

APPELLATE CIVIL.

Before Sir Louis Stuart, Knight, Chief Judge, and
Mr. Justice Wazir Hasan.

GOBARDHAN DASS (DECREE-HOLDER-APPELLANT) v. KUN-
WAR JANG BAHADUR AND ANOTHER (JUDGMENT-
DEBTORS-RESPONDENTS).*

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Execution of decree—Application for rateable distribution, whether a step in aid of execution—Limitation Act, article 182(5)—Civil Procedure Code, section 73 and order XXI, rule 11.

Held, that rateable distribution of assets is a mode of execution of a decree for payment of money prescribed by law under section 73 of the Code of Civil Procedure. An application asking for rateable distribution is, therefore, "in accordance with law" and saved limitation under article 182, clause 5 of the Limitation Act.

Held further, that an application "for execution" or "to take some step in aid of execution" is "in accordance with law" if it is in accordance with the rules of procedure prescribed therefor and it does not cease to be such an application if on an adjudication on the merits of the case the court rejects the relief for which it prays.

Mr. *Bisheshwar Nath Srivastava* and Mr. *Kashi Prasad*, for the appellant.

Mr. *M. Wasim*, for the respondent No. 1.

STUART, C. J., and HASAN, J.:—These are the decree-holder's appeals from the order of the Subordinate Judge of Hardoi, dated the 23rd of March, 1926, dismissing applications for execution of two decrees respectively. The decree under execution in each case was passed on the 30th of November, 1918 by the Court of the Subordinate Judge of Lucknow and was transferred, in due course, for execution to the Court of the Subordinate Judge of Hardoi.

* Execution of Decree Appeals Nos. 26 and 27 of 1926, against the order, dated the 23rd of March, 1926, of Khurshed Husain, Subordinate Judge of Hardoi.

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The last application for execution in each case was made by the decree-holder on the 27th of May, 1925. The judgment-debtors filed petitions of objections against the applications for execution, but at the hearing of the case in the lower court only two objections were pressed and the rest abandoned. The learned Subordinate Judge decided the first objection in favour of the decree-holder and against the judgment-debtors. His decision in respect of that objection was not impugned before us on behalf of the judgment-debtors. The other objection was that the applications of the 27th of May, 1925, in both cases were barred by limitation. This objection the learned Subordinate Judge decided in favour of the judgment-debtors and against the decree-holder. From that order the decree-holder has appealed to this Court in each case. The only question for the decision in these appeals, therefore, is as to whether the application of the 27th of May, 1925 in each case is, or is not, barred by limitation.

It is agreed that in the matter of limitation these applications for execution of decrees are governed by the provisions of article 182 of the First Schedule of the Indian Limitation Act, 1908. Following the method adopted by the learned Subordinate Judge in his order under appeal we will specify in separate columns and in chronological order the previous applications relevant to the matter under consideration which were made by the decree-holder for execution in each case :—

APPEAL NO. 26.

1. (Exhibit A3). The application, dated the 18th of November, 1921, made to the Court of the Subordinate Judge of Lucknow. This

APPEAL NO. 27.

1. (Exhibit A4). The application, dated the 18th of November, 1921, made to the Court of the Subordinate Judge of Lucknow. This

was the fourth application made by the decree-holder as would appear from the recitals in column 6 of the application. In column 7 the amount of the decree and the interest awarded under the decree were specified. In column 8 the costs due under the decree and the total amount recoverable in execution were specified. In column 10 the decree-holder asked for the following reliefs:—

- (1) That notice under rule 22 of order XXI of the Code of Civil Procedure be issued to the judgment-debtors; and
- (2) That an order be passed under the provisions of section 39 of the Code of Civil Procedure that the decree be sent to the Court of the Subordinate Judge of Hardoi for execution.

The order of transfer was accordingly passed. The application purports to be made under order XXI, rule 11 of the Code of Civil Procedure, and is, as a matter of fact, strictly in accordance with the form prescribed by that rule.

application is precisely of the same nature as the application of the same date in the connected case. The order of transfer was made as prayed for.

