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one of the parties was subsequently made to the Court to file the award. At this time there was no pending suit and the Court, therefore, had power under paragraph 20 of Schedule II of the Code of Civil Procedure to file the award.

AGARWALA, J.

It remains to notice another argument, namely, that the words "any other law" in section 89, include Order XXIII, rule 3. It would, however, be contrary to all canons of the construction of statutes, that, where a Code lays down that certain proceedings shall be governed by provisions contained therein and relating to those proceedings, words referring to "other laws" should be taken to refer to the Code itself. It is not open to us to substitute for the words "by any other law" in section 89 the words "except as provided in this Act or by any other law". If this had been the intention of the legislature it would have been made clear as in sections 96, 100 and 104.

I agree to the order proposed.

Rule made absolute.

Case remanded.

APPELLATE CIVIL.

Before Wort and James, JJ.

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April 8, 9.

BISHWANATH PRASAD MAHTHA

v.

LACHHMI NARAIN.*

Code of Civil Procedure, 1908 (*Act V of* 1908), *section* 48 *—order passed on compromise by executing court, whether "subsequent order" within section* 48(*1*)(*b*)*—obstruction caused by judgment-debtor during execution proceedings, whether amounts to "fraud or force" within the meaning of section* 48(*2*)(*a*).

* Appeal from Original Order no. 294 of 1933, from an order of Babu Manindra Nath Mitra, Subordinate Judge of Muzaffarpur, dated the 15th of September, 1933.

An order passed on compromise by the executing court in the course of a proceeding for setting aside the sale does not constitute " subsequent order " directing payment within the meaning of section 48(*1*)(*b*), Code of Civil Procedure, 1908.

Gobardhan Prasad v. *Bishunath Prasad*(1), followed.

Section 48(2)(*a*) of the Code contemplates some action on the part of the judgment-debtor which prevents the decree-holder from taking out execution and thus allowing time to run against him, or some action which entices the decree-holder to hold his hand. An obstruction by the judgment-debtor during the course of execution proceedings does not amount to " fraud or force " within the meaning of section 48(2)(*a*).

Gobardhan Das v. *Dau Dayal*(2), followed.

Lalta Prasad v. *Suraj Kumar*(3), not followed.

Appeal by the judgment-debtors.

The facts of the case material to this report are set out in the judgment of Wort, J.

B. C. De (with him *Syed Mehdi Imam* and *J. C. Mullick*), for the appellants.

Rai Tribhuban Nath Sahay, for the respondent.

WORT, J.—Two points relating to limitation were the subject-matter of the decision of the learned Judge in the Court below and have been argued in this Court. It is said by the appellant-judgment-debtors that this fourth application for execution, which was dated the 12th of December, 1932, was barred by limitation by reason of the period provided by the Limitation Act, namely, three years, and also by reason of section 48 of the Code of Civil Procedure. The application for execution to which I refer was an application to execute a decree obtained on a compromise as far back as the 2nd of August, 1913.

(1) (1921) A. I. R. (Pat.) 340.
(2) (1932) I. L. R. 54 All. 573, F. B.
(3) (1922) I. L. R. 44 All. 319.

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WORT, J.

There is some controversy as to whether the application to which I have made reference was an application to execute that decree or whether it was an application to execute a later compromise referred to in one of the earlier applications for execution. Shorn of the unnecessary details, what happened was this.

After the compromise of 1913 execution was taken and there was an application in 1919 by the judgment-debtors to set aside the sale which had taken place as a result of that application for execution. This was compromised on the 5th of July, 1919, under which certain payments were to be made not later than the 1st of January, 1922. Another term of that compromise was that a certain remission of Rs. 5,000 in addition to an earlier remission of Rs. 5,000 in favour of the judgment-debtors was to be made. It was provided that failure on the part of the judgment-debtors to carry out the compromise would result, according to the terms of the compromise, in the confirmation of the sale which had taken place. In the same month, that is, on the 8th of July, 1919, as a result of this compromise, the execution case was dismissed.

