pleadings or any extrinsic circumstances can be looked at, as requested by learned counsel for the plaintiff appellant, in order to explain the endorsement and in order to ascertain whether the defendant can be held to have acknowledged anything more than the endorsement itself purported to acknowledge. Learned counsel's request really means that we should ascertain that the liability existed and so infer that the defendant acknowledged it by his endorsement. For reasons already given we are of opinion that the determination of the question depends on the inference to be drawn from the endorsement itself.

In the result we dismiss this appeal with costs.

Before Sir John Thom, Chief Justice, and Mr. Justice Ganga Nath

LAKHMI CHAND AND OTHERS (JUDGMENT-DEBTORS) *v.* BIBI KULSUM-UN-NISSA (DECREE-HOLDER)*

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Limitation Act (IX of 1908), section 15—Execution of decree not specifically stayed by order or injunction—Although subsequent decree inconsistent with the decree which was to be executed—Principle of the section can not be extended—Suspension of limitation, only in accordance with specific provisions—"General principle of suspension of limitation" not recognized.

In applying the law of limitation the courts in India are bound by the specific provisions of the Limitation Act and are not permitted to travel outside the ambit of those provisions or to discover in those provisions general principles and to apply these principles, on grounds of equity, to cases which are not specifically provided for by the Act itself. There is no place in the law of limitation in India for a "general principle of suspension of limitation" apart from the specific provisions of the Act which expressly allow such suspension in specific cases.

Section 15 of the Limitation Act, in so far as execution proceedings are concerned, contemplates the case only of execution proceedings being held up by a stay order or injunction of court. There is no reference in it to the case of the

*Appeal No. 20 of 1937, under section 10 of the Letters Patent.

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execution of one decree being suspended or rendered impossible by a subsequent decree, inconsistent with it, in another suit. The Limitation Act must be strictly construed, and section 15 can not be extended to apply to a case where there has been no stay order or injunction specifically and expressly staying the execution of the decree.

The mere fact that an application for execution would turn out to be abortive, as a result of the conflicting decree passed in another suit, does not relieve the decree-holder of the duty of taking the ordinary steps to execute his decree if he wishes to save that decree from the bar of limitation.

Mr. *Nanak Chand*, for the appellants.

Mr. *Mushtaq Ahmad*, for the respondent.

THOM, C.J., and GANGA NATH, J.:—This is a judgment-debtors' appeal from the order of a learned single Judge of this Court. The decree-holder obtained a decree dated the 13th of February, 1926, in a suit against Daya Nand and others for possession of a house in village Danpur, and for a perpetual injunction restraining the defendants in that suit from installing an idol in the said house and from blowing conches and doing all such acts as were calculated to occasion a breach of the peace in the village.

On the 28th of April, 1933, the decree-holder made an application for execution. The judgment-debtors objected that the application was time barred. This objection was repelled by the court of first instance. The order of that court was upheld in appeal by the lower appellate court. The lower appellate court's order has been sustained by the learned single Judge before whom the matter came in second appeal.

Prima facie the application for execution of the decree dated the 13th of February, 1926, preferred on the 28th of April, 1933, was barred by limitation. The decree-holder contended, however, that the period of limitation in respect of his decree was interrupted from the 3rd of February, 1928, until the 2nd of May, 1931.

Before the decree-holder could execute his decree of the 13th of February, 1926, a suit was instituted in the name of an idol Sri Thakur Krishn Maharaj, represented by one Nand Ram who claimed to be the *pujari* of the temple, the allegation in the plaint being that the aforesaid house was a temple. The plaintiff in this suit averred, *inter alia,* that the decree of the 13th of February, 1926, had been obtained by collusion and fraud. He sought for a declaration that the *pujari* Nand Ram was in possession of the temple and that the plaintiff in the earlier suit, namely the decree-holder, had no right to take possession of the temple or to interfere with the worship therein. Further, a perpetual injunction was claimed restraining the defendant from interfering with the use of the temple as a place of worship, and the blowing of conches, etc.

This suit was decreed by the trial court. The trial court decree was affirmed in first appeal. The defendant, who is the decree-holder in the present proceedings, appealed to the High Court, which recalled the order of the lower appellate court and dismissed the suit.

The order of the trial court decreeing the suit was passed on the 3rd of February, 1928. The order of the High Court dismissing the suit was passed on the 2nd of May, 1931.

The operative part of the trial court's order is as follows: "Suit is decreed with full costs. It is hereby declared that the plaintiff is the owner in possession of the temple and the land in suit, and the defendant has no concern with it now. She is not entitled to eject the plaintiff. She is hereby restrained from taking possession of this house and land and from interfering with the blowing of conches, ringing of bells and performing of *artis* and other rituals in the temple in future."

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Now this order was in force between the 3rd of February, 1928, and the 2nd of May, 1931, when it was set aside by the High Court. In these circumstances it was contended by the decree-holder that the period from the 3rd of February, 1928, until the 2nd of May, 1931, should be excluded in computing the period of limitation in respect of his decree of the 13th of February, 1926. If during the aforementioned period limitation be held not to run, then the application for the execution of the decree made on the 28th of April, 1933, is within time.

