civil Procedure Code, order XLIV, rule 1, *proviso—Pauper appeal—Whether proviso applies after issue of notice—Civil Procedure Code, section* 115*—"Case decided"—Court refusing to apply the proviso, rule* 1, *order XLIV to a pauper appeal—Revision on behalf of Government.*

The fact that the court, on considering that a pauper appeal presented to it was not liable to be rejected under the proviso to rule 1 of order XLIV of the Civil Procedure Code, has allowed notice to issue to the Government Pleader and to the respondent does not preclude the court from considering the question again, if raised by the Government Pleader or the respondent when they appear.

Under order XLIV, rule 1 of the Civil Procedure Code the court, when a pauper appeal is presented, has to scrutinise it as laid down in the proviso to the rule; it has to see whether the decree is contrary to law or to some usage having the force of law or is otherwise erroneous or unjust. If the court finds that *prima facie* there is such a ground, it is to issue notice to the Government Pleader and also to the respondent to show cause why the application should not be granted. When a notice has been issued it is open to the Government Pleader and to the respondent to show not only that the applicant is not a pauper, but they are also entitled to show that the decree appealed against is not contrary to law or to some usage having the force of law or is not otherwise erroneous or unjust; and

*Civil Revision No. 264 of 1933.