APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge and Mr. Justice H. G. Smith

BACHCHU SINGH (JUDGMENT-DEBTOR-APPELLANT) *v.* RADHE LAL AND ANOTHER (DECREE-HOLDERS-RESPONDENTS)* 1937 *April*, 12

Limitation Act (IX of 1908), Article 182, Explanations (1) and (5)—Person standing surety after passing of decree—Application of execution against surety—Application, if saves limitation against decree-holder under Article 182.

Explanation 1 of Article 182 cannot be made applicable to a case where certain persons have made themselves liable for the decretal amount as sureties after the passing of the decree. The explanation contemplates only cases in which a decree has been passed either jointly or severally in favour of or against more persons than one. The provisions of Explanation 1 are merely explanatory of the substantive provisions of the article and it would not be right to use the explanation so as to restrict the application of the article when the case happens to be fully covered by its terms. Applications for execution made against the surety, who after the passing of decree makes himself liable for the satisfaction of the decree, are applications made in accordance with law to the proper court for execution of the decree or to take some step in aid of execution of the decree and are sufficient to save limitation against the judgment-debtor under clause (5) of Article 182 of the Limitation Act.

Mr. *Suraj Narain*, for the appellant.

Mr. *B. K. Dhaon*, for the respondents.

SRIVASTAVA, C. J. and SMITH, J.:—This is a second appeal by the judgment-debtor. The facts of the case are that on the 21st of April, 1925, the decreeholders-respondents obtained a decree against the judgment-debtor-appellant. The decree-holders applied for execution on the 30th of April, 1925. In the course of the execution proceedings a compromise was arrived at between the decree-holders and the judgment-debtor on the 6th of October, 1925. The terms of the compromise were that the judgment-debtor undertook to

*Execution of Decree Appeal No. 10 of 1936, against the order of Babu Gopendra Bhushan Chatterjee, District Judge of Gonda, dated the 28th of November, 1935, confirming the order of Pandit Pearey Lal Bhargava, Civil Judge of Bahraich, dated the 6th of July, 1935.

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pay the decretal amount within twenty days, and in case of his failure to do so the decree-holders were empowered to realize Rs.2,000 from one Muneshar Singh and Rs.495 from one Bindra Singh, who stood sureties for the judgment-debtor for the amounts above mentioned. Both Muneshar Singh and Bindra Singh are signatories to the compromise. It appears that the judgment-debtor failed to pay the decretal amount within the prescribed time, and the decree-holders made several applications for execution of the decree against Muneshar Singh. The last of these applications was made on the 29th of April, 1930. It was consigned to records on the 23rd of August, 1932. On 10th October, 1934 the decree-holders made an application for execution against the judgment-debtor. The application was opposed by him on the ground of limitation. Both the lower courts have disallowed the objection, and held that limitation against the judgment-debtor was saved by the proceedings in execution taken by the decree-holders against the surety Muneshar Singh. Dissatisfied with these orders the judgment-debtor has come to this Court in second appeal.

The determination of the question rests on the proper interpretation to be placed on the provisions of Article 182 of the Indian Limitation Act. In *Shyam Lal* v. *Nasiruddin Beg* (1), one of us, who was a party to that decision, observed that when this Article was drafted the case of an application for execution against a surety does not seem to have been present before the mind of the legislators. The question, therefore, is not altogether free from difficulty. We are, however, of opinion that Explanation I of Article 182 cannot be made applicable to a case like the present where certain persons have made themselves liable for the decretal amount as sureties after the passing of the decree. The Explanation contemplates only cases in which a decree has been passed either jointly or severally in favour of or against more persons than one. It is no

(1) (1933) 10 O.W.N., 571.

doubt true that section 145 of the Code of Civil Procedure entitles the decree-holders to execute the decree against the sureties, but that cannot make the sureties joint judgment-debtors, if they were not parties to the decree at the time when it was passed. The next question is whether the case can be brought within the four corners of clause (5) of the Article. In other words, the question is whether the applications for execution which were made against the surety Muneshar Singh were applications made in accordance with law to the proper court for execution of the decree, or to take some step in aid of execution of the decree. We have no doubt that only one answer is possible to this question and that in the affirmative. In fact the learned counsel for the appellant has not denied that the applications made against the surety were applications made in accordance with law to the proper court for execution of the decree. He, however, contends that the terms of clause (5) have no application to cases in which the Explanation I is inapplicable. In other words, the argument is that on a correct interpretation of clause (5) the only cases in which an application referred to in that clause can be used to save limitation against some person other than the person against whom the application is made are the cases referred to in the second part of the Explanation. The argument is not without force. It appears repugnant to make an act directed against one person effective for the purpose of saving limitation against another person who was no party to it, but it cannot be gainsaid that the judgment-debtor appellant was primarily liable for payment of the decree. The proceedings taken by the decree-holder for realisation of part of the decretal debt from the surety Muneshar Singh were clearly proceedings in furtherance of the decree. The judgment-debtor would have had the benefit in execution proceedings of any money realised by the decree-holder from the surety. In the circumstances there can be no doubt that the applications made by the decree-holder against Muneshar Singh from time to time were steps in aid

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of execution of the decree. The case therefore is literally covered by the terms of clause (5). The provisions of Explanation I are after all merely explanatory of the substantive provisions of the article. In the circumstances we think that it would not be right to use the Explanation so as to restrict the application of the Article when the case happens to be fully covered by its terms. In a similar case a Bench of the Allahabad High Court in *Mohammad Hafiz* v. *Mohammad Ibrahim* (1) held that an application asking the proper court to execute the entire decree by the arrest of the person of a surety who had made himself liable for the satisfaction of the decree amounts to asking the execution court to take a step in aid of the execution of the decree as against the principal, whose liability the surety had taken upon himself, within the meaning of clause (5) of Article 182 of the first schedule of the Indian Limitation Act. In another case, *Badr-uddin* v. *Mohammad Hafiz* (2), a Bench of the same Court contended themselves by stating the position in the form of a dilema. They observed that if the effect of section 145 was to make the decree in a case like the present equivalent to a decree passed jointly against the original judgment-debtor and the surety, then the case is covered by the closing words of Explanation (1) to Article 182 of the Schedule. On the other hand if section 145 has not that effect, "then the words of Explanation (1) aforesaid have no application whatsoever to a case like the one now before us and must altogether be excluded from consideration. In that case we are driven back to the words of clause (5) of Article 182 itself." These cases so far as they go support our view. We are therefore of opinion that the lower courts have rightly held that limitation against the judgment-debtor was saved by the applications made against the surety under clause (5) of Aricle 182. We accordingly dismiss the appeal with costs.

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Appeal dismissed.

(1) (1921) I.L.R., 43 All., 152. (2) (1922) I.L.R., 44 All., 743.