

other interpretation is correct then also the sections need re-drafting and, as pointed out, injustice may arise in certain cases and when such heavy penalties as arbitrary assessment and loss of the right of appeal are concerned, care should be taken to remove or lessen the chances of such injustice. In face of the authorities, however, I am reluctantly compelled to answer the first question in the affirmative.

As regards question No. 2, I have nothing to add to the judgment of my Lord, the Chief Justice, and I respectfully agree with his decision.

JOHNSTONE J.—I agree with the learned Chief Justice.

N. F. E.

### FULL BENCH.

*Before Shadi Lal C. J., Broadway and Jai Lal JJ.*

GHANAYA LAL AND OTHERS—Appellants

*versus*

NATHU RAM—Respondent.

Civil Appeal No. 2959 of 1926.

*Indian Limitation Act, IX of 1908, article 182, clause 5*  
—Application by decree-holder for leave to bid at auction sale  
—whether a step in aid of execution.

The question referred to the Full Bench was, whether an application by a decree-holder for leave to bid at an auction sale amounts to a step in aid of execution within the meaning of clause 5 of article 182 of the Indian Limitation Act.

*Held* (Jai Lal J, dissenting) that while an application for leave to bid does not ordinarily amount to an application inviting the Court to take a step in aid of execution, the circumstances under which it was made may show that the granting of leave has actually aided or would have aided the execution. If the decree-holder, on whom the *onus* lies proves such circumstances, the application would amount to a step in aid of execution.

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*Hira Lal Bose v. Dwija Charan Bose per Mookerjee J. (1), Nabadip Chandra Maithi v. Bepin Chandra Pal (2), and Vapu Rowther v. Sivakataksham Pillai (3), relied upon.*

*Held, per Jai Lal J., that in its very nature an application for leave to bid amounts to an application to the Court to take a step in aid of execution.*

Case law discussed.

*Miscellaneous first appeal from the order of Mirza Abdul Rab, Senior Subordinate Judge, Kangra at Dharmsala, dated the 15th November 1926, rejecting the application of the judgment-debtor for the stoppage of the execution proceedings as time barred.*

JAGGAN NATH, AGGARWAL, and R. C. SONI, for Appellants.

BADRI DAS, for Respondent.

*The judgment of Sir Shadi Lal, C. J., and Agha Haidar J., dated the 28th April 1930, referring the case to a Full Bench.*

The question for determination in this appeal is whether an application by the decree-holder for leave to bid at an execution-sale of the property of the judgment debtor amounts to a step in aid of execution within the meaning of clause (5) of Article 182 of the Indian Limitation Act. This question was answered in the negative by a Division Bench of the Chief Court in *Maulvi Muhammad Shaffee v. Budri Mal* (4); but that judgment was distinguished in *Salig Ram v. Lala Rai Chand* (5), which decides that such an application may, under certain circumstances, be a step in aid of execution.

(1) (1905) 10 Cal. W. N. 209. (3) (1930) I. L. R. 53 Mad. 390.

(2) (1908) 12 Cal. W. N. 621. (4) 88 P. R. 1884.

(5) 60 P. R. 1912.

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In *Toree Mahomed v. Mahomed Mabood Bux* (1), and *Raghunandan Misser v. Kallydut Misser* (2), the Calcutta High Court laid down the rule that an application for permission to bid does not constitute a step in aid of execution and there are *dicta* to the same effect in *Krishna Patter v. K. Steetharama Patter* (3). But doubt was thrown upon this view in a subsequent judgment of the Calcutta High Court, *vide Tropolokya Nath Bose v. Jyoti Prokash Nandi* (4). In *Hira Lal Bose v. Dwija Charan Bose* (5), Mookerji J. expressed the opinion that it cannot be affirmed as an inflexible rule of law that an application for the grant of leave to a decree-holder to bid at the sale must in every case, or may not in any case, amount to an aiding of the execution.

The rule adopted by the Allahabad and Bombay High Courts is to the effect that such an application is a step in aid of the execution of the decree, *vide Bansi v. Sikree Mal* (6), *Dalel Singh v. Umrao Singh* (7), and *Vinayakrao Gopal Desmukh v. Vinayak Krishna* (8).

Having regard to the diversity of the judicial opinion upon the matter and to the importance of the question, we consider that it should be determined by a Full Bench, and we refer it accordingly.

#### JUDGMENT OF THE FULL BENCH.

SHADI LAL C. J.—The question of law, which SHADI LAL C.J. arises in this case, is whether an application by the decree-holder for leave to bid at a sale held in execution of his decree amounts to a step in aid of execution within the meaning of clause (5) of article 182

(1) (1883) I. L. R. 9 Cal. 730.