2. (Exhibit A5). The application for execution, dated the 20th of December, 1922, made to the Court of the Subordinate Judge of Hardoi. The application is in accordance with the form prescribed by rule 11 of order XXI of the Code of Civil Procedure. The last column of the application recites the fact that the court, in the cases mentioned therein, had appointed a receiver of the judgment-debtors' assets. The relief prayed for in the application is that in accordance with the provisions of section 73 of the Code of Civil Procedure rateable distribution may be ordered. In the other columns of the application the amount of the decree realizable and the fact that the previous application had been made to the court at Lucknow for a transfer certificate are mentioned.

3. (Exhibit 4). This application was also made, in accordance with the provisions of rule 11 of order XXI of the Code of Civil Procedure on the 14th of January, 1925, to the Court of the Subordinate Judge of Hardoi.

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2. (Exhibit A4). The application for execution, dated the 4th of May, 1922, made to the Court of the Subordinate Judge of Hardoi. The application is in accordance with the form prescribed by rule 11 of order XXI of the Code of Civil Procedure and in column 10 relating to the mode in which assistance of the court is required, the amount of the decree is stated and prayer is made under order XXI, rule 43, for the attachment and sale of the movables of the judgment-debtors.

3. Application for execution made to the same court on the 11th of July, 1922. This application is again in the form prescribed by rule 11 of order XXI, of the Code of Civil Procedure and in the last column relating to the mode in which the assistance of the court is required, the amount due under the decree is stated and a prayer is made for the attachment and sale of certain immovable property specified in a schedule attached to the application under order XXI, rules 54/66 of the Code of Civil Procedure.

4. Application for execution made to the same court on the 28th of May, 1923, in accordance with

In column 6 of the application previous applications are cited and in column 8 the amount realizable under the decree is mentioned. In column 10 it is stated that one Puttu Lal, decree-holder, had attached certain assets of the judgment-debtors and prayer is made for rateable distribution under the provisions of section 73 of the Code of Civil Procedure.

4. The present application for execution made on the 27th of May, 1925.

the form prescribed by rule 11 of order XXI of the Code of Civil Procedure. Here again the amount due under the decree is stated and a prayer is made for rateable distribution of assets which might be realized in execution of three decrees specified in the same column under section 73 of the Code of Civil Procedure. Previous application for execution and the fact that the decree had not been satisfied are also stated in this application in columns 6 and 7 of the form.

5. The present application of the 27th of May, 1925.

In describing the nature of the applications for execution in the two cases the learned Subordinate Judge has committed certain errors in the matter of the reliefs for which the applications prayed. We have corrected those errors. It is agreed that the application of the 18th of November, 1921, in each case was a valid application. But it is contended on behalf of the judgment-debtors and the contention has been upheld by the learned Subordinate Judge that the applications of the 20th of December, 1922, and of the 14th of January, 1925 in the one case and of the 11th of July, 1922 and the 28th of May, 1923 in the other case were not applications "in accordance with law" and, therefore, they do not save the last applications in both the cases from the bar of limitation.

As the application of the 28th of May, 1923 in one case and the applications of the 20th of December, 1922 and the 14th of January, 1925 in the other case are of the same nature and the argument in

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respect of all of them is the same we will first deal with these applications. The argument is that these applications asking for the rateable distribution were not "in accordance with law" within the meaning of clause 5 of article 182 of the First Schedule of the Indian Limitation Act, 1908, because no application for execution of his decree or decrees by the present decree-holder was pending on the dates of these applications and also because the relief of rateable distribution is not one of the modes of execution of a money decree prescribed by rule 30 of order XXI of the Code of Civil Procedure.

As to the last ground of the argument we have no hesitation in overruling it at once. Rule 30 of order XXI of the Code of Civil Procedure is not in any manner intended nor does it purport to be exhaustive of the modes of execution of a money-decree. The words of the rule are "may be executed by". Sub-clause (v) of clause (j) of rule 11 of order XXI of the Code of Civil Procedure distinctly provides for other modes of execution besides the detention in the civil prison of the judgment-debtor or by the attachment and sale of his property, or by both. The nature of the relief granted by the decree was the recovery of money; the prayer for rateable distribution made in the applications under consideration was a mode of execution which the nature of the relief granted by the decree required. Indeed the relief of a rateable distribution is only permissible in a case of a decree for the payment of money as is clear from section 73, sub-section (1) of the Code of Civil Procedure.