The contention that the period of limitation was interrupted as aforementioned, and that the execution application of the 28th of April, 1933, was therefore within time has found favour with the court of first instance, the lower appellate court and with the learned single Judge who disposed of the matter in second appeal. The view taken by the learned Judge in second appeal is that the decree of the 3rd February, 1928, had the effect of rendering impossible the execution of the decree in the first suit dated the 13th of February, 1926, which on the 28th of April, 1933, the decree-holder sought to execute, and that therefore the decree of the 13th of February, 1926, was stayed "by injunction or order" within the meaning of section 15(1) of the Limitation Act.

Section 15(1) is in the following terms: "In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded."

It will be observed that there is no reference in the aforementioned provisions to the execution of a decree being suspended or rendered impossible of execution as the result of a subsequent decree inconsistent with it.

Nevertheless, the view taken by the learned single Judge and the courts below is that the general principle upon which section 15 is based is applicable to the case where a decree is rendered impossible of execution as the result of a subsequent decree inconsistent therewith. In other words, the orders of the learned single Judge and of the courts below proceed upon what has been referred to in a recent case in this Court, *Badruddin Khan* v. *Mahyar Khan* (1), as the "general principle of suspension of limitation."

We are unable to agree that there is any place in the law of limitation in India for a "general principle of suspension of limitation". The law of limitation in India is enshrined in the Limitation Act. Beyond the specific and definite provisions of that Act the court is not entitled to go. It may well be that the proposition that the recognition of a "general principle of suspension of limitation" is consistent with equity and, it may be, with common sense; but that is neither here nor there. The Limitation Act must be strictly construed, and in this connection we would refer to the observations in the opinion of the Judicial Committee of the Privy Council in the case of *Nagendra Nath De* v. *Suresh Chandra De* (2): "The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide."

We would note further that the Calcutta High Court in the case of *Sarat Kamini Dasi* v. *Nagendra Nath Pal* (3) held that in applying the principles of limitation the Indian Courts are not permitted to travel beyond the provisions embodied in the Limitation Act, and that, apart from the provisions of that Act, there is no principle which can legitimately be

(1) I.L.R. [1939] All. 103. (2) (1932) I.L.R. 60 Cal. 1.
(3) (1925) 29 C.W.N. 973.

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invoked to aid or to supplement its provisions. The same view was taken by the Madras High Court in the case of *Sundaramma* v. *Abdul Khadar* (1).

In view of what must be regarded as settled law that the courts in India are bound by the specific provisions of the Limitation Act and are not permitted to more outside the ambit of these provisions, references to "general principles of suspension of limitation" are to be deprecated. It is not permissible to the courts to discover in the provisions of the Limitation Act general principles and to apply these principles to cases which are not specifically provided for by the Act itself.

Now it is abundantly clear that section 15 of the Limitation Act does not contemplate the case of one decree being rendered impossible of execution by a subsequent decree in another suit. Section 15, so far as execution proceedings are concerned, contemplates the case only of execution proceedings being held up by an order of the court or injunction. Now it cannot be maintained in the present case that the execution of the decree of the 13th of February, 1926, was held up either by an injunction or a stay order. No attempt was made to put the decree into execution. There was, therefore, no necessity for an order of stay of execution, or of injunction, and no such order was passed. The learned single Judge in the course of his judgment refers to this point and observes: "It may be conceded at once that no injunction, temporary or otherwise, specifically staying the execution of the decree was obtained by the plaintiff in the second suit. Similarly there is no order directing, in so many words, that the execution of the decree passed in the first suit be stayed pending the disposal of the second suit." Now in our judgment, there being no order "directing in so many words that the execution of the decree passed in the first suit be stayed pending the disposal of

(1) (1932) I.L.R. 56 Mad. 490.

the second suit", section 15 of the Limitation Act has no application whatever.

Learned counsel for the judgment-debtors, in appeal, referred to the case of *Somshikharswami* v. *Shivappa Mallappa* (1). In that case the plaintiff had obtained a decree for possession on the 15th of February, 1913. There was an appeal against the decree of the trial court to the district court and then to the High Court, which ultimately confirmed the decree on the 10th of December, 1915. The plaintiff filed his application for execution on the 28th of June, 1920. During the interval, however, the defendant had filed a suit in 1916 for a declaration that the plaintiff's decree had been obtained by fraud. That litigation lasted until the 31st of July, 1920. The suit was ultimately dismissed. It will be observed that the facts of that case are almost on all fours with the facts of the present case. The decision of the Bombay High Court was that the plaintiff may have been under an honest but mistaken impression that during all this time from 1916 to 1920 it would have been futile for him to prosecute the application for execution of the decree which was challenged by the suit of 1916, and that in a case of this kind though it might be desirable that the plaintiff ought to be in a position to deduct the time taken up in defending a litigation of such a nature, yet it was impossible to bring the case within the provisions of the Indian Limitation Act, and the application for execution was accordingly barred.

