

1893

 JAGAT
 CHUNDER
 ROY
 v.
 ISWAR
 CHUNDER
 ROY.

account and to recover what might be found due to the estate of his father. The Court held that the sale was good in law, and that the purchaser was entitled to sue for an account and to receive such sum as might be found due to the partnership account. In the present case the partnership is apparently still subsisting, and we think that the decree-holder is entitled to attach the partnership property, that is to say, the two shops mentioned in the application. If the decree is not satisfied, he may proceed to put up to sale the two-anna share in the partnership business which it is alleged belongs to his judgment-debtor. If any such sale takes place, it will then be open to the purchaser or to the other partners to apply to have the partnership business wound up and the accounts taken. Meanwhile all that we need decide is that the partnership property may be attached in this case and the share of the judgment-debtor brought to sale. We accordingly allow the appeal with costs and reverse the order of the District Judge, dated 3rd March 1892.

Appeal allowed.

J. V. W.

Before Mr. Justice Ghose and Mr. Justice Gordon.

1893
 April 25.

WASI IMAM AND ANOTHER (DECREE-HOLDERS) v. POONIT SINGH
 AND ANOTHER (JUDGMENT-DEBTORS).*

Limitation Act (XV of 1877), Sch. II, Art. 179, cl. 4—Application for execution of decree—Step in aid of execution—Application to record certificate of payment by judgment-debtor in part satisfaction—Civil Procedure Code, s. 258.

An application made by some of the judgment-debtors (and signed by the decree-holders) to have certain payments, which were made out of Court, certified under section 258 of the Civil Procedure Code, and that time be allowed to pay the balance of the decree, the attachment put upon their property continuing, is "a step in aid of execution" such as will keep the decree alive within the meaning of the Limitation Act, XV of 1877, Art. 179, cl. 4.

* Appeal from order No. 186 of 1892, against the order of J. Tweedie, Esq., District Judge of Patna, dated the 26th of January 1892, reversing the order of Baboo Jogesh Chunder Mitter, Subordinate Judge of that district, dated the 8th of August 1891.

THIS was an application for execution of a decree, dated the 27th December 1887. Execution of the decree was taken out on the 23rd April 1888, and on that date the judgment-debtors put in a petition (which was signed by the decree-holders by their pleader) asking to have the sum of Rs. 93, which had been paid out of Court to the decree-holders, certified under section 258 of the Civil Procedure Code, and asking for six months' time to pay off the remaining amount due under the decree. On the 25th April the execution proceedings were struck off. The judgment-debtors failed to satisfy the decree, and on the 8th of April 1891 the decree-holders applied for attachment and sale of the judgment-debtors' properties to satisfy their decree. The Subordinate Judge of Patna held that the application of the 23rd of April 1888 was a step in aid of execution, and hence was not time-barred. The District Judge on appeal reversed the decision of the Subordinate Judge, holding that the petition of the 23rd of April was not a step taken in aid of execution such as the law requires to be taken in order to keep the decree alive, and declared the execution was barred.

1893

WAST IMAM,
v.
POONIT
SINGH.

The decree-holders appealed to the High Court.

Baboo *Saligram Sing* for the appellants.

Baboo *Tarit Mohun Das* for the respondents.

The judgment of the Court (GHOSH and GORDON, JJ.) was as follows:—

The sole question involved in this appeal is whether the application that was made by the judgment-debtors, and consented to by the decree-holders, on the 23rd April 1888, was an application to take some step in aid of execution of the decree obtained by the decree-holders.

We are disposed to think that this was a joint application by both the judgment-debtors and the decree-holders; and what was asked for in the said application was, as we understand it, that a certain amount of money paid to the decree-holders out of Court might be certified in accordance with the provisions of section 258 of the Civil Procedure Code, and that six months' time might be allowed to the judgment-debtors for payment of the balance of

1898
 WASI IMAM
 v.
 POONIT
 SINGH.

the decretal money, the attachment that had been put upon the property of the judgment-debtors being allowed to continue.

The Court upon this application made an order in accordance with the request of the parties.

The question whether an application like this might be regarded as an application to take some step in aid of execution was considered in a case decided by this Court, *Tarini Das Bandyopadhyaya v. Bishtoo Lal Mukhopadaya* (1), and it was there held that an application by a judgment-creditor to bring an execution proceeding on the file, and to record his certificate of the payment of a sum of money by the judgment-debtor, is an application to take some step in aid of execution of the decree within the meaning of clause 4, article 179 of schedule II of the Limitation Act. And we find that this case was followed by the Allahabad High Court in the case of *Muhammad Husain Khan v. Ram Sarup* (2). There is also another case of the Allahabad High Court to the same effect, *Sitla Din v. Sheo Prasad* (3).

We think that (although the matter is not free from doubt) we ought to adopt the rulings of this Court and the Allahabad High Court in this case; and following these rulings, we hold that the application which was made, and which we regard as the joint application of both the parties concerned, gave the decree-holders a fresh start of time.

We observe that the lower Court assigns another reason for holding that the decree is barred by limitation, and that is, that the application that was made on the 23rd April 1888 was not an application by the whole body of judgment-debtors, but by some of them; but we do not think that that makes any difference in the principle which ought to govern us in this matter, because explanation 1 of article 179 of the Limitation Act, among other matters, provides that "where a decree or order has been passed jointly against more persons than one, the application if made against any one or more of them, or against his or their representatives, shall take effect against them all." That, we think, is an authority for holding that the application made by the decree-holders in this case, the decree being a joint decree against all

(1) I. L. R., 12 Cal., 608.

(2) I. L. R., 9 All., 9.

(3) I. L. R., 4 All., 60.

the judgment-debtors, saves the decree-holders from being barred by limitation. 1893

The result is that the order of the Court below is set aside and that of the Court of first instance restored, with costs.

WASI IMAM
v.
POONIT
SINGH.

Appeal allowed.

C. S.

FULL BENCH REFERENCE.

Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Prinsep, Mr. Justice Norris, Mr. Justice Pigot, and Mr. Justice Ghose.

BAIKANTHA NATH DAS (COMPLAINANT) v. LOLIT MOHUN SARKAR (ACCUSED).*

1893
May 23.

Bengal Municipal Act (Bengal Act III of 1884), ss. 2, 230, 270, sub-section (4)—“Notification,” meaning of—“Order” under Bengal Act V of 1876, ss. 234, 249, 250—Extension of Municipal Act to Balasore—Order notified.

The word “notification” in section 2, Bengal Act III of 1884, includes an order made under section 234 of Bengal Act V of 1876.

An order, therefore, made and notified under section 234 of Bengal Act V of 1876, extending the provisions of chapter VII of the Act, is, under the provisions of section 2 of Bengal Act III of 1884, to be deemed to have been made and notified under the provisions of the Act of 1884.

THIS was a reference to a Full Bench made by Mr. Justice Pigot and Mr. Justice Hill. The order of reference was as follows :—

“In this case the Sessions Judge of Cuttack has submitted, for the orders of this Court, in revision, the record of a case in which the Deputy Magistrate of Balasore has tried and convicted Lolit Mohun Sarkar, under section 270, sub-section (4) of the Bengal Municipal Act, 1884, and sentenced him to a fine of Rs. 10 for making an excavation within the limits of the Municipality of

* Letter of Criminal Reference No. 327, from Baboo B. L. Gupta, Sessions Judge of Cuttack, dated 20th August 1892, from the conviction of Baboo Nobin Chunder Dey, Deputy Magistrate of Balasore, dated 15th July 1892.