

APPELLATE CIVIL.

Before Bhide J.

RUGHNATH AND COMPANY (DECREE-HOLDER)

Appellant,

versus

RAM GOPAL-ROHIT RAM (JUDGMENT-DEBTOR)

Respondent.

1938

Nov. 15.

Execution Second Appeal No. 910 of 1938.

Indian Limitation Act (IX of 1908), Art. 183 — Application for execution — Limitation whether begins to run from the date of judgment or date of completion of decree — Time spent in preparation of decree — Whether can be deducted — Civil Procedure Code (Act V of 1908), S. 118, O. XX, r. 7, O. XXI, r. 10.

The Calcutta High Court passed a decree on 15th December, 1924. On 21st August, 1936, an application for transmission of the decree for execution to the District Judge, Hissar, was granted. The transfer certificate reached the District Judge on 14th December, 1936, but was returned on the ground that the address of the respondents was incomplete. An application for execution was presented on 23rd February, 1937, when the certificate was received.

Held, that under the circumstances, the application was barred by time under Art. 183 of the Indian Limitation Act.

It was contended that the costs were not assessed till September, 1928, and as the decree was not complete till then, limitation should be taken to run from the latter date.

Held, (repelling the contention) that according to Art. 183, the limitation begins to run from the time when a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right, and as the decree bears the same date as the judgment, the aforesaid right would, *primâ facie*, seem to accrue from the date of the judgment.

That there is no provision of law allowing the time spent in preparation of the decree to be deducted in computing the period for an application for execution.

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ROHIT RAM.*Rustomji v. Fazal Rahim* (1), distinguished.*Banku Behari Chatterji v. Naraindas Dutt* (2), followed.

Second appeal from the order of Mr. N. Ahmad, District Judge, Hissar, dated 8th March, 1938, affirming that of Sheikh Masud Ahmad, Subordinate Judge, 1st Class, Hissar, dated 23rd December, 1937, dismissing the application of the Decree-holder for execution of the decree.

NANAK CHAND, *Pandit*, for Appellant.

SHAMAIR CHAND, for Respondent.

BHIDE J.

BHIDE J.—This is an appeal arising out of an application for execution of a decree passed by the Calcutta High Court on the 15th December, 1924. It appears that an application was made to that Court on the 21st August, 1936, for transmission of the decree for execution to the District Judge, Hissar, for execution in that district, and the application was granted. The transfer certificate reached the District Judge on the 14th December, 1936, but was returned on the ground that the address of the respondents was incomplete. The certificate was received again on the 23rd February, 1937, when an application for execution was made but it has been held by the Courts below to be barred by time under Article 183 of the Indian Limitation Act and from this decision the present appeal has been preferred by the decree-holder.

The learned counsel for the appellant has not challenged the correctness of the view taken by the Courts below that a mere application for an order for transmission of execution to another Court does not amount to an application for execution and cannot save limitation. He has, however, contended that an application for execution was made at Hissar on the

(1) 1932 A. I. R. (Bom.) 378.

(2) I. L. R. (1927) 54 Cal. 500 (P.C.).

14th December, 1937, *i.e.*, within 12 years of the date of the decree and hence execution was not barred. There is, however, nothing on the record to show that any application for execution was actually presented till the 23rd February, 1937. The application presented on that date appears to have been written on the 11th December, 1936, and evidence of the Nazir of the District Court (*vide* statement of Jagdish Chandar, D. H. W. 1, dated the 22nd December, 1937) shows that the application was brought to the Court by *Lala Tej Ram Gupta*, counsel for the decree-holder, on the 14th December, 1936, but was not admitted as the transfer certificate relating to the execution of the decree had been returned to the Calcutta High Court. The endorsement on the Court-fee stamp on the application shows that the stamp was purchased on the 23rd February, 1937. It seems therefore clear that although the application may have been brought to the Court on the 14th December, 1936, it was not actually presented to the Court according to law till the 23rd February, 1937.

The next point taken up by the learned counsel for the appellant was that the costs were not assessed till September, 1928, and hence as the decree (or at any rate the portion relating to costs) was not complete till September, 1928, limitation should be taken to run from the latter date. According to Article 183, however, limitation begins to run from the time 'when a present right to enforce the judgment, decree or order accrues to some person, capable of releasing the right.' According to law (see Order 20, rule 7, Civil Procedure Code, and Rules of the Calcutta High Court, Chapter XVI), decree bears the same date as the judgment and the aforesaid right would *prima facie* seem to accrue from the date of the judgment.

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BEIDE J.

Ordinarily, preparation of the decree (including assessment of costs) does take a little time but there seems to be no provision of law allowing this time to be deducted in computing the period for an application for execution. The learned counsel for the appellant was not able to cite any authority in point to support his contention excepting *Rustomji v. Fazal Rahim* (1), in which it was held by Tyabji J., that the limitation in the case of that part of the decree which relates to costs runs from the date on which the costs are assessed. But the wording of the decree itself in that case supported this view. For the decree in that case provided that 'the costs of defendant No.1 be paid to his attorneys Messrs. Rustomjee and Ginwala, *when taxed and noted in the margin.*' It would therefore appear that according to the wording of the decree itself the right to take out execution relating to costs did not accrue till the costs were assessed and noted in the margin. But there is no such provision in the decree in the present case.

The learned counsel for the appellant referred to section 118 of the Civil Procedure Code, but that section also does not appear to me to support his contention that there is no executable decree till the costs are assessed. Section 118 seems to be only an enabling section providing for execution before assessment of costs when this is found necessary. It seems to be analogous to Order 21, rule 10, Civil Procedure Code, and nothing more.

In *Banku Behari Chatterji v. Naraindas Dutt* (2) the question arose whether the period of limitation for executing a mortgage decree personally against the mortgagor runs from the date of the final decree or from the time when the deficiency is ascertained by the

(1) 1932 A. I. R. (Bom.) 378. (2) I. L. R. (1927) 54 Cal. 500 (P. C.).

sale of the mortgaged property. It was held by their Lordships of the Privy Council that the period of limitation for a personal decree also runs from the date of the final decree. I do not see why the same principle should not govern the present case. It is true that the amount of the costs was assessed later, but the costs are allowed by the judgment itself and not by any subsequent order. The decree merely gives effect to the judgment. The law requires that the decree should be considered to be of the same date as the judgment, although some time would ordinarily be taken in the preparation of the decree. The period of limitation usually leaves sufficient margin for such preparation. In the present instance, the period of limitation was 12 years and even after the assessment of costs in 1928, there was ample time for execution. The appellant, however, delayed taking out execution till the last moment and hence has placed himself in the present difficulty.

In my opinion the decree of the Court below is correct. I dismiss the appeal but in view of all the circumstances leave the parties to bear their costs.

A. K. C.

Appeal dismissed.

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BEHDE J.