## APPELLATE CIVIL.

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

1928
*March*, 2.

MUSAMMAT RUQQAYA BIBI (JUDGMENT-DEBTOR-APPELLANT) *v.* PRAG TEWARI (DECREE-HOLDER-RESPONDENT).*

*Limitation Act (IX of 1908), First Schedule, Article 182 (5)—"Application in accordance with law" in Article 182, meaning of—Execution of decree—Decree-holder making an application for execution of decree in proper form, to the proper court—Court, whether should see whether decree-holder really wanted to prosecute the application and obtain satisfaction or not.*

In placing a construction on the words of Article 182 (5), schedule I, Act IX of 1908, a court should look at the words of the article themselves and not endeavour to introduce extraneous considerations. It should be remembered that Article 182 imposes restrictions upon the rights of a decree-holder to obtain the remedy awarded to him by the decree. The person who is to provide the remedy should be safeguarded and the nature of these safeguards should be found in the enactment itself and nowhere else. The words "application in accordance with law to the proper court for execution" in Article 182 cannot be held to refer to anything more than what they state.

Where a decree-holder made the applications for execution of the decrees and they were on proper form and demanded the remedy to which he was entitled the court should not examine the decree-holder's mind to know whether he really wished to obtain the satisfaction for which he asked or whether he did not so wish. *Mala fides* may stand in the way of a litigant being granted relief but the circumstance that a man does not really wish to obtain the execution for which he has asked is not an act of bad faith which would render an

*Execution of Decree Appeal No. 65 of 1927, against the decree of M. Ziauddin Ahmad, Subordinate Judge of Gonda, dated the 5th of December, 1927, dismissing the objection of the appellant.

application made by an applicant, who did not really wish the relief sought, an application which is not in accordance with law. *Sheo Prasad* v. *Naraini Bai* (1), dissented from and *Ram Lal* v. *Udit Narain Singh* (2), referred to.

Mr. *Naimullah* for Mr. *Haider Husain*, for the appellant.

Mr. *Hardhian Chandra*, for the respondent.

STUART, C. J., and RAZA, J. :—These two appeals will be decided by the same judgment. Two decrees on the basis of separate deeds of mortgage were obtained by Prag Tiwari against Musammat Ruqqaya Bibi. One was obtained on the 5th of May, 1922, and the other was obtained on the 16th of May, 1922. Decrees absolute for the sale of the mortgaged property concerned were passed on the 6th of April, 1923. On the 26th of January, 1924, the decree-holder applied for the sale of the mortgaged property under both decrees. His applications were not supported and were dismissed for default on the 28th of February, 1924. The applications with which we are concerned were made by him on the 15th of January, 1927. They have been allowed by the court of execution. An argument was taken before the court of execution that the applications were time-barred. That argument was repelled. It is raised again before us.

The question for our decision is a very simple one. Were the applications for execution made on the 26th of January, 1924, applications made in accordance with law to the proper court for execution? It is not a question of taking a step in aid of execution, for these were applications for the actual execution of the decrees. We are asked to hold that the present applications are not within limitation on the ground that on the facts the decree-holder, when he presented the applications of the

(1) (1926) I.L.R., 48 All., 468. (2) (1927) 4 O. W. N., 175.

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26th of January, 1924, had no intention of executing the decrees at the time, but that he merely wished to gain an extension of the period within which he might wish to execute the decrees. The reply on the merits which was accepted by the court below was that the decree-holder had very little if anything to gain by not executing the decrees at the time, that as a matter of fact he wished to execute them and that he was restrained from so executing by the fact that before he could proceed with these applications, he was placed under trial in a criminal court on a charge of which he was subsequently convicted. We find that the judgment-debtor appellant has been unable to support on the merits her plea that these applications were not honest and genuine applications and we agree with the finding of the court below that they were honest and genuine applications and that decision disposes of the matter.

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But we have been referred to a recent decision of a Bench of the Allahabad High Court in *Sheo Prasad* v. *Narain Bai* (1) and consider we should express an opinion on the principles enunciated therein. The learned Judges who composed that Bench laid down the principles that a court should take into consideration, before it decided whether an application was in accordance with law, the question as to whether the application was made in good faith to secure execution or to take a step in aid of execution, and was not merely colourable with a view to give a fresh starting point for the period of limitation, and that if the court found that such an application was not made in good faith to secure execution or to take a step in aid of execution and was colourable with a view to give a fresh starting point for the period of limitation, it should hold that it was not an application made in accordance with law. We are unable to agree with these views as we do not find that there is

(1) (1926) I.L.R., 48 All., 468.

any justification in reading into the words of Article 182 (5), Schedule I of Act IX of 1908, the restrictions which the learned Judges considered should be applied. We have already decided how the words of the clause should be construed in a decision in *Ram Lal* v. *Udit Narain Singh* (1). That decision was not upon this point, but we consider that the principles which were applied there should be applied here. We are, therefore, of opinion that in placing a construction on the words of this section a court should look at the words themselves and nothing else and not endeavour to introduce extraneous considerations. It is to be remembered that Article 182 imposes restrictions upon the rights of a decree-holder to obtain the remedy awarded to him by the decree. On the face of it such restrictions can only be justified by general policy. Ordinarily when a court has awarded a man a certain remedy, that remedy should be granted to him. His procedure in obtaining that remedy may be and should be regulated in a manner conducive to the interests of the general public and the interests of the judgment-debtor. The person who is to provide the remedy should be safeguarded. The nature of those safeguards presumbly will be found in the enactment itself and nowhere else. We are unable to understand that the words "application in accordance with law to the proper court for execution" can be held to refer to anything more than what they state. In this case the decree-holder certainly made the applications. He made them to the proper court. He made them for execution of the decrees. The applications were in proper form and demanded the remedy to which he was entitled. We fail to understand why the court should examine the decree-holder's mind to know whether he really wished in his heart to obtain the satisfaction for which he asked or whether he did not so wish. All the authorities of

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their Lordships of the Judicial Committee, which have been quoted in the decision to which reference is made by the learned Judges who decided I. L. R., 48 All., 468, are to the effect that litigants in the proceedings must act in good faith, but it is nowhere laid down that a man acts in bad faith if he in his heart is not really anxious to secure the remedy to which he is entitled under the law and for which he has applied. *Mala fides* may stand in the way of a litigant being granted relief, but we are not convinced that the circumstance that a man does not really wish to obtain the execution for which he has asked, is an act of bad faith which would render an application made by an applicant, who did not really wish the relief sought, an application which is not in accordance with law. For the above reasons we dismiss these appeals with costs.

*Appeals dismissed.*

## APPELLATE CIVIL.

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

1928
*March*, 8.

MATHURA PRASAD (PLAINTIFF-APPELLANT) *v.* CHAIRMAN, DISTRICT BOARD, SITAPUR (DEFENDANT-RESPONDENT).*

*United Provinces District Boards Act* (*X of* 1922), *section* 192 *—District Board, suit against—Suit for price of work done for a District Board, whether a suit against the Board "in respect of an act done by the Board"—Limitation Act* (*IX of* 1908), *Article* 56*—Limitation for suit for recovery of price of work done for the Board.*

Where the plaintiff brought a suit against a District Board for the price of work done by him at the latter's request, when the Board did not settle his account, *held*, that the suit

*Second Civil Appeal No. 309 of 1927, against the decree of Mahmud Hasan Khan, Subordinate Judge of Sitapur, dated the 21st of May, 1927, confirming the decree of Pardaman Kishun Kaul, Munsiff, Sitapur, dismissing the plaintiff's suit.