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BELL RAM

v.

MUNSHI.

JAI LAL J.

I consequently accept this appeal and, setting aside the decrees of the Courts below, decree the suit with costs throughout.

P. S.

*Appeal accepted.***APPELLATE CIVIL.***Before Hilton J.*

SUNDAR DAS-VIR BHAN (JUDGMENT-DEBTORS) Appellants

versus

BISHEN DAS (TRANSFEREE-DECREE-HOLDER)
DECEASED, THROUGH HIS LEGAL REPRESENTATIVES AND OTHERS—Respondents.

Civil Appeal No. 1342 of 1932.

Civil Procedure Code, Act V of 1908, Order XXI, rule 53: Dismissal for default of the application for execution of an attached decree—whether causes the attachment to cease—Attachment—whether ceases by the application for execution to the Court which passed the decree—Indian Limitation Act, IX of 1908, Article 174—whether applicable to certification by a decree-holder.

On 29th July 1924, U. H. obtained a money decree against S. V. On 6th April 1927 S. A. got this decree attached in execution of another decree that they had against U. H. A notice under Order XXI, rule 53, Civil Procedure Code, was sent by the Court attaching the decree to the Court which had passed it. S. A. applied to the latter Court to execute this attached decree, but the application was dismissed in default on 19th July 1928. The attached decree was assigned by U. H. to B. D. on 10th January 1930. After the assignment, but before the assignee applied for execution, S. V. on 6th September 1930 paid some money to S. A. towards the decree out of Court. On the application of the assignee for execution the lower Court repelled the contention of the judgment-debtor

S. V. that the decree had been satisfied by payment to the attaching creditors S. A. and held that B. D. as assignee could proceed in execution of the decree against S. V.

Held, that the attachment having been made by the order of the Court which passed the decree in favour of S. A. did not cease on the 19th July 1928 by the dismissal for default of the execution proceedings in the Court which passed the attached decree. Nor did the attachment cease under Order XXI, rule 53 (i) (b) (ii), Civil Procedure Code, at the time when S. A. applied to execute the decree, the rule in question relating not to the date of cessation of the attachment but only to the manner in which the attachment is to be effected.

Prem v. Muhammad Habibullah (1), and *Dooras M. V. Ramkrishna Aiyar v. Mari Goundan* (2), relied upon.

Held also, that the limitation of ninety days provided by Article 174 of the First Schedule of the Indian Limitation Act for certification of payments in a decree is not applicable to a certification by a decree-holder.

Raja Shri Parkash Singh v. Allahabad Bank, Ltd. (3), relied upon.

Miscellaneous First Appeal from the order of Sardar Indar Singh, Senior Subordinate Judge, Amritsar, dated 17th June, 1932, holding that Bishan Das can proceed with his application against Messrs. Sundar Das-Vir Bhan to the extent of Rs. 680.

CHIRANJIV LAL AGGARWAL, for Appellant.

FAKIR CHAND and CHANDAR GUPTA, for Respondents.

HILTON J.—On the 29th July, 1924, Uma Datt Hans Raj obtained a decree against Sundar Das-Vir Bhan for Rs. 4,593-12-0 which after an unsuccessful appeal by the judgment-debtors to the High Court had grown to Rs. 5,244.

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(1) (1914) 24 I. C. 795. (2) 1927 A. I. R. (Mad.) 1025.

(3) 1929 A. I. R. (P. C.) 19.

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The firm Sewa Ram-Amar Nath had a decree against Uma Dat-Hans Raj and on the 6th April, 1927, in execution of that decree they got attached Uma Dat-Hans Raj's decree of the 29th July, 1924, against Sundar Das-Vir Bhan.

On the 19th July, 1928, the application of Sewa Ram-Amar Nath to execute this attached decree was dismissed in default.

On the 10th January, 1930, Uma Dat-Hans Raj assigned their decree of the 29th July, 1924, to Bishen Das for Rs. 1,000.

On the 6th September, 1930, Sundar Das-Vir Bhan paid Rs. 680 out of Court to Sewa Ram-Amar Nath on account of the decree of the 29th July, 1924, which Uma Dat-Hans Raj had obtained against Sundar Das-Vir Bhan and which Sewa Ram-Amar Nath had had attached in execution of their decree against Uma Dat-Hans Raj.

On the 13th April, 1931, Bishen Das, the assignee of the decree of the 29th July, 1924, applied to execute that decree against Sundar Das-Vir Bhan who pleaded that they had satisfied the decree by the payment which they had made out of Court on the 6th September, 1930, to Sewa Ram-Amar Nath.

