

## APPELLATE CIVIL.

Before Syed Wazir Hasan, Chief Judge and Mr. Justice  
Bisheshwar Nath Srivastava.

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March, 9.

MATA DIN, LALA (DECREE-HOLDER-APPELLANT) v. MUSAM-  
MAT KAUSILLA AND OTHERS (JUDGMENT-DEBTORS-  
RESPONDENTS).\*

*Limitation Act (IX of 1908), article 182, clause (5)—Execution of decree—Step in aid of execution—Payment to a decree-holder out of court, if a step in aid of execution.*

A payment made by a judgment-debtor to a decree-holder out of court is not a step in aid of execution under clause 5 of article 182. The essential conditions which must be satisfied are that there must be (a) an application in accordance with law, (b) the application must be made to the proper court, and (c) the application must be to take some step in aid of execution of the decree. So it is obvious that clause (5) can have no application unless there is an application made to the proper court. *Narayana Nair v. Kunhi Raman Nair* (1), relied on. *Jatindra Kumar Das v. Gagan Chandra Pal* (2), and *Maung Law San v. Maung Po Thein* (3), dissented from.

Mr. R. N. Shukla, for the appellants.

Mr. Shankar Sahai, for the respondents.

HASAN, C. J. and SRIVASTAVA, J. :—This is a decree-holder's appeal. The facts relevant to the appeal are as follows :—

The decree-holder appellant obtained a decree against the judgment-debtors respondents for Rs. 310-10-3 on the 30th of April, 1925. The first application for execution was consigned to the record on the 12th of February, 1926, on payment of Rs. 60 in part satisfaction of the decree. Another sum of Rs. 100 was paid on the 12th of July, 1926, and the payment was duly certified by the decree-holder on the 11th of

\*Execution of Decree Appeal No. 53 of 1930, against the order of S. Asghar Hasan, District Judge of Hardoi, dated the 19th of May, 1930, confirming the order of S. Abid Raza, Munsif, Bilgram (Hardoi), dated the 4th of February, 1930.

(1) (1925) A.I.R., Mad., 131.

(2) (1913) I.L.R., 46 Calc., 22.

(3) (1924) I.L.R., 2 Rang., 393.

August, 1926. A further payment of Rs. 100 was made out of Court on the 24th of May, 1927. The decree-holder acknowledged receipt of this amount, in his application for execution, dated the 26th of November, 1929, which has given rise to the present appeal. The decree-holder also put in a formal certificate on the 18th of December, 1929, and the execution court on the same date ordered that the payment be recorded.

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Both the lower courts have held that the payment of Rs. 100 made on the 24th of May, 1927, cannot be regarded as a step in aid of execution and that the application for execution dated the 26th of November, 1929, was therefore barred by limitation.

The learned counsel for the parties are agreed before us that if the payment made on the 24th of May, 1927, is held to constitute a step in aid of execution within the meaning of clause (5) of article 182 of the 1st schedule of the Indian Limitation Act, then the application for execution made on the 26th of November, 1929, must be held to be within time. They are also agreed that if the above mentioned payment cannot be regarded as such a step in aid of execution then the application dated the 26th of November, 1929, must be held to be barred by time. The only question therefore which requires determination in this appeal is whether the payment made out of court on the 24th of May, 1927, is or is not a step in aid of execution under clause (5) of article 182. This clause is to the following effect :—

“5. (Where the application next hereinafter mentioned has been made) the date of the final order passed on an application made in accordance with law to the proper court for execution, or to take some step in aid of execution of the decree or order.”

If we analyse this clause it will be quite clear that in order to bring the case under it, the essential

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conditions which must be satisfied are that there must be (a) an application in accordance with law, (b) the application must be made to the proper court, and (c) the application must be to take some step in aid of execution of the decree. It seems therefore obvious that clause (5) can have no application unless there is an application made to the proper court. In the present case the payment, as stated before, was made out of court. It is admitted that there was no application to any court and the payment having been made out of court, there is no room for presuming any such application. We have therefore no doubt that the payment made out of court cannot satisfy the requirements of clause (5). The view which we have taken is supported by the decision of the Madras High Court in *Narayana Nair v. Kunhi Raman Nair* (1). The learned counsel for the decree-holder-appellant relies for the contrary view upon the decision of the Calcutta High Court in *Jatindra Kumar Das v. Gagan Chandra Pal* (2), and of the Burma High Court in *Maung Law San v. Maung Po Thein* (3). If these cases are to be regarded as authorities for the proposition that the mere payment made out of court is a step in aid of execution within the meaning of clause (5), then we must respectfully dissent from that view. We have been unable to discover in them any reasoned argument in support of that proposition. The plain terms of clause (5) seem to us to be enough to refute the proposition contended for by the appellant.

We are therefore of opinion that the decision of the courts below is correct. We accordingly dismiss the appeal with costs.

*Appeal dismissed.*

(1) (1925) A.I.R., Mad., 131.

(2) (1918) I.L.R., 46 Calc., 22.

(3) (1924) I.L.R., 2 Rang., 393.