alone it is necessary to set aside the decree of the learned District Judge and to remand this appeal for rehearing. The whole appeal is to be reheard. Costs will abide the result.

1922.

RAM LOCHAN MISRA. v. PANDIT HARINATH MISRA.

DAS, J.—I agree.

Appeal remanded.

APPELLATE CIVIL.

Before Coutts and Das, J.J.

GOBARDHAN DAS DWARKA PRASAD v. SATISH CHANDRA RAI.*

1922.

April, 28.

Code of Civil Procedure, 1908 (*Act V of* 1908), *Order XXI, rules* 15 *and* 22—*Execution of decree, defective application for—notice issued, whether is a step-in-aid of execution—Limitation Act*, 1908 (*Act IX of* 1908), *Schedule I, Article* 182(5) *and* (6).

Where notice under Order XXI, rule 22, of the Code of Civil Procedure, 1908 has been issued on an application in accordance with rule 15(1) such application is a step-in-aid of execution within the meaning of Article 182(5) of the Limitation Act, 1908, even though the application was in fact defective, and even though the court failed to comply with the requirements of rule 15(2).

The issue of a notice under Order XXI, rule 22, gives a fresh starting point for limitation under Article 182(6) even though the application on which notice was issued was defective.

The decree-holder appealed.

The facts of the case material to this report are stated in the judgment of Coutts, J.

C. C. Das (with him *Bindeswari Prasad*), for the appellant.

* Appeal from Appellate Order No. 212 of 1921.

1922.

GOBARDHAN DAS DWARKA PRASAD v. SATISH CHANDRA RAI.

COUTTS, J.

Saroshi Charan Mitter, *Susil Madhab Mullick* and *Nirod Chandra Roy*, for the respondent.

COUTTS, J.—This appeal arises out of an execution proceeding. It appears that a firm of the name of Gobardhan Das Dwarka Prasad obtained a decree against one Babu Satish Chandra Rai. The decree was obtained in 1917. An appeal was preferred and the appeal was dismissed on the 5th January, 1918. On the 14th May, 1920, one of the members of the firm of Bansidhar Dhundhunia made an application for execution under Order XXI, rule 15, and on the 12th June, 1920, notice under Order XXI, rule 22, was issued by the executing court. On the 31st July, 1920, this application for execution was struck off as being defective. On the 12th March, 1921, the application out of which the present appeal has arisen was filed. An objection was taken by the judgment-debtor that the application was barred by limitation as the application which was preferred on the 14th May, 1920, was no application at all, but this objection was disallowed. On appeal to the District Judge the decision of the first court was set aside and the application for execution was rejected apparently on the ground that the application which had been preferred on the 14th May, 1920, was not an application in accordance with the law, and that consequently the notice under Order XXI, rule 22, did not save limitation. The decree-holder has appealed.

In my opinion the appeal must succeed. The application which was made on the 14th May, 1920, was no doubt a defective application but it was nevertheless, as has been admitted by the learned Vakil for the respondent, an application made in accordance with the provisions of Order XXI, rule 15, clause (*1*). This being so, limitation is saved under Article 182, clause (*5*), of the Limitation Act. It is contended, however, by the learned Vakil for the respondent, that the application was not a valid application inasmuch as the court, when that application was filed, did not

comply with the provisions of rule 15, clause (*2*). With this proposition, I am unable to agree and the learned Vakil appears to have confused the validity of the application with the discretion of the court to reject or allow the application. The court has discretion under clause (*2*), unless it sees sufficient cause for allowing the application, to disallow it; but the mere fact that the court does not allow the application does not make it any the less an application in accordance with law. The learned Vakil further suggests that possibly the application was not a valid application, because it did not comply with the provisions of rule 11. Rule 11 is the ordinary rule which governs applications for execution; but rule 15 is an exception to the general rule; and there is no doubt that in fact the application which was made on the 14th May, 1920, was an application made in accordance with the provisions of rule 15, sub-clause (*1*), and consequently limitation is saved by sub-clause (*5*) of Article 182. Apart from that, moreover, limitation is also saved under sub-clause (*6*) of Article 182 of the Limitation Act, because of the issue of notice under Order XXI, rule 22, on the 12th June, 1920. Under sub-clause (*6*) of Article 182 it is not necessary that the notice should be issued in respect of an application made in accordance with law, and it is now settled that a notice issued on a defective application saves limitation. In the present case the application was at most nothing more than a defective application and consequently the notice which was issued in accordance with it saves limitation.

The order of the learned District Judge in appeal is clearly wrong and must be set aside. I would accordingly set it aside and decree this appeal with costs in all courts.

DAS, J.—I agree.

Order set aside.