

cross-objection under section 561 of the Code of Civil Procedure of 1882 as also the corresponding provisions of the Code of 1908 may be received by the Court at any time. The first objection of the learned Advocate for the appellant has, therefore, no substance.

As regards the second objection, the notice of the application having been ordered to be issued, it must be presumed that the Court was satisfied before ordering the issue of the notice that the requirements of the law under the proviso to Order XLIV, rule 1, were satisfied. Moreover, it appears that notice of the application was given to the learned Advocate for the appellant at the time it was presented and it was open to him to appear and object at that time. He, however, did not appear and raise any objection. It is not open to him now to say that the requirements of the proviso to Order XLIV, rule 1, have not been complied with.

The application is granted, and the petitioner is allowed leave to file the memorandum of cross-objections in forma pauperis.

MACPHERSON, J.—I agree

APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

GANGA SINGH

v.

SHEO PRASAD.*

1928.

May 11.

Execution of Decree—Part payment—time extended for payment of balance—limitation—Limitation Act, 1908 (Act IX of 1908), section 15—application for transfer of decree within three years. Where a judgment-debtor paid a part of the decretal amount and asked for time to pay the balance, and the court granted time, held, that, between the date of

*Miscellaneous Appeal no. 174 of 1927, from an order of M. S. Hasan, Subordinate Judge of Muzaffarpur, dated the 20th June, 1927, reversing an order of Babu Sachindra Nath Ganguli, Munsif of Hajipur, dated the 24th January, 1927.

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the part-payment and the date fixed for the payment of the balance, execution of the decree was stayed within the meaning of section 15 of the Limitation Act, 1908; and, therefore, that a subsequent application for transfer of the decree for execution made within three years from the date fixed for payment of the balance, was within time.

Mussammat Sahodra v. Bhagwan Das(1), approved.

Appeal by the judgment-debtor.

The facts of the material to this report are stated in the judgment of Kulwant Sahay, J.

Khurshaid Husnain and S. Ali Khan, for the appellant.

B. P. Varma, for the respondent.

KULWANT SAHAY, J.—The question for consideration in the present appeal is, whether the application for execution filed on the 7th of December, 1926, was barred by limitation. A previous application for execution was made in the year 1923 and on the 21st of September, 1923, the judgment-debtor paid Rs. 50 in part payment and prayed for a week's time for payment of a sum of Rs. 200 and the balance in the month of October following. The Court granted time to the judgment-debtor to pay the money up to the 29th of September, 1923. No payment was, however, made on this date and the execution case was dismissed on the 3rd of October, 1923. The learned Munsif held that time began to run from the 21st of September, 1923, which was the date on which a step in aid of execution was taken on behalf of the decree-holder when the petition of payment was signed and certified by him. On appeal the learned Subordinate Judge has held that time began to run from the 29th of September, 1923, i.e., on the expiry of the time granted to the judgment-debtor to pay a portion of the decree.

It appears that on the 24th of September, 1926, an application was made to the Court of Munsif of Muzaffarpur for transfer of the decree to the Court of

(1) (1926) 94 Ind. Cas. 452.

the Munsif at Hajipur and the decree was transferred and the present application was filed in the Court of the Munsif at Hajipur on the 7th of December, 1926. The learned Subordinate Judge was of opinion that the application for transfer filed on the 24th of September, 1926, was a step-in-aid of execution and it was taken within three years from the 29th of September, 1923, and that, therefore, the present application was not barred by limitation.

The question depends upon the terms of section 15 of the Indian Limitation Act which prescribes that in computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded. The question is whether in the present case the execution of the decree was stayed by order of the Court. It is true that every order for adjournment of an execution case is not an order staying execution and each case has to be decided on a consideration of the question whether the order has the effect of staying execution. In the present case the judgment-debtor paid a sum of Rs. 50 on the 21st of September, 1923, and asked for time to pay the balance and the Court granted him time up to the 29th of September, 1923. Therefore, from the 21st of September up to the 29th of September, 1923, the decree-holder could not take any step towards the execution of the decree. He was by the order granting time prevented from taking any further step and the order of the 21st of September must, under the circumstances of the present case, be considered to be an order of stay of execution.

In *Musammatt Sahodra v. Bhagwan Das*⁽¹⁾ it was held that where on the request of the parties execution of a decree was stayed and the judgment-debtor was allowed a certain period to pay the decretal amount,

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a subsequent application for transfer of execution made within three years from the date of the expiry of the period allowed to the judgment-debtor was within time; and reference was made to the provisions of section 15 of the Indian Limitation Act. It has been contended on behalf of the appellant that the order of the 21st of September 1923 was an order in furtherance and not in stay of the execution. This contention is obviously not sound. The decree-holder was prevented from taking any step during the period the order was in force and it cannot be said that the order was in furtherance of the execution.

In my opinion the view taken by the learned Subordinate Judge is correct and the appeal should be dismissed with costs.

MACPHERSON, J.—I agree. It must be held in this particular case that the execution was in effect stayed for a week by order of the Court.

Appeal dismissed.

APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

HARLAL CHAUBEY

1928.

May, 22.

v.

KUMAR RAMESHWAR NARAYAN SINGH.*

Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908), section 208—sale of "holding except house and gharbari." whether invalid. The Deputy Commissioner has no jurisdiction to sell under section 208 of the Chota Nagpur Tenancy Act, 1908, anything less than the whole holding on which the arrear of rent has accrued.

*Appeal from Appellate Decree no. 705 of 1925, from a decision of Babu Brajendra Prasad, Additional Subordinate Judge of Hazaribagh, dated the 17th February 1925, confirming a decision of Babu Siba Priya Chatterji, Munsif of Hazaribagh, dated the 6th June 1924.