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right to do so, provided they came into court at the first opportunity available, namely, the re-opening day of the court. In the present case the defendants, on their own showing, had the option of making the payment to the mortgagees direct. From this they were in no way prevented on account of the court being closed. They were not compelled to wait till the court re-opened. They had an opportunity available to them of which they did not take advantage. We do not, therefore, think that they were entitled to say that the time fixed in the compromise decree for the payment of the first instalment should be extended. Accordingly there was a default on the 15th of June, 1924, which entitled the plaintiffs to claim the whole amount."

In *Adya Singh* v. *Nasib Singh* (1) a similar view was taken. There a decree-holder agreed to set aside the sale of the properties of the judgment-debtor if the latter paid up the decretal amount within two months of the date of the sale. The courts were closed on the last day allowed for payment and the decretal amount was deposited on the day that the courts re-opened. It was held: "That payment not having been made within the time agreed upon, the sale could not be set aside."

There is no force in the appeal. It is therefore ordered that it be dismissed with costs.

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December, 21

Before Mr. Justice Bennet, Acting Chief Justice, and Mr. Justice Ganga Nath

LATAFAT ALI KHAN (JUDGMENT-DEBTOR) *v.* KALYAN MAL (DECREE-HOLDER)*

Limitation Act (IX of 1908), article 182(5)—"Step in aid of execution"—Application to withdraw money deposited by judgment-debtor.

An application by the decree-holder to withdraw a sum of money which had been deposited in court by the judgment-debtor in payment of an instalment due on the decree, is an application to take a "step in aid of execution" within the meaning of article 182 (5) of the Limitation Act.

For a "step in aid of execution" it is not necessary that there must be a pending application for execution; the last part of

*Second Appeal No. 993 of 1934, from a decree of M. B. Ahmad, District Judge of Shahjahanpur, dated the 28th of May, 1934, confirming a decree of Bishun Narain Tankha, Civil Judge of Shahjahanpur, dated the 15th of September, 1931.

(1) A.I.R. 1920 Pat. 122.

paragraph (5) of article 182 shows that in some cases the two things may be different and apart from each other.

Mr. *Mushtaq Ahmad,* for the appellant.

Mr. *Shiva Prasad Sinha,* for the respondent.

BENNET, A.C.J., and GANGA NATH, J.:—This is an execution second appeal by a judgment-debtor whose objection that the application for execution is barred by limitation has been dismissed by the two courts below. The facts are that there was a decree passed on the 28th of June, 1919, in a mortgage suit and the final decree on the 21st of June, 1920, for Rs.1,612-2-0. The first application for execution was made on the 11th of June, 1921, and there was a compromise on the 29th of August, 1921, by which it was agreed that the decretal amount should be paid by yearly instalments of Rs.300 in each year, beginning with the 1st of September, 1922, and ending on the 1st of September, 1927. On the 23rd of September, 1923, the second execution application was made and was struck off. On the 22nd of August, 1925, the judgment-debtor deposited Rs.300 as an instalment and it was not until the 16th of July, 1928, that the decree-holder applied to withdraw this sum. The present application for execution was made on the 13th of January, 1931, for an amount of Rs.676-4-0 stated to be due on the decree Rs.600 had been credited as paid by the judgment-debtor and the decree-holder claims that Rs.300 are due on account of the instalment of the 1st of September, 1926, and Rs.300 are due on account of the instalment of the 1st of September, 1927. Reliance was also placed by the decree-holder on an alleged payment of the 2nd of August, 1928. The trial court did not believe the evidence on this point. The lower appellate court merely recited the fact that the trial court had not believed this allegation but did not come to a finding on the point. We have ourselves examined the evidence and we agree with the trial court that the alleged payment was not proved. Now the appeal has been argued before us on