A second application in execution was made on the 11th of March, 1922. Three months later the judgment-debtor commenced the suit in which the relief sought was a declaration that the compromise decree and the compromise in the execution case were not binding upon them. The reason for their contention it is unnecessary to state. In the suit an injunction was obtained. This injunction was received by the executing court on the 31st of October, 1922. It is necessary to state in this connexion that that injunction was in force up to the 14th of July, 1923, and, as a result of that injunction, on the 8th of June, 1923, the second execution case was struck off. The suit to which I have referred, after the decision by

the Subordinate Judge, came to this Court on appeal; it was remanded and again reheard, coming again to this Court, and, ultimately in March of 1932, this Court dismissed the plaintiffs' suit, holding, as it would appear, that both the compromise of 1913 and the compromise of 1919 were valid and binding upon the plaintiffs.

The third execution was taken out in July, 1923, and in May of 1927, after certain obstructive proceedings by the judgment-debtors (the proceedings have been described as obstructive) certain properties were sold. An application was made a few months later to set aside the sale. This application was dismissed and the sale was confirmed.

Now the judgment-debtors in the Court below contended, as I have said, that the matter was barred both under the Limitation Act and under section 48 of the Code of Civil Procedure. Section 48 prohibits an application for execution after a period of twelve years has elapsed from the date of the decree "or subsequent order which directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods"; and it was one of the contentions of the decree-holder-respondent that this compromise of July, 1919, was the date from which the limitation was to run under section 48 as the compromise was a subsequent order directing the payment of money. There have been, it would appear, differences of opinion as regards this matter in the various High Courts, but, so far as we are concerned, the matter is concluded by the decision of this Court in *Gobardhan Prasad* v. *Bishunath Prasad*(1). That was a case similar to the one with which we have to deal. There was a subsequent compromise order made in the execution proceedings and there it was contended that the compromise order in the execution

(1) (1921) A. I. R. (Pat.) 340.

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proceedings was an order contemplated by section 48(1)(b) of the Code of Civil Procedure: Coutts and Adami, JJ. held that it was not. That decision, as I have said, is binding upon us and concludes the matter. The decree-holder, therefore, cannot in this case date the period of limitation from July of 1919.

WORT, J.

But there was another aspect of this particular point raised in this Court for the first time and that is that in this execution proceeding the decree-holder was not executing his decree of 1913 but he was executing the compromise of 1919. That is contrary to facts, contrary to the argument addressed to us and contrary to the case made by the decree-holder in the Court below. The fact recognized by the learned Judge in the Court below was that at least the first three applications in execution were applications to execute the compromise decree of 1913, and whether, as is the contention of the learned Advocate for the respondent, that decree of 1913 is to date from 1915 by reason of its terms, or from 1913 is immaterial, having regard to the long period which has elapsed since that compromise was entered into.

But to revert to the point with which I was dealing, it is clear from the record of the case that the decree-holder in the first three applications was attempting to execute the compromise decree of 1913 and indeed it could not be otherwise. I have sufficiently indicated the terms of that compromise and the most that could be said was that the failure on the part of the judgment-debtors to comply with the terms threw the decree-holder back on his rights and incidentally the judgment-debtors on their liabilities under the decree of 1915 or 1913 as the case might be. Whether the decree-holder in executing that decree could add any term of the compromise of 1919 is in my judgment entirely immaterial for the purpose of deciding the question, whether he was executing that compromise or the earlier one. This

matter did come up to this Court as in the execution proceedings (the second execution case I think it was) the decree-holder attempted to base his account on the compromise of 1919. The Subordinate Judge held against the decree-holder on that point, and this Court characterized that order as an administrative order and one with which this Court could not interfere. But I repeat myself that it is quite clear that what the decree-holder was attempting to execute was the decree of 1915 and it is upon that basis that the judgment of the learned Judge in the Court below proceeds. The decree-holder now seeks to take advantage of the provisions of section 48(*2*)(*a*) to the effect:

> "Nothing in this section shall be deemed to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application."

It is contended that the obstruction met with by the decree-holder throughout these proceedings, particularly between 1915 and 1919 and during the third execution case, is to be subtracted from the total period as being a case of prevention of the decree-holder by fraud or force from executing the decree. It is quite unnecessary to define 'fraud' as used in section 48 and I should imagine that it was used in the ordinary juridical sense of the term. But what is quite clearly contemplated, apart from the definition of the term itself, is some action on the part of the judgment-debtor which prevents the decree-holder from taking out execution proceedings and thus allowing time to run against him, or some action by the judgment-debtor which entices the decree-holder to hold his hand. It seems to me that a very simple test as to the meaning of the sub-section which I have read can be made by putting a very simple question. In this case the execution proceedings were started, as I have said, in 1915. Now so long as no final

