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 RAJA
 BISWAMBHAR
 NATH SAHI
 v.
 MAHESH
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judgment-debtor under section 248, Civil Procedure Code, is not by itself sufficient to debar him from urging the objection that an application is barred by limitation, when no order for execution has been made after the service of notice under section 248." In the present case we find that an order was made for attachment of the judgment-debtor's properties after the service of notice under Order XXI, rule 22. This will bring the present case within the doctrine laid down in *Mungul Pershad Ditchit's* case (1).

The present application is clearly within time. This appeal is dismissed with costs.

Let the record be sent down as soon as possible.

Ross, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Ross and Kulwant Sahay, J. J.

BALDEO THATHWARI KONHORAI

v.

LACHMAN LAL PATHAK.*

Limitation Act, 1908 (Act IX of 1908), Schedule I, Article 182 (5)—Step-in-aid of execution—appearance on an application under Order XXI, rule 90, Code of Civil Procedure, 1908 (Act V of 1908).

The mere appearance of the decree-holder in a proceeding under Order XXI, rule 90 of the Code of Civil Procedure, 1908, which is dismissed for default, does not amount to an application to take a step-in-aid of execution within the meaning of Article 182 (5), Schedule I of the Limitation Act, 1908.

(1) (1892) I. L. R. 8 Cal. 51, P. C.

* Miscellaneous Appeal no. 81 of 1926, from an order of F. F. Madan, Esqr., I.C.S., District Judge of Gaya, dated the 6th March, 1926, reversing a decision of M. Ihtisham Ali Khan, Subordinate Judge of Gaya, dated the 14th November, 1925.

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

M. N. Pal, for the appellant.

Kailaspati and Sarju Prasad, for the respondent.

KULWANT SAHAY, J.—This is an appeal by the judgment-debtor against an order of the District Judge of Gaya overruling his objection to the execution of a decree and directing the execution to proceed.

The only objection raised was that the decree under execution was barred by limitation. It appears that before the present execution another application for execution of the same decree had been made, and some properties belonging to the judgment-debtor were sold on the 28th February, 1922. The judgment-debtor filed an application for setting aside the sale under the provisions of Order XXI, rule 90, of the Civil Procedure Code. This application was opposed by the decree-holder who was himself the auction purchaser. On the 10th June, 1922, the application for setting aside the sale was dismissed for default. On that date, however, it appears, that the decree-holder was present in Court with his witnesses. The present application for execution was filed on the 8th June, 1925. This application is evidently time-barred. But it was contended on behalf of the decree-holder that his appearance on the 10th June, 1922, amounted to a step-in-aid of execution and gave a fresh start to the period of limitation. The learned Subordinate Judge held that the decree-holder's appearance on the 10th June, 1922, did not amount to a step-in-aid of execution and that the present application was barred. The learned District Judge, on appeal, has held that the appearance of the decree-holder with his witnesses on the 10th June, 1922, amounted to a step-in-aid of execution, and that the present application was not barred by limitation. He relied upon a decision of this Court where it was held that any step by the decree-holder to remove obstacles thrown by the judgment-debtor in the way of the execution of a decree

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was a step-in-aid of execution. He was of opinion that this principle was wide enough to include a case in which the decree-holder appeared with witnesses in a proceeding under Order XXI, rule 90, which was, however, dismissed for default. I am of opinion that the view taken by the learned District Judge is erroneous. Article 182, clause (5), of the first Schedule to the Indian Limitation Act, provides that the period of limitation will begin to run from the date of an application to take some step-in-aid of execution. Here, no application was made by the decree-holder to the Court on the 10th June, 1922, the decree-holder was merely present in Court with his witnesses, but there was no occasion for him to take any step in Court inasmuch as the application under Order XXI, rule 90, was dismissed for default. The mere appearance of the decree-holder in a proceeding under Order XXI, rule 90, which was, however, dismissed for default, cannot, in my opinion, amount to an application to take some step-in-aid of execution within the meaning of clause (5) of Article 182 of the first Schedule to the Indian Limitation Act. The decision of the learned District Judge cannot be sustained. The appeal must be allowed and the application for execution dismissed as barred by limitation. The appellant is entitled to his costs in this Court as well as in the Courts below.

Ross, J.—I agree.

Appeal allowed.

APPELLATE CIVIL.

Before Dawson Miller, C. J. and Foster, J.

F. A. SAVI

v.

SRIMATI SABITRI THAKURAIN.*

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Nov., 8.

Code of Civil Procedure, 1908 (Act V of 1908), section 109 (a)—Order setting aside compromise decree, whether is a final order.

* Privy Council Appeal no. 28 of 1926.