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two points. Firstly, learned counsel addressed us at great length on his third ground of appeal which states that if article 182 applied at all, the case was governed not by clause (5) but by clause (7), and his fourth ground argued that the proper article was article 181 and not article 182. Now it is to be noted that the case for the decree-holder depends on the finding that the application to withdraw the money on the 16th of July, 1928, is a step in aid of execution, and if this be so, then whether we regard the two instalments of September, 1926, and September, 1927, as the instalments to be realised, or whether we regard the whole amount as being due on September, 1926, as learned counsel for the appellant states was the case, in either case the matter will be saved from limitation. The contention of learned counsel was supported by reference by him to two rulings of this Court. One of these is a Full Bench ruling, *Joti Prasad* v. *Sri Chand* (1). Learned counsel claimed that the fifth question in this ruling was a ruling on the point of whether in the case of an instalment decree the proper paragraph of article 182 to look to was paragraph (7) or paragraph (5). We do not find that any such question was formulated in the fifth question either in the original form or as re-drafted on page 260, nor is any such point contained in the answer on page 266. That ruling in our opinion dealt solely with the question of what was the correct starting point for limitation for the first application. Now in article 182 there are seven paragraphs and we consider that all those paragraphs, except paragraph (5), deal with the question of what is the time from which limitation begins to run in the case of a first application for execution. Paragraph (5) alone deals with the case of subsequent applications and this paragraph states that the period of three years shall run from "the date of the final order passed on an application made in accordance with law to the proper court for execution, or to

(1) (1928) I.L.R. 51 All. 287.

take some step in aid of execution of the decree or order." The wording of paragraph (5) shows that it refers to an application for execution where there has been a previous proceeding in execution in the court. The other paragraphs do not deal with such a question at all. Reference was also made by learned counsel to *Ram Prasad Ram* v. *Jadunandan Upadhia* (1). In this case as stated in the head-note (p. 773) a Bench of this Court laid down that the "decree-holder had two distinct rights, viz., (1) to receive instalments as and when they fell due; (2) to enforce the payment of all the instalments that might remain unpaid, in the event of two successive instalments remaining unpaid. In the present case the second right was time barred as the present application was made more than three years after the right to apply first accrued on default of the first two instalments, article 181, Limitation Act, being applicable. But if the second right is time barred, it would not follow that the first right is also time barred. The decree-holder could therefore recover such of the instalments as had fallen due on the date of the application for execution, and article 182(7), Limitation Act, was applicable." Now we consider that this dictum is against the contention of learned counsel. In the present case, as already noted, the application may be treated in either way, either as one to recover the balance owing to default as provided in the compromise or as one to receive the instalments as and when they fall due. The ruling is that this latter remedy to receive the instalments as and when they fall due will come under article 182(7). Therefore this is not a case which is under article 181. As the case comes under article 182(7), the first application for execution will come under that paragraph and subsequent applications for execution will come under paragraph (5). This ruling therefore is against learned counsel. Learned counsel also referred to a ruling by one single member of this

(1) [1934] A.L.J. 772; I.L.R. 56 All. 921.

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Bench, *Hari Ram* v. *Himman Lal* (1). But the head-note in this ruling states: "Held, that the right of the decree-holder to apply for execution of the decree for the whole of the remaining sum due to him was time barred; but the decree-holder could recover such instalments as had fallen due by the date of the application for execution, provided the same were within time." There is nothing different in this dictum from *Ram Prasad Ram* v. *Jadunandan Upadhia* (2), which the ruling purported to apply.

The next point which was argued was the question as to whether the application of the decree-holder of the 16th of July, 1928, to withdraw Rs.300 deposited by the judgment-debtor on the 22nd of August, 1925, was a step in aid of execution within the meaning of article 182, paragraph (5). Now learned counsel argued that for a step in aid of execution there must be a pending application for execution. If this were so, then the last part of this paragraph (5) would be superfluous because if in every such case there were an application for execution, then the period of limitation which will run from the date of the final order passed on such an application will always be as late as any step in aid of execution contained in that proceeding, and no benefit could accrue to any decree-holder from the addition of the last part of this paragraph. We consider that the legislature intended that the last part of the paragraph should provide something which may in some case be different from the first part and provide a different date and therefore we consider that this interpretation by learned counsel is not correct. This has been the view taken by the Allahabad High Court. The first ruling taking this view is reported in *Kishori Lal* v. *Shamkaran* (3), where there was a precisely similar case. In *Paran Singh* v. *Jawahir Singh* (4) it was held by a Bench of this Court that an application by a decree-holder to

(1) [1935] A.L.J. 1291.

