

APPELLATE CIVIL

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

NARAIN BAKHSH SINGH (JUDGMENT-DEBTOR-APPELLANT) v.
SHIVA BHIKH (DECREE-HOLDER-RESPONDENT)*

1936
October 20

Limitation Act (IX of 1908), article 182—Execution of decree—Application for execution filed in time—Attachment of judgment-debtor's property—Judgment-debtor applying for insolvency—Insolvency Court's order staying execution—Execution proceedings consigned to record but attachment continued—Withdrawal of insolvency petition—Application more than three years after for revival of execution proceedings and sale of attached property—Application, if barred by time.

Where the decree-holder applies for execution within five days of obtaining his decree and the property of the judgment-debtor is attached but the judgment-debtor applies for insolvency and obtains an order for stay of execution from the Insolvency Court and the execution application is consigned to record but on the application of the decree-holder the attachment is allowed to continue and later the insolvency application is withdrawn and the decree-holder applies more than three years after the consigning of his previous execution application for the revival of the execution proceedings and for sale of the attached property, *held*, that the subsequent application should be treated as a continuation of the previous application and that the latter application is not only in terms but also in substance an application to continue the previous proceedings which had been suspended and is not barred by time. *Gulzari Lal v. Ram Bhajan* (1), *Tara Chand Ghansham Das v. Jugal Kishore* (2), and *Prem Narain v. Ganga Ram* (3), referred to and relied on.

Mr. *Khaliq-uz-Zaman*, for the appellant.

Mr. *Radha Krishna Srivastava*, for the respondent.

SRIVASTAVA, C.J. and ZIAUL HASAN, J.:—This is an appeal by the judgment-debtor against the order dated

*Execution of Decree Appeal No. 43 of 1935, against the order of Babu Bhagwat Prasad, Civil Judge of Bara Banki, dated the 14th of January, 1935, confirming the order of Pandit Anurit Deva Bhattacharya, Munsif of Ram Sanehighat at Bara Banki, dated the 7th of September, 1934.

(1) (1919) 22 O.C., 75.

(2) (1918) 51 I.C., 64.

(3) (1931) A.L.J., 436.

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the 14th of January, 1935, of the learned Civil Judge of Bara Banki affirming the order dated the 7th of September, 1934, of the learned Munsif of Ramsanehigat in that district.

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The decree which was the subject of execution was passed on 17th January, 1931 and an application for execution was made within five days of the decree being passed on the 22nd of January, 1931. On this application the property of the judgment-debtor was attached. But the judgment-debtor had made an application for being declared insolvent and on the 31st of January, 1931, had obtained an order from the Insolvency Court that execution be stayed. In the circumstances the decree-holder's pleader made a statement to the execution court on the 17th of February, 1931, which was the date fixed for sale, that the case be consigned to records but that attachment should continue. Accordingly the execution court made an order to the same effect. Ultimately the judgment-debtor withdrew his insolvency petition on the 9th of September, 1932. On the 8th of August, 1934, the decree-holder made another application praying that the execution proceedings which were consigned to records on the 17th of February, 1931, be revived. He prayed in the alternative that proceedings be started afresh against the property which had been attached previously and the said property be sold. This application was opposed by the judgment-debtor on the ground that it was barred by limitation. Both the lower courts have disallowed the plea of the judgment-debtor and he has now come to this Court in second appeal.

We are of opinion that the application dated the 8th of August, 1934, should be treated as a continuation of the previous application dated the 22nd of January, 1931. As already stated the property had been attached in execution but the decree-holder was prevented from selling it by reason of the order passed

by the District Judge staying the execution proceedings. In the circumstances the decree-holder was prevented from selling the property through no default on his part. When the decree-holder found that he could not proceed with the sale because of the stay order issued by the District Judge he was compelled to have his application filed while the stay order was in force. The application was never disposed of and the effect of the order consigning it to records was merely to suspend execution for the time being. His intention is also clear from the fact that he asked the attachment to be maintained which prayer was granted by the execution court. We think that in the circumstances the latter application is not only in terms but also in substance an application to continue the previous proceedings which had been suspended in the circumstances stated above. See *Gulzari Lal v. Ram Bhajan* (1), *Firm Tara Chand Ghansham Das v. Jugul Kishore* (2) and *Prem Narain v. Ganga Ram* (3). There is therefore no question of the application being barred by time.

It was also argued that the lower appellate court was wrong in holding that the decree-holder was entitled to the benefit of section 15 of the Indian Limitation Act by reason of the order of stay passed by the District Judge in the insolvency proceedings. It was contended that the order passed by the District Judge was without jurisdiction and that the period during which the said order remained in force could not therefore be excluded in computing limitation. It is unnecessary for us to decide the question in view of our decision about the present application being a continuation of the previous one.

We accordingly dismiss the appeal with costs.

Appeal dismissed.

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