A somewhat similar point was decided by the Privy Council in the case of *Kirtyanand Singh* v. *Prithi Chand Lal* (2). The Judicial Committee held in that case where, after the appellants had obtained decrees in certain rent suits, a receiver was appointed for some of the judgment-debtor's property in a suit against him, and on the application of the appellants in that suit seeking leave to proceed against property in the hands of the

(1) A.I.R. 1924 Bom. 39. (2) (1932) I.L.R. 12 Pat. 195

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receiver the court ordered that they should "wait for some time", and at the time no application for execution was pending, that the order was not in any sense a stay of the execution by injunction or order within the meaning of section 15 of the Limitation Act. Now the refusal by the court of the appellant's application to proceed against the property in the hands of the receiver would effectually have prevented the appellant from executing his decree. If, despite the order of the court, he had attempted to put his decree into execution, the court would immediately have passed an order staying the execution. Similarly in the present case it may well be that had the decree-holder attempted to put his decree of the 13th of February, 1926, into execution, he would have been met with an application for stay by the judgment-debtors. Nevertheless, the application for execution would not have been futile and of no avail. The application for execution would have drawn from the court an order, it may be an order staying the execution, but that order would have had the effect of interrupting the running of period of limitation.

Learned counsel for the decree-holder contended that there was no justification for imposing upon the decree-holder the duty of prosecuting an application for execution which was bound to fail and which would be futile, in the circumstances. It is sufficient to remark, in answer to this argument, that in the Privy Council decision above referred to, the Judicial Committee held that an order which would have the effect of rendering execution proceedings abortive did not relieve the decree-holder of the burden of taking the ordinary steps to execute his decree if he wished to save that decree from the bar of limitation. Furthermore, we would observe that to state that an application for execution of the decree of the 13th February, 1926, would be futile is to beg the question. That application would not have been futile. No doubt the execu-

tion proceedings would have been stayed, but the application itself, so far from being futile, would have resulted in an order which would have interrupted the running of the period of limitation, and the decree would have been kept alive.

Learned counsel for the decree-holder relied in the course of argument upon the decision in the case of *Lakshminarayana* v. *Lakshmipati* (1). In that case it was held by a Bench of the Madras Court that in order to justify the application of section 15 of the Limitation Act the court has to see whether the order or decree in a previous litigation between the same parties is in substance and not merely in form one which prevents a party from filing a suit or executing a decree; in other words, section 15 would apply when the decree-holder was prevented from executing his decree even though no stay order had been passed or injunction issued. With respect, we are unable to agree with this decision, and we would observe that the decision was not followed by a Full Bench of the same High Court in a subsequent case, *Sundaramma* v. *Abdul Khadar* (2), already referred to, a case in which the facts were closely similar to the facts of the present case. The Court there held that the provisions of the Indian Limitation Act could not be extended by the court on grounds of equity. The law on the point is exhaustively discussed in the course of the judgment of the Court. We do not consider it necessary to review in detail the various authorities referred to. We would observe, however, that in the course of the judgment of JACKSON, J., who was one of the Bench, the argument that a litigant should not be forced to prosecute futile proceedings was considered. In an earlier case in the Madras High Court the proposition appears to have been approved that a person is not bound to bring an unnecessary suit or to make futile and unnecessary applications during the course of other litigations for the settlement of the same rights. As JACKSON, J.,

(1) A.I.R. 1927 Mad. 997. (2) (1932) I.L.R. 56 Mad. 490.

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observes in reference to this argument, it seems rather to beg the question. If the application was one which must be made in order to save the bar of limitation, it was neither futile nor unnecessary.

The Bench approved further of the decision in the case of *Satyanarayana Brahmam* v. *Seethayya* (1). In that case it was held that no equitable grounds for the suspension of a cause of action can be added to the provisions of the Indian Limitation Act, and that a decree cancelling a promissory note as fraudulent is no stay of a suit upon the note.

Learned counsel for the decree-holder cited a number of cases in support of his contention that on the general principle of suspension of limitation, the decree of the 13th February, 1926, must be held to have been kept alive. We do not consider it necessary to refer to these authorities in detail. Suffice it to say that they do not justify the proposition that a general principle of suspension of limitation has any place in the law of limitation in India. In the cases to which counsel has referred where the decrees were held to have been kept alive, the decisions have not been based upon any general principle of suspension of limitation. The decision in each case has rested on a finding as to the date upon which the cause of action had arisen.

On the whole matter we are satisfied, after a full consideration of the authorities, that the decree of the 3rd February, 1928, did not operate as an injunction or stay of execution within the meaning of section 15 of the Limitation Act, and that therefore the decree of the 13th February, 1926, was time barred on the 28th April, 1933, when the decree-holder respondent attempted to put the decree into execution.

We accordingly allow the appeal, set aside the order of the learned single Judge, sustain the objection of the judgment-debtors and dismiss the application for execution. The judgment-debtors are entitled to their costs throughout.

(1) (1926) I.L.R. 50 Mad. 417.