(2) [1934] A.L.J. 772; I.L.R. 56 All. 921

(3) Weekly Notes 1882, p. 184.

(4) (1884) I.L.R. 6 All. 366.

be paid the proceeds of a sale of property in execution of the decree was a "step in aid of execution" of the decree, within the meaning of the corresponding article of the Limitation Act of 1877. In *Sujan Singh* v. *Hira Singh* (1) it was held that the expression "step in aid of execution" in the corresponding article of the Limitation Act of 1877 was intended to cover any application made according to law in furtherance of the execution proceedings under a decree. It included applications made by a decree-holder under section 258 of the Civil Procedure Code to enter up part satisfaction of the decree. The view of the Madras High Court is the same as that of the Allahabad High Court and this is shown by rulings reported in *Venkatarayalu* v. *Narasimha* (2), *Kerala Varma Valiya* v. *Shangaram* (3) and *Koormayya* v. *Krishnamma Naidu* (4). On the other hand, the Calcutta High Court has taken a different view as shown by *Hem Chunder Chowdhry* v. *Brojo Soondury* (5) and *Fazal Imam* v. *Metta Singh* (6). Following the view of the Allahabad and Madras High Courts, we hold that the application of the decree-holder to withdraw the money was a step in aid of execution. In support of this view we may point out that the execution of a decree is the carrying out of the decree. In the present case the decree directed the payment by the judgment-debtor of money to the decree-holder. The last step in that proceeding was for the decree-holder to receive the money from the court and until the decree-holder had received the money it cannot be said that execution was complete. Therefore the application of the decree-holder to withdraw the money from the court was a step in aid of execution. A similar line of argument has been used in *Moti Lal* v. *Makund Singh* (7), in regard to an application by the decree-holder to be put in possession of the property

(1) (1889) LL.R. 12 All. 399.
(2) (1880) I.L.R. 2 Mad. 174.
(3) (1892) I.L.R. 16 Mad. 452.
(4) (1893) I.L.R. 17 Mad. 165.
(5) (1881) I.L.R. 8 Cal. 89.
(6) (1884) I.L.R. 10 Cal. 549.
(7) (1897) LL.R. 19 All. 477 (479).

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which he had purchased at an auction sale and it was held that this was a step in aid of execution. This was stated to be on the analogy of the case of *Sujan Singh* v. *Hira Singh* (1), to which we have already referred. We find no merits in this second appeal which we therefore dismiss with costs.

REVISIONAL CRIMINAL

Before Mr. Justice Allsop

1937

December, 21

EMPEROR *v.* BALLU SINGH AND OTHERS*

Public Gambling Act (III of 1867), section 13—"Public place"—Grove to which the public commonly have access in fact—"Instrument of gaming"—Money—Confiscation—Criminal Procedure Code, section 517.

Where persons were found gambling on the edge of a grove a few paces away from a public pathway, and there was nothing to show that the place was enclosed in any way or that the public were usually refused access to or excluded from it, it was *held* that the place was a public place within the meaning of section 13 of the Public Gambling Act.

Section 13 of the Public Gambling Act does not justify the seizure or confiscation of money found at a place of public gambling, money not being an "instrument of gaming" within the meaning of that section.

But section 517 of the Criminal Procedure Code can justify an order of confiscation of money found at a place of public gambling and brought into the custody of the court or produced before the court in the course of the trial.

Messrs. *S. B. Johari* and *S. Munir Ahmad*, for the applicants.

The Deputy Government Advocate (Mr. *Sankar Saran*), for the Crown.

ALLSOP, J.:—This is a reference by the learned Sessions Judge of Bijnor, recommending that convictions under section 13 of the Public Gambling Act should be set aside. The learned Judge is of opinion that the place where the accused were found gambling was not a public place within the meaning of the Act.

*Criminal Reference No. 704 of 1937.

(1) (1889) I.L.R. 12 All. 399.