(5) (1905) 10 Cal. W. N. 209.

(2) (1896) I. L. R. 23 Cal. 690.

(6) (1891) I. L. R. 13 All. 211.

(3) (1927) I. L. R. 50, Mad. 49.

(7) (1900) I. L. R. 22 All. 399.

(4) (1905) I. L. R. 30 Cal. 761.

(8) (1897) I. L. R. 21 Bom. 331.

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of the first schedule to the Indian Limitation Act, IX of 1908. The learned counsel on both sides are agreed that there is a great diversity of judicial opinion on the subject, and it is, therefore, desirable to examine the language of the clause uninfluenced by the decisions bearing upon the question. It will be observed that article 182 contains a general provision prescribing a period of three years for the execution, of a decree or order described therein, but mentions various dates from which that period should be computed. Under clause (5) of the article the *terminus a quo* is "the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree or order." This clause has been amended by Act IX of 1927 which provides that the period of limitation shall be calculated, not from the date of the application, but from the date of the final order passed thereon. It is, however, admitted that the amendment does not affect the present case.

The language of clause (5) makes it clear that the period of three years commences from (a) the date of an application for execution, or (b) the date of an application for taking some step in aid of execution. It is the latter part of the clause which is invoked by the decree-holder to avoid the bar of limitation.

Two conditions are necessary to satisfy the law :—(1) There must be an application in accordance with law asking the proper Court to take a step. (2) The step required to be taken by the Court must be one in aid of execution. When both these conditions are fulfilled, the requirements of the law are fully satisfied; and nothing more is needed. It is not necessary that the proposed step should be actually

taken, or that even an order should be passed by the Court on the application. As soon as an application of the above description is made, the period of limitation will run from the date of the presentation of the application. It is beyond dispute that in the present case the first condition has been fulfilled, and we have to decide whether the granting of permission to the decree-holder to bid at a sale in execution of his decree should be treated as a step taken by the Court in aid of execution.

We now turn to the Civil Procedure Code, which contains the law regulating a sale in execution of a decree. Order 21, rule 72, provides that no holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for, or purchase, the property. It is, therefore, clear that a decree-holder, who desires to bid for the property to be sold in execution of his decree, must apply to the Court for permission. Suppose, the application is granted by the Court, would the grant of permission aid the execution of the decree? Unless it advances or furthers execution, it cannot be held to be a step in aid of execution.

The decree-holder may, after obtaining permission, offer bids at the sale of the judgment-debtor's property; and there can be little doubt that he would thereby increase the number of bidders and may create a competition for the purchase of the property which is calculated to enhance the price to be realised by the sale. It is also possible that he may not offer any bid, or may buy the property only if it is going cheap. It cannot, therefore, be predicated with any reasonable certainty that the grant of leave would be an act in furtherance of execution. It may advance

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execution or in some conceivable circumstances even retard the execution proceeding. In the majority of the judgments cited by the learned counsel for the parties the decision has been reached by looking at the matter from only one point of view or by emphasising one aspect of it.

Coming now to the decided cases, we find that the judgment in *Bansi v. Sikree Mal* (1), merely assumes that the grant of permission always aids the execution, and assigns no reason for the view taken therein. This judgment was cited with approval in *Dalel Singh v. Umrao Singh* (2), where it was explained that "The fact that a decree-holder is prepared to bid for property and is anxious to purchase is, in the absence of fraud which cannot be presumed, distinctly an act which modifies the conditions of the sale to the obvious benefit both of the decree-holder and the judgment-debtor, and brings the decree within nearer distance of complete execution and satisfaction." There is, however, no warrant for the assumption that the mere obtaining of permission to bid necessarily indicates an anxiety on the part of the decree-holder to purchase the property. The granting of permission only removes the obstacle created by the Statute in the way of his offering a bid for the property and places him in exactly the same position as a stranger to the decree. It proves neither an anxiety nor a disinclination to buy the property. He may, or may not, avail himself of the leave, and his attitude in this matter is determined by a desire to benefit himself and not the judgment-debtor. It cannot, therefore, be said that the mere permission to bid will necessarily have the effect of

(1) (1891) I. L. R. 13 All. 211.

(2) (1900) I. L. R. 22 All. 399.

bringing the decree within nearer distance of complete execution. The decision in *Bansi v. Sikree Mal* (1), was followed by the Bombay High Court in *Vinayakrao Gopal Deshmukh v. Vinayak Krishna Dhebri* (2), but here again the matter was not discussed, nor were\* any reasons given in support of the view adopted by the learned Judges.