The executing Court decided on the 17th June, 1932, that as the execution application of Sewa Ram-Amar Nath had been dismissed in default on the 19th July, 1928, prior to the payment which was made on the 6th September, 1930, out of Court by Sundar Das-Vir Bhan to Sewa Ram-Amar Nath, that payment had been made at a time when the decree of the 29th July, 1924, was no longer under attachment and that it did not, therefore, constitute a satisfaction of that decree and that it did not preclude Bishen Das as

assignee of that decree from proceeding in execution against Sundar Das-Vir Bhan. Against this order an appeal has been preferred here by Sundar Das-Vir Bhan and has been contested on behalf of Bishen Das.

In my opinion the appeal must succeed for the following reasons:—

The authority of *Prem v. Muhammad Habibullah* (1) and *Doorvas M. V. Ramkrishna Aiyar v. Mari Goundan* (2), makes it quite clear that the attachment of the decree of the 29th July, 1924, which was made on the 6th April, 1927, did not cease on the 19th July, 1928, when the proceedings in execution of that attached decree were dismissed in default in the Court which had received notice under Order XXI, rule 53 from the Court which had passed the decree in favour of Sewa Ram-Amar Nath against Uma Dat-Hans Raj. There is no reason for not applying to the present case the principles laid down in these authorities to the effect that the attachment still subsisted, having been made by the order of the Court which passed the decree in favour of Sewa Ram-Amar Nath and not by order of the Court which passed the decree of the 29th July, 1924, and that the dismissal in default by the latter Court of the proceedings pending before it could not, therefore, cause a cessation of the attachment.

It was argued, however, before me on behalf of the respondent Bishen Das that the attachment ceased under Order XXI, rule 53 (i) (b) (ii), Civil Procedure Code, at the time when Sewa Ram-Amar Nath applied to execute the decree of the 29th July, 1924. This view, however, is not justified by the wording of the

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said rule which only lays down that the Court which receives notice from another Court should be requested to stay the execution of its decree unless and until the holder of the decree sought to be executed applies to the Court receiving such notice to execute the attached decree. This does not mean that when the holder of the decree sought to be executed makes such an application, the attached decree ceases to be an attached decree: it only means that a period is provided by the rule up to which a stay of execution is to be arranged by the Court to which notice is sent to enable the holder of the decree sought to be executed to make application for execution of the attached decree. In other words, the rule in question relates not to the date of cessation of the attachment but only to the manner in which the attachment is to be effected. No such argument as above was put forward in the two authorities above mentioned, although, had it been a valid argument, it could have been urged in the circumstances of both those cases.

It was further contended on behalf of the respondent that the payment made by Sundar Das-Vir Bhan out of Court on the 6th September, 1930, was never certified to the executing Court and that it cannot therefore be taken notice of for the purposes of the execution. As against this, it is clear from the record that the judgment-creditor admitted during the proceedings before the Court below that he had received this amount and it does not appear that the limitation of ninety days provided by Article 174 of the First Schedule of the Indian Limitation Act is applicable to a certification by a decree-holder [see *Raja Shri Parkash Singh v. Allahabad Bank, Ltd.* (1)]. In any

case, this argument cannot be of any avail to the respondent for the simple reason that if the payment of the 6th September, 1930, did not have the effect of satisfying the decree of the 29th July, 1924, then it follows that the attachment of that decree did not cease on that date but continued in force after that date. because under Order XXI, rule 55, Civil Procedure Code, the attachment is deemed to be withdrawn only when the decree has been satisfied through the Court or when satisfaction has been certified to the Court. It would, therefore, follow that if there was no satisfaction of the decree on the 6th September, 1930, there was no withdrawal of the attachment on that date and the attachment must still be subsisting, in which case it is Sewa Ram-Amar Nath who is the representative of Uma Dat-Hans Raj and entitled as such to execute the decree of the 29th July, 1924, in accordance with the provisions of Order XXI, rule 53 (3), and not the assignee Bishen Das whose assignment dates from the 10th January, 1930. whereas Sewa Ram-Amar Nath had become representatives of Uma Dat-Hans Raj under the aforesaid rule on the 6th April, 1927.

For the above reasons, I find no force in the contentions which have been made before me on behalf of the respondent Bishen Das. I accept the appeal of Sundar Das-Vir Bhan and setting aside the order of the Senior Subordinate Judge of Amritsar, dated the 17th June, 1932, I dismiss the application of Bishen Das against Sundar Das-Vir Bhan and order him to pay their costs in this Court.

P. S.

Appeal accepted.

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