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order was made in that execution proceeding it is quite clear that time was not running at any rate in the sense that whatever time that execution case had taken, even if it be a period of twenty or thirty years, it could not be said to be barred by limitation. When once the final order was made time began to run. But so long as the application was made within a period of three years of the last order in the execution case, that application for execution would certainly be within time within the meaning of the Limitation Act. Now could it be said that, although the decree-holder was proceeding with the execution, met by one objection after another, obstructive as those objections might be, the decree-holder was prevented by fraud from executing his decree? It seems to me that it would be stretching the language of the section beyond what was legitimate to hold that the judgment-debtors, however obstructive they might have been, were preventing the decree-holder from executing his decree by fraud merely because they took advantage of the procedure which was allowed by law. It is true that there is a decision of the Allahabad High Court in *Lalta Prasad* v. *Suraj Kumar*(1) where the learned Judges appear to be of the opinion that a judgment-debtor's defence under section 48 of the Code of Civil Procedure by obstructive proceedings such as took place in the case before us was fraud within the meaning of the section. The value, however, of that decision has been diminished by the decision of a Full Bench of the same High Court in *Gobardhan Das* v. *Dau Dayal*(2) which arrived at a somewhat different conclusion. In my judgment it is impossible to hold that, however obstructive (I am assuming that there was obstruction) the judgment-debtors might have been, there was fraud within the meaning of section 48 of the Code.

(1) (1922) I. L. R. 44 All. 319.
(2) (1932) I. L. R. 54 All. 573, F. B.

I next come to the point of the period of three years' limitation. The last order in the third application was made on the 21st of December, 1928 and the fourth application was made on the 12th of December, 1932. It is obvious that the decree-holder was under the obligation of bridging over that period if he was to save his fourth application which appears to have been considerably beyond the period of three years provided by the Limitation Act. From the point of view that was strenuously contended for in the latter part of the argument advanced on behalf of the respondents, the application was hopelessly barred by limitation. The contention is, as I have said, that the execution proceedings throughout were based on the compromise of 1919. It is clear that the first three applications were nothing of the kind, but the fourth application purports to be so. If the fourth application was an application for execution of the compromise of 1919, then the period of twelve years had elapsed. From the point of view of the argument on behalf of the decree-holder in this connection there would be three periods which he would be entitled to deduct from the period of twelve years: first, the period of eight months and fifteen days during which the Subordinate Judge's injunction was in operation; secondly, two years and five months, the period between the compromise of 1919 and the date upon which the judgment-debtors had to comply with it; and thirdly, three years and nine months, the period during which the so-called title suit was pending: the total thus made up is a period of over six years and ten months which still would leave the fourth application in execution barred by limitation. If it is treated, as I think probably it must be treated, as an application for the execution of the original decree, then the period obviously dates, as I have indicated, from the 21st of December, 1928. Now the matter can be put shortly in this way. There was nothing to prevent the decree-holder from executing

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his decree of 1915. Whatever his desire might have been, he could have executed that decree, as I have said. There was no stay of execution, there was no injunction during the period from 1928 to 1932. All that had taken place was a decision by the Subordinate Judge of the Darbhanga Court holding that the compromise of 1919 was not valid and was not binding upon the judgment-debtors. It may be that the decree-holder was prevented from executing the compromise of 1919; but that did not prevent him from taking out execution of the decree of 1915 which in my judgment was the only decree that he could execute. As there was no stay and as the decree-holder was not prevented from executing that decree and as he allowed more than three years to elapse, his fourth application was barred by limitation. Whether it was barred under section 48 of the Code of Civil Procedure or under the Limitation Act, in my judgment, for the considerations which I have stated, it seems to me that the execution was barred by limitation and that the learned Judge in the Court below was therefore wrong in the conclusion at which he had arrived. For these reasons the appeal is allowed with costs.

JAMES, J.—I agree.

Appeal allowed.

APPELLATE CIVIL.

Before Khaja Mohamad Noor and Dhavle, JJ.

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December 5, 6, 7, 10, 11, 12, April 26.

MATHURA SINGH

v.

RAMA RUDRA PRASHAD SINHA.*

Minor—decree vitiated by gross negligence of guardian, whether binding on minor—principles, whether apply to a ward of court—decree passed on account of gross negligence

* Appeal from Original Decree no. 106 of 1931, from a decision of M. Muhammad Shamsuddin, Subordinate Judge of Shahabad, dated the 24th February, 1931.