

APPELLATE CIVIL.

*Before Mr. Justice Muhammad Raza and Mr. Justice
Bisheshwar Nath Srivastava.*

DHAN DEI, MUSAMMAT (OBJECTOR-APPELLANT) v.
KASHMIRI BANK, LTD., FYZABAD (DECREE-HOLDER-
RESPONDENT).*

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September,
28.

Civil Procedure Code (Act V of 1908), section 48—Execution of decree—Limitation of twelve years prescribed by section 48 of the Code of Civil Procedure, effect of—Provincial Insolvency Act (V of 1920), section 78(2)—Period of limitation prescribed by section 48 of the Code of Civil Procedure, if controlled by section 78(2) of the Provincial Insolvency Act.

Held, that section 48 of the Code of Civil Procedure is controlled by section 78(2) of the Provincial Insolvency Act, 1920. The words "the period of limitation prescribed for a suit or application for the execution of a decree" are general and comprehensive and refer to the limitation prescribed in any law for the time being in force. They can control or modify the period of time allowed, not only in the statute of limitation, but also in section 48 of the Code of Civil Procedure, 1908.

No doubt in a strict sense section 48 does not prescribe a period of limitation, but in a general sense it imposes limitation on the right of the decree-holder to apply for execution after the expiry of twelve years from the date of the decree. In that general sense, although by section 48 a period of limitation strictly so called is not prescribed, the twelve years period in effect lays down the period of limitation applicable to an application for execution of a decree within the meaning of section 78(2) of the Provincial Insolvency Act. *Geneshi Lal v. Imtiaz Ali* (1), *Subbarayan v. Nataranjan* (2), *Machanjeeri Ahmad v. K. Govinda Prabhu* (3), *Mohammad Abdul Karim v. Newaz Singh* (4) and *Shiam Karan v. The Collector of Benares* (5), referred to.

Mr. B. P. Misra, for the appellant.

Mr. R. D. Sinha, for the respondent.

*Execution of Decree Appeal No. 86 of 1930, against the order of L. M. Kidwai, First Subordinate Judge of Bahraich, dated the 16th of August, 1930, confirming the order of Babu Kampta Nath Gupta, Munsif of Bahraich, dated the 7th of January, 1930.

(1) (1931) 80 W. N., 242. (2) (1922) I.L.R., 45 Mad., 785.
(3) (1928) I.L.R., 51 Mad., 862. (4) (1910) 13 O.C., 303.
(5) (1919) I.L.R., 42 All., 118.

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RAZA and SRIVASTAVA, JJ. :—This is an execution second appeal arising out of a simple money decrec.

The facts relevant to the appeal may be shortly stated :—

The respondent obtained a decree against the appellant for Rs. 470-4-0 and costs on the 9th of November, 1914. The appellant was adjudicated an insolvent on the 3rd of November, 1917. A receiver was appointed in respect of the entire property of the insolvent. The order of adjudication was annulled on the 7th of July, 1928. The respondent took out execution of the decree from time to time, but the decree was not satisfied. The fifth application for execution was made on the 21st of November, 1917. It was consigned to record on the 14th of May, 1918 as the appellant had been adjudicated an insolvent. Rupees 416-8-8 were due from the judgment-debtor (appellant) on that date. The sixth and the last application for execution was made on the 29th of August, 1929 about 13 months after the order of adjudication was annulled by the Insolvency Court. This application was opposed by the judgment-debtor (appellant) on the ground of limitation. His objection was dismissed by the learned Munsif of Bahraich on the 7th of January, 1930. His appeal was dismissed by the learned First Subordinate Judge of Bahraich on the 16th of August, 1930. He came to this Court in second appeal on the 17th of November, 1930. He died during the pendency of the appeal and the name of his widow Musammat Dhan Dei was brought on record in his place.

