

Court in *Emperor v. Ramanuj* (1), an accused convicted of causing hurt under section 323 of the Indian Penal Code can be ordered to find security under section 106 of the Code of Criminal Procedure. The words "assault or other offences involving a breach of the peace" clearly include the offence of causing hurt under section 323 of the Indian Penal Code and so an accused convicted under that section can be ordered to find security to keep the peace under section 106 of the Code of Criminal Procedure.

I was a party to this decision. I may also refer to a very recent decision of a Bench of the Allahabad High Court in the case of *Naziruddin v. Emperor* (2). It was held in that case also that a person convicted of an offence under section 323 of the Indian Penal Code can be ordered to find security to keep the peace under section 106 of the Code of Criminal Procedure.

The legality of the order passed by the learned District Magistrate cannot, therefore, be questioned in this case in which the applicants have been convicted under section 323 of the Indian Penal Code and section 24 of Cattle Trespass Act.

Hence I dismiss the application.

Application dismissed.

APPELLATE CIVIL

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

TILLA SINGH AND OTHERS (JUDGMENT-DEBTORS-APPELLANTS) V.
TIRBHAWAN SINGH AND OTHERS (DECREE-HOLDERS-RES-
PONDENTS)*

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Limitation Act (IX of 1908), Article 182(5)—Essential conditions for an application under Article 182, clause (5)—A obtaining mortgage decree against B—C obtaining simple money decree against B—C attaching B's entire share including mortgaged property in execution of his decree—Execution transferred to

*Execution of Decree Appeal No. 16 of 1932, against the order of Thakur Rachhpal Singh, District Judge of Hardoi, dated the 23rd of January, 1932.

(1) (1926) 3 O.W.N., (Sup.), 311. (2) (1933) A.L.J.R., 1345.

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Revenue Court—A applying to Revenue Court that share of B might be sold subject to A's lien in respect of mortgage decree—Proclamation of sale of property in terms of prayer—A's application to Revenue Court for declaration of his mortgage lien, whether an application made to proper court—Application, if a step-in-aid of execution.

In order to bring a case under clause (5) of Article 182, Limitation Act, 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 decree. Clause (5) can have no application unless there is an application made to the proper Court.

Where *A* obtains a decree against *B* for sale of certain mortgaged property and *C* obtains a simple money decree against *B* in execution of which he gets the entire share of *B* (including the mortgaged property) attached and the execution of that decree is transferred to the Revenue Court and *A* applies to the Revenue Court that the share of *B* might be sold subject to *A*'s lien in respect of the mortgage decree and the prayer is allowed and the sale proclamation is prepared in which the mortgage lien of *A* is duly entered, *A*'s application to the Revenue Court for declaration of his mortgage lien under his decree is not an application made "to the proper Court" to take some step-in-aid of execution of the decree for sale of the mortgaged property. The Revenue Court is not the court whose duty it is to execute the decree within the meaning of Explanation II to Article 182, Limitation Act. *Mata Deen v. Kausilla* (1), and *Ram Bharose v. Ramman Lal* (2), relied on.

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

Mr. S. C. Das, holding brief of Mr. Radha Krishna Srivastava, for the respondents.

RAZA and SRIVASTAVA, JJ.:—This is an execution appeal arising out of a mortgage decree.

The facts relevant to this appeal may be shortly stated:

Tirbhawan Singh and others obtained a decree against Tilla Singh and others for sale of certain mortgaged property on the 23rd of August, 1921. The decree was made final on the 22nd of August, 1925. The decree-holders applied for execution for the first

(1) (1931) I.L.R., 7 Luck., 38.

(2) (1932) I.L.R., 7 Luck., 59c
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time on the 19th of March, 1931. That application was consigned to records on the same date as the provisions of rule 187 of the Oudh Civil Rules had not been complied with. The decree-holders then made their second application for execution on the 23rd of March, 1931. This is the application which has given rise to this second appeal. The judgment-debtors filed objections contending that the application was barred by time. The decree-holders met this plea with the following allegations:

(1) One Tika Ram had obtained a simple money decree against the judgment-debtors in execution of which he had got the entire share of judgment-debtors (including the mortgaged property in question) attached. The execution of that decree was transferred to the Revenue Court. The decree-holders applied on the 1st of December, 1927, to the Revenue Court, that the share of the judgment-debtors might be sold subject to their lien in respect of the mortgage decree. This prayer was allowed and a sale proclamation was prepared on the 29th of September, 1928, in which mortgage lien of the decree-holders was duly entered. They relied upon this application and the proclamation as steps-in-aid of execution saving limitation in their favour.

(2) Two of the judgment-debtors, namely Tilla Singh and Fateh Singh had, on the 22nd of March, 1928, paid to the decree-holders a sum of Rs.105 towards the interest due under the decree.