Apart from the provisions of rule 11, to which we have just now referred, it is quite clear to our mind that rateable distribution of assets is a mode of

execution of a decree for the payment of money prescribed by law, and that law is to be found in section 73 of the Code of Civil Procedure.

As to the first ground of argument also we are of opinion that it has no substance. The language of section 73, sub-section (1), only requires the following conditions to be fulfilled before it comes into operation :—

- (1) Holding of assets by the court;
- (2) more than one person having applied to the court for the execution of their decrees for the payment of the money passed against the same judgment-debtor;
- (3) such applications having been made before the receipt of the assets; and lastly
- (4) such persons not having obtained satisfaction of their decrees.

The decree-holder in the present case had made applications for the execution of his decrees previous to the applications under consideration and had not obtained satisfaction thereof. This matter, as also the facts covering other conditions, were recited in the applications and the truth of those recitals has never been challenged. It may be mentioned that none of these applications was decided on merits but was merely consigned to record for the reason that no further steps were taken in relation to it. They cannot, therefore, be treated as having been finally adjudicated upon.

Cases decided by the High Courts in India were cited on behalf of the judgment-debtors with a view to show that applications in those cases were not treated as applications "in accordance with law" and the learned Advocate for the decree-holder cited cases to the contrary. We do not think that it will

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serve any useful purpose to refer to those cases in our judgment because none of them decides the question as to whether an application for execution is barred by limitation on the ground that a previous application for rateable distribution of the judgment-debtor's assets is not "in accordance with law" for the reasons now urged.

We are of opinion that an application "for execution" or "to take some step in aid of execution" is "in accordance with law" if it is in accordance with the rules of procedure prescribed therefor and it does not cease to be such an application if on an adjudication of the merits of the case the court rejects the relief for which it prays. A perusal of the description of these applications given in the preceding portion of this judgment will show that they were in accordance with the rules of procedure prescribed by the Code of Civil Procedure. They were, therefore, according to our judgment, in accordance with law.

It now remains to deal with the application of the 11th of July, 1922. It is argued on behalf of the judgment-debtors that the relief prayed for in that application as to the attachment and sale of certain immovable property could not have been granted by the court for the reason that that property had already been attached in execution of a decree transferred to the Collector under section 68 of the Code of Civil Procedure and, therefore, the application was not in accordance with law. Whether the relief could, or could not, have been granted by the court seized with the execution of these decrees we need not decide. The relief for which the prayer was made in the application was certainly one which was open to the decree-holder to make under the rules of procedure relating to the execution of a decree for

payment of money. The rest of the application was also in accordance with those rules. We are of opinion, as we have already said, that the fact that on an adjudication of the merits of the application the court was not in a position to grant the relief prayed for does not make the application in any manner less in accordance with law.

On the above grounds we reverse the order of the learned Subordinate Judge under appeal in each case and under order XLI, rule 23 of the Code of Civil Procedure, remand these cases to him with directions that the applications for execution be re-admitted under their original number in the proper register and be determined according to law.

The conduct of the decree-holder has been open to a charge of negligence and absence of proper caution. We would, therefore, not allow any costs to him so far either in the court below or in this Court. The future costs will abide the event.

Order reversed.

APPELLATE CRIMINAL.

*Before Sir Louis Stuart, Knight, Chief Judge, and
Mr. Justice Muhammad Raza.*

KING-EMPEROR (COMPLAINANT-APPELLANT) v. RAJKALI
(ACCUSED-RESPONDENT).*

1926
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*Confession—Admission of guilt soon after the occurrence—
Retraction of confession by accused, effect of.*

Where an accused made an admission of her guilt to several persons soon after the occurrence and also made a confession of the guilt before a magistrate and being in full possession of her faculties was utterly unable to give any satisfactory explanation as to how she came to make those

* Criminal Appeal No. 324 of 1926, against the order of Fateh Bahadur, officiating Sessions Judge of Hardoi, dated the 15th of June, 1926.