The only point which has been argued before us is the point of limitation. The appellant's learned Counsel contends that section 48 of the Code of Civil Procedure is not controlled by section 78 of the Provincial Insolvency Act (V of 1920) and hence the decree-holder's application for execution is barred by time. We have heard the learned Counsel on both sides at some length. We have also considered the authorities

which have been laid before us in the course of arguments. In our opinion there is no substance in this appeal. The relevant portions of sections 28 and 78 of the Provincial Insolvency Act are as follows :—

Section 28(2) :—

“On the making of an order of adjudication, the whole of the property of the insolvent shall vest in the court or in a receiver as hereinafter provided, and shall become divisible among the creditors, and thereafter, except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable under this Act shall during the pendency of the insolvency proceedings have any remedy against the property of the insolvent in respect of the debt, or commence any suit or other legal proceeding, except with the leave of the court and on such terms as the court may impose.”

Section 78(2) :—

“Where an order of adjudication has been annulled under this Act, in computing the period of limitation prescribed for any suit or application for the execution of a decree (other than a suit or application in respect of which the leave of the court was obtained under sub-section (2) of section 28 which might have been brought or made, but for the making of an order of adjudication under this Act, the period from the date of the order of adjudication to the date of the order of annulment shall be excluded: Provided that nothing in this section shall apply to a suit or application in respect of a debt provable, but not proved under this Act.”

It is not disputed in this case that the debt for which the respondent had obtained the decree against

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the appellant was proved under the Act. He was paid along with others rateably before the order of adjudication was annulled by the Insolvency Court. He applied for execution of the decree some 13 months after the order of adjudication was annulled, as stated above.

Raza
and Srinivas
I.J.

Under section 48 of the Code of Civil Procedure "where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of 12 years from (a) the date of the decree sought to be executed, or (b) where the decree or any subsequent order directs any payment of money, or the delivery of any property to be made at a certain date or a recurring period, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree."

The appellant's learned Counsel contends that as the period of 12 years has elapsed from the date of the decree sought to be executed, the decree-holder's application must be rejected under section 48 of the Code of Civil Procedure which is not controlled by section 78 of the Provincial Insolvency Act. He relied principally on the case of *Ganeshi Lal v. Imtiaz Ali* (1) decided by a Bench of this Court on the 24th of March, 1931, and also on the case of *Subbarayan v. Nataranjan* (2) referred to and relied on in *Ganeshi Lal's* case (1). It was held in *Ganeshi Lal's* case that "section 48 of the Code of Civil Procedure contains an unqualified prohibition, subject to exceptions contained in clause (2) thereof against execution of certain kinds of decrees more than 12 years old and is not controlled by section 15(1) of the Limitation Act, 1908. Hence an application for execution of such a decree stayed by an injunction or order of the Court, filed after 12 years from the date of the decree, cannot be saved from the bar under section 48 of the Code by excluding under section 15(1) of the Limitation Act the time during

(1) (1931) 8 O.W.N., 642.

(2) (1922) I.L.R., 45 Mad., 785.

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which execution was stayed. The period mentioned in section 48 of the Code of Civil Procedure is not a period of limitation in the strict sense and consequently section 15(1) is not applicable to it." In our opinion the contention of the appellant's learned Counsel in this case is not well founded and must be overruled. As pointed out in the case of *Machanjeeri Ahmad v. K. Govinda Prabhu* (1) so long as insolvency proceedings are pending the period of limitation is suspended, provided the claim is not barred on the date of adjudication, and if an order of adjudication is annulled, the right to proceed against an insolvent would revive and the period will be excluded if the person wishes to proceed against an insolvent or his property. We think section 78(2) was enacted to save such an application for execution as we have before us in this case, from the bar of limitation. It is clear that the respondent was temporarily prevented from issuing any process for execution against the judgment-debtor (appellant) under section 28(2) of the Insolvency Act. The question arises whether the limitation of 12 years referred to in section 48 of the Code of Civil Procedure is such a period of limitation as is referred to in section 78 (2) of the Act. As pointed out in the case of *Mohammad Abdul Karim v. Nawaz Singh* (2), there are two kinds of limitation with respect to execution of decrees. Section 48 of Act V of 1908 (Civil Procedure Code) corresponds to section 230 of Act XIV of 1882 and the apparent object of this section is to put an end to all execution proceedings on the expiration of 12 years from the date of the decree except in certain specified cases. The second kind of limitation is of the nature referred to in Article 182 of the first schedule to the Indian Limitation Act (IX of 1908). The apparent object of this Article is to ensure due diligence by the decree-holder in applying for execution. The object of these two periods of limitation is to prevent the