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The contrary view was held by a Division Bench of the Punjab Chief Court in *Moulvi Muhammad Shafee v. Budri Mal* (3), in which it was pointed out that though permission to the decree-holder might possibly influence the price to be realised by the sale, the execution would be equally effectual whether he was allowed to bid or not. This judgment was distinguished by a Single Judge in *Salig Ram v. Lala Rai Chand* (4), where the grant of permission to bid apparently led to a fresh auction of the property and was consequently held to be a step in aid of execution. The judgment of a Division Bench of the Calcutta High Court in *Toree Mahomed v. Mahomed Mabood Bux* (5), is not directly to the point, because it only decided that the mere payment of a Court-fee in connection with execution proceedings with a view to obtain leave to bid does not constitute a step in aid of execution. There is, no doubt, an observation in the judgment that an application for leave to bid would not be a step in aid of execution; and this *obiter dictum* was followed by another Division Bench in *Raghunundwn Misser v. Kallydutt Misser* (6), where the learned Judges evidently acted upon the rule of *stare decisis* and affirmed the proposition that an application of this kind is not an applica-

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(1) (1891) I. L. R. 13 All. 211. (4) 60 P. R. 1912.  
 (2) (1897) I. L. R. 21 Bom. 331. (5) (1888) I. L. R. 9 Cal. 730.  
 (3) 88 P. R. 1884. (6) (1896) I. L. R. 23 Cal. 690.

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tion seeking the aid of the Court in execution of the decree. The correctness of this decision was, however, doubted by Banerjee J. in *Troylokya Nath Bose v. Jyoti Prokash Nandi* (1), but the point did not directly arise in that case and was not, therefore, finally determined. The view adopted by the Allahabad and Bombay High Courts was subsequently dissented from by a Division Bench of the Calcutta High Court in *Jogendra Prosad Mitra v. Asutosh Goswami* (2).

These are all the cases in support of the rival contentions urged by the learned counsel on both sides; but for the reasons stated above I concur in the opinion expressed by Mookerjee J. in *Hira Lal Bose v. Dwija Charan Bose* (3), that it cannot be affirmed as an inflexible rule that the granting of leave to bid must, in every case, amount to a step in aid of execution; nor can it be said that it may not, in any case, aid the execution. Whether it belongs to one category or the other must depend upon the circumstances of each case. It is to be observed that even the Calcutta High Court has taken the view that though an application for mere leave to bid is not a step in aid of execution, such an application, when it contains the prayer to set off the price of the property against the decretal amount, constitutes such a step, *vide Nabadiip Chandra Maitti v. Bepin Chandra Pal* (4). This judgment was followed by the Madras High Court in *Vapu Rowther v. Sivakataksham Pillai* (5).

The only answer, I can return to the question referred to the Full Bench, is that, while an application for leave to bid does not ordinarily amount to an

(1) (1903) I. L. R. 30 Cal. 761. (3) (1905) 10 Cal. W. N. 209.

(2) (1916) 24 Cal. L. J. 462. (4) (1908) 12 Cal. W. N. 621.

(5) (1930) I. L. R. 53 Mad. 390.

application inviting the Court to take a step in aid of execution, the circumstances under which it was made may show that the granting of leave has actually aided, or would have aided, the execution. If the decree-holder, on whom the onus *lies*, proves such circumstances, the application would amount to a step in aid of execution.

BROADWAY J.—I concur.

JAI LAL J.—The question referred to the Full Bench is whether an application by a decree-holder for leave to bid at an auction sale amounts to a step in aid of execution within the meaning of clause 5 of Article 182 of the Indian Limitation Act. The clause provides that a decree-holder can apply for the execution of his decree within three years *inter alia*, from the date of applying in accordance with law to the proper Court for execution or to take some step in aid of execution of the decree. That there is a diversity of opinion in the various High Courts as to the answer to this question is illustrated in the referring order and in the judgment of the learned Chief Justice which I have had the advantage of pursuing. A further illustration of this diversity is to be found in the latest reported case on the subject, *i.e.*, *Vapu Rowther v. Sivakataksham Pillai* (1). In that case Venkatasubba Rao J. was disposed to hold that such an application does amount to a step in aid of execution, but the other learned Judge, Madhavan Nair J., while not expressing a definite opinion, remarked that it might be possible to argue on the strength of certain decisions of the Madras High Court that such an application is not an application asking the Court to take a definite step in furtherance of execution.