The learned Subordinate Judge of Hardoi decided both the questions against the decree-holders on the 14th of November, 1931, and held that the decree was barred by time. The decree-holders' appeal was decided by the learned District Judge of Hardoi on the 23rd of January, 1932. He agreed with the learned Subordinate Judge in deciding the second question (i.e. the question of payment) against the decree-holders. He held, however, that the application, dated the 1st of

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December, 1927, and the proclamation of the 29th of September, 1928, had the effect of saving limitation in favour of the decree-holders. He made the following remarks in his judgment:

"I think that the application of the 1st of December, 1927, is in itself an application for execution though made before the Collector in execution proceedings initiated by another decree-holder. For the reasons given above I am of opinion that the application of the 1st of December, 1927, and the sale proclamation of the 29th of September, 1928, were steps-in-aid of execution which bring the present application within limitation."

The judgment of the learned District Judge shows that he had arrived at that conclusion "with a considerable amount of hesitation."

The judgment-debtors have appealed to this Court questioning the finding of the learned District Judge on the first point.

We have heard the learned Counsel on both sides at some length. In our opinion this appeal should be allowed.

Article 182(5) of the Indian Limitation Act (First Schedule) is in the following terms:

"5. (Where the application next hereinafter mentioned has been made) the date of 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 . . .

Explanation II—"Proper court" means the court whose duty it is to execute the decree or order."

As pointed out by a Bench of this Court in the case of *Mata Deen v. Kausilla* (1), it is quite clear that in order to bring the case 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

(1) (1931) I.L.R., 7 Luck., 38.

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(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. One of us was a party to that decision. Remarks to the same effect were repeated in a decision of a Full Bench of this Court in the case of *Ram Bharose v. Ramman Lal* (2), to which both of us were parties.

The application of the 1st of December, 1927, cannot, anyhow, be held to be an application for execution made to the proper court. The respondents' learned Counsel has found it difficult to support the judgment of the learned District Judge on that point. We have to consider whether the application of the 1st of December, 1927, and the sale proclamation of the 29th of September, 1928, were steps-in-aid of execution as held by the learned District Judge. We have no difficulty in deciding this question against the decree-holders in the present case. The fact is that no application in accordance with law was made "to the proper court for execution or to take some step-in-aid of execution of the decree." The decree-holders' application to the Collector for declaration of his mortgage lien under the decree was not an application made "to the proper Court" to take some step-in-aid of execution of the decree for sale of the mortgaged property. The Collector was not certainly "the court whose duty it is to execute the decree" within the meaning of Explanation II to Article 182 of the Indian Limitation Act. We do not know what order was actually passed on the decree-holders' application of the 1st of December, 1927, and on what date. The entry relating to the decree in question was, of course, made in the sale proclamation of the 29th of September, 1928, but it is difficult to understand how the sale proclamation can be held to be a step-in-aid of execution bringing the present application within limitation.

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We are not, therefore, prepared to agree with the finding of the learned District Judge on the question of limitation. In our opinion the decree-holders' application is barred by time and was rightly and properly dismissed by the learned Subordinate Judge.

Hence we allow the appeal with costs and setting aside the order of the learned District Judge restore that of the learned Subordinate Judge.

Appeal allowed.

APPELLATE CIVIL

*Before Sir Syed Wazir Hasan, Knight, Chief Judge and
Mr. Justice J. J. W. Allsop*

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OFFICIAL ASSIGNEE, BOMBAY, REPRESENTING DEBI SHANKAR JUDGMENT-DEBTOR (APPELLANT) v. DURGA PRASAD (DECREE-HOLDER) AND ANOTHER (RESPONDENTS)*

Presidency Towns Insolvency Act (III of 1909), section 53(1)—Execution of decree—Court issuing process under Order XXI, rule 46 instead of a precept or a garnishee order—Money received by court for benefit of decree-holder under the process, whether "assets realized in the course of the execution"—"Assets realized in the course of the execution" under section 53(1), meaning of.

Where money is received by a court in virtue of execution process, it is "assets realized in the course of the execution" within the meaning of section 53(1) of the Presidency Towns Insolvency Act. The requirements of section 53 are fully satisfied if the money is received by the Court for the benefit of the decree-holder in proceedings initiated according to law for the purpose of executing the decree. The fact that instead of issuing a precept under section 46 or a garnishee order under rule 104 of Order XXI of the Code of Civil Procedure, the court issued a process under rule 46 of the same order does not make the receipt of the money by the court otherwise than "in the course of the execution." *Mani Lal Umed Ram v. Nana Bhai Manek Lal* (1), *Vishwanath Maheshwar v. Virchand Pana Chand* (2), and *Arunachellam Chetti v. Ganapathi Ayyar* (3).

*Execution of Decree Appeal No. 8 of 1932, against the order of Baba Mahabir Prasad Varma, Subordinate Judge of Lucknow, dated the 16th of December, 1931.

(1) (1904) I.L.R., 28 Bom., 264. (2) (1882) I.L.R., 6 Bom., 16.
(3) (1905) I.L.R., 28 Mad., 279.