(1) (1928) I.L.R., 51 Mad., 862 (2) (1910) 13 O.C., 303 (306).
(865).

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execution of decrees from going on indefinitely and at the same time to secure to the decree-holders the benefits of their decrees, if they are ordinarily diligent. There is no distinction in principle to be drawn between the two periods laid down and therefore, if under any special provision of law a decree-holder is prevented within these periods of limitation from taking out execution it is reasonable to hold that the decree-holder should be protected in either case. To the same effect is the ruling of their Lordships of the Allahabad High Court in the case of *Shiam Karan v. The Collector of Benares* (1). The question to be decided in these cases was whether the decree-holder should be protected by the provisions of paragraph 11(3) of the third schedule of Act V of 1908, but we think the principle of decision in these cases helps the respondent in this appeal. He is not anyhow at fault. It would be very inequitable if he were prevented from taking out execution when he could not take out execution during the period of the judgment-debtor's insolvency under section 28(2) of the Provincial Insolvency Act. No doubt in a strict sense section 48 does not prescribe a period of limitation, but in a general sense it imposes limitation on the right of the decree-holder to apply for execution after the expiry of 12 years from the date of the decree. In that general sense, although by section 48, a period of limitation strictly so called is not prescribed, the 12 years period in effect lays down the period of limitation applicable to an application for execution of a decree within the meaning of section 78(2) of the Provincial Insolvency Act.

In our opinion section 48 of the Code of Civil Procedure is controlled by section 78(2) of the Provincial Insolvency Act, 1920. We hold that the words "the period of limitation prescribed for a suit or application for the execution of a decree" are general and comprehensive and refer to the Limitation prescribed in any

(1) (1909) I.L.R., 42 All., 118.

law for the time being in force. They can control or modify the period of time allowed, not only in the statute of limitation, but also in section 48 of the Code of Civil Procedure, 1908.

We think no case has been made out to disturb the judgment of the lower court. Hence we dismiss the appeal with costs.

Appeal dismissed.

MISCELLANEOUS CIVIL.

Before Mr. Justice Bisheshwar Nath Srivastava.

ABDUL HAFIZ AND OTHERS (OBJECTORS-APPELLANTS) V. MOOL CHAND, APPLICANT AND OTHERS, OBJECTORS AND ANOTHER (INSOLVENT-RESPONDENTS).*

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October, 15.

Provincial Insolvency Act (V of 1920), section 53 as amended by Act X of 1930—Insolvent executing deed of gift before the amending Act came into force—Application for the annulment of the deed of gift made after the amending Act came into force—Decision of application under section 53, if to be governed by the amending Act.

Where, a deed of gift was executed by the insolvent before the Provincial Insolvency Act was amended by Act X of 1930 but the application for getting it annulled under section 53 of the Provincial Insolvency Act was made several months after the amending Act had come into force, held, that the decision of that application must be based upon the interpretation of the section as approved by the Legislature by means of the amending Act. *Taticherla Pichamma v. The Official Receiver of Cuddapah* (1), relied on.

Mr. *Sri Ram*, for the appellant.

Mr. *Mahabir Prasad Srivastava*, for the respondents.

SRIVASTAVA, J. :—This is an appeal against the order dated the 11th of April, 1931, of the District

*Miscellaneous Appeal No. 31 of 1931, against the order of Saiyed Asghar Hasan, District Judge of Hardoi, dated the 11th of April, 1931.

(1) (1930) I.L.R., 54 Mad., 12.