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An examination of the reported cases shows that, the Allahabad and the Bombay High Courts are of opinion that an application for leave to bid is a step in aid of execution, while the majority of the Judges of the Calcutta High Court have held that ordinarily such an application is not a step in aid of execution, but that under certain circumstances it might become so, though some Judges of that Court also have expressed an agreement with the view of the Allahabad High Court. The latest view taken in this province appears to be the same as was taken by the majority of the Judges of the Calcutta High Court, though formerly it was held that such an application is not a step in aid of execution. The Madras High Court does not appear to have definitely decided the question one way or the other.

I do not propose to examine the reported cases on the subject as most of them have been referred to by the learned Chief Justice in his judgment, but, after a careful consideration of the matter, I have reached the conclusion that the answer to the question referred to us should be in the affirmative.

There can be no manner of doubt that an application for leave to bid by a decree-holder is an application to the Court to take some step, such step being the removal of the disability of the decree-holder to bid at the sale. The real question that requires decision is whether such a step is a step in aid of execution; in other words, whether it is calculated to promote, advance or accelerate the execution of the decree, that is to say, whether in the case of a money decree, such a step is calculated to increase or accelerate the chances of the realization of the decretal amount.

Now, the first consideration that strikes one is that the removal of the disability of the decree-holder to bid at the sale is likely to increase the number of bidders at the sale by at least one person and that fact alone must be deemed to increase the chances of the realization of the decretal amount. It is, however, urged by counsel that the fact that a disability to bid has been imposed on the decree-holder by Legislature shows that the Legislature considered that ordinarily bidding by the decree-holder at the auction retards rather than promotes the realization of the money. This, in my opinion, is not necessarily the correct interpretation of the intention of the Legislature because it may be that the Legislators thought that the imposition of the restriction would check the decree-holder in his tendency to pursue the execution of the decree with undue zeal, or it may be that they intended to protect the interests of the rival decree-holders. In neither of these cases can the execution of the decree be deemed to be retarded. But supposing for argument's sake that the contention of the counsel is correct, even then the reasonable inference is that when a decree-holder applies for leave to bid he seeks to satisfy the Court that the supposed normal presumption does not apply to him and that, if he be allowed to bid, the realization of the decretal amount is likely to be facilitated. Either he makes such an allegation expressly in the application or it is to be implied in it, if no other ground is mentioned therein, because it must be assumed that a Court will not remove the disability for the personal benefit of the decree-holder alone, *i.e.* apart from his interest in the realization of the decretal amount. The application therefore, must always be deemed to suggest the assumption that leave to bid would promote the execution of the decree.

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It may, of course, be that the decree-holder in applying for leave is actuated by motives which are inconsistent with the advancement of the execution of the decree or that the actual result of the grant of leave has been that the realization of the decretal amount has been retarded by the conduct of the decree-holder; either in applying for leave or in bidding, or in not bidding, at the auction sale. But the guiding consideration in deciding the question, in my opinion, is neither the motive of the decree-holder in applying for leave nor the actual result of the auction sale but it is the normal or anticipated result of grant of leave to bid. I will illustrate my meaning by giving an instance. Suppose, a decree-holder applies to the Court for issue of a warrant of attachment of the judgment-debtor's property, or for his arrest knowing that the judgment-debtor has no attachable property, or it may be that at the time of making the application the decree-holder has no intention of executing the warrant of attachment or of arrest and has made the application merely "to keep the decree alive." That such an application is a step in aid of execution admits of no doubt, but if the motive of the decree-holder or his conduct after the application has been made or granted were to be the guiding factors, then such an application could not be held to be a step in aid of execution.

In my opinion, it is not even necessary that the application for leave to bid should have been granted by the Court in order to clothe it with the character of an application of the requisite nature; it would retain its character even if it is refused or if no order is passed thereon. All that is necessary under the law is the making of an application which comprises

a prayer to the Court to take a step which, if taken, would promote the execution of the decree. I will again illustrate my meaning with reference to the case of an application for the issue of a warrant, supposing such an application is made but the Court refuses to grant it, would that fact in any way affect its character, *i.e.*, of its being a step in aid of execution? I think, not. It is, therefore, the inherent character of the step or its supposed effect that must be the true guide in answering the question and, as I have already stated, an application for leave to bid always implies a suggestion that the proposed step would promote the execution of the decree, as every increase in the number of bidders or even of bids promotes the execution of the decree and this is the moving factor in granting the leave to bid.

To sum up, I venture to think that in its very nature an application for leave to bid amounts to an application to the Court to take a step in aid of execution and this irrespective of the hidden motive of the decree-holder in applying or of the actual result of the granting of the application, and further that the combination of some other prayer in the application does not affect the question, as then it would be the granting of such a prayer that, would be the step in aid of execution and not the granting of the leave to bid which in that case must be held never to amount to a step in aid of execution.

My answer to the question referred to us, therefore, is in the affirmative.

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