numbered as a suit, but it was summarily rejected without trying the validity of the award, on the ground that treated as a suit it was time-barred. The plaintiff next filed a regular suit to enforce the award. It was objected to as being barred by *res judicata*, as well as by limitation. It was held that a suit to enforce an award was a suit not provided for by any other Article of the Indian Limitation Act, so that the time was six years under Article 120. The petitioner relies upon the decision of this Court in *Fardunji Edalji* v. *Jamsedji Edalji*[1]. The question there was whether a suit on an award was a suit for specific performance. So far as we can gather, there was no question of limitation argued before the Court, nor was it decided that a suit to enforce an award is in reality a suit to recover money directed by the award to be paid to the successful party, so that the period of limitation for such a suit was three years and not six.

The rule, therefore, must be discharged with costs.

Rule discharged.

J. G. R.

[1] (1903) 28 Bom. 1.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.

D. S. APTE AND ANOTHER (ORIGINAL APPLICANTS), APPELLANTS *v.* TIRMAL HANMANT SAVNUR (ORIGINAL OPPONENT), RESPONDENT *.

1925.

April 3.

Decree—Execution—Civil Procedure Code (Act V of 1908), section 48, clause 1 (b)—"Subsequent order" means any order made by a competent Court.

A decree was passed on May 28, 1903, in the Subordinate Judge's Court. On September 8, 1908, the final decree was passed by the High Court. On June 9, 1911, the Subordinate Judge made an order that the amount should be recovered by annual instalments of Rs. 125 each, the first instalment to

* Second Appeal No. 357 of 1924.

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become due on February 1, 1912. In case of default to pay any one instalment, the whole amount to be recovered at once. A default was made in payment of instalment. Thereupon, on December 21, 1921, the judgment-creditor applied for execution. The judgment-debtor contended that, as between the date of the decree and the date of the last application more than twelve years had elapsed, it was barred under section 48 of the Civil Procedure Code.

Held, that the application was not barred as the order made by the Subordinate Judge on June 9, 1911, having been made by a competent Court, was a subsequent order within the meaning of that term in section 48 (*1*) (*b*), Civil Procedure Code, 1908, and gave a fresh period to the decree-holder to execute the decree as from the date of default in payment of the instalment.

Jurawan Pasi v. *Mahabir Dhar Dube*[1], dissented from.

SECOND appeal against the decision of V. M. Ferrers, District Judge at Dharwar, confirming the decree passed by G. A. Balse, Subordinate Judge, Hubli.

Proceedings in execution.

One Madhavrao Savnur, father of defendants Nos. 1 and 2, owed a debt to Shankarrao Apte. Raghavendrarao, grandfather of respondent-defendant No. 3, stood surety for the debt. In 1902, Shankarrao Apte brought a suit against debtors, defendants Nos. 1 and 2, and the surety for the recovery of Rs. 661-12-0. On May 18, 1903, a decree was passed in favour of Shankarrao, directing that the amount be recovered from the property of the deceased surety, Raghavendrarao. Shankarrao having died, his sons were brought on record. In 1911, they presented Darkhast No. 286 of 1908. In that Darkhast, on June 9, 1911, the Subordinate Judge made the following order:—

"The amount should be recovered by annual instalments of Rs. 125 each. First due on February 1, 1912. In case of default to pay any, the whole to be recovered at once....."

The judgment-debtor having failed to pay the instalment as directed, Darkhast No. 721 of 1921 was presented for the recovery of the entire amount by proceeding against the property in the hands of the respondent.

[1] (1918) 40 All. 198.

The Subordinate Judge held that the property sought to be attached and sold was not liable for the decretal debt on the ground that it was in the possession of the respondent as the grandson of the surety of the principal debtor and that the decision of *Narayan* v. *Venkatacharya*[1] barred the application. The application was, therefore, dismissed.

On appeal the District Judge held that the order of June 9, 1911, was made by the Subordinate Judge sitting as a Court of execution and such an order did not come within section 48, clause *1* (*b*), Civil Procedure Code, 1908 : *Jurawan Pasi* v. *Mahabir Dhar Dube*[2]. He accordingly confirmed the order of dismissal.

The applicants appealed to the High Court.

S. B. Jathar, for the appellants.

R. A. Jahagirdar, for the respondent.

MACLEOD, C. J. :—In this case a decree was passed on May 28, 1903, in the Subordinate Judge's Court. The final decree was passed by the High Court on September 8, 1908. The plaintiff applied for execution on December 21, 1921. The opponent against whom this proceeding was instituted contended that the property sought to be attached and sold was not liable for the decretal debt on the ground that it was in his possession as the grandson of the surety of the principal debtor. This contention found favour with the Subordinate Judge, and accordingly the application was dismissed.

The judgment-creditor appealed, and although no question of limitation was raised in the grounds of appeal, the question of limitation was raised at the commencement of the argument before the District Judge. The respondent argued that, as between the date of the decree and the date of the last application more than twelve years had elapsed, under section 48 of

(2) (1904) 28 Bom. 408. (3) (1918) 40 All. 198.

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the Civil Procedure Code there could be no further application. Now, on June 9, 1911, the Subordinate Judge made an order that the amount should be recovered by annual instalments of Rs. 125 each, the first instalment to become due on February 1, 1912. In case of default to pay any instalment, the whole to be recovered at once. Each instalment to carry interest at 6 per cent. per annum. The District Judge, following the decision in *Jurawan Pasi* v. *Mahabir Dhar Dube*[1], held that as that order was made by the Subordinate Judge sitting as a Court of execution, it was not an order within the meaning of that word in section 48 (*1*) (*b*) of the Civil Procedure Code. In that case it was held that the expression "subsequent order" in section 48 (*1*) (*b*) of the Code of Civil Procedure meant a subsequent order made by the Court which made the decree and acting as that Court, and not an order of a Court executing the decree, that an order made by a Court executing a decree, allowing a judgment-debtor time to pay up the balance of the decretal money, would not be a subsequent order within the meaning of section 48, and would not give a fresh period to the decree-holder to execute his decree, nor was an order merely giving time for payment an order staying execution or an injunction, so that the time so given could be excluded in computing limitation against the decree-holder.

With great respect, I cannot see myself why the words "any subsequent order" must be limited as if the words "by the Court which passed the decree" were there. The words "any subsequent order", to my mind, mean any order made by a competent Court. As the District Judge points out, any other construction would lead to this absurdity that there might be an order by a competent Court directing that the

[1] (1918) 40 All. 198.

decree should be paid by instalments, with the result that when twelve years had expired, some of the instalments might still remain to be paid, even if there had been no default on the part of the debtor. It would certainly be an extraordinary interpretation to put on those words, which might result in a creditor being deprived of his right to execute for the subsequent instalments if they were not paid.

It is not suggested in this case that the order of June 9, 1911, was not made by a competent Court.

The present Darkhast sets out the previous history of the decree. It recites the following order made in Darkhast No. 286 of 1908 :—

"The defendant No. 3 is examined. Having regard to all the circumstances I order that the amount should be recovered by annual instalments of Rs. 125 each. First due on February 1, 1912. In case of default to pay any, the whole to be recovered at once. Each instalment to carry interest at 6 per cent. per annum from this date of recovery to be recovered along with the instalment, June 9, 1911."

I fail to see on what possible ground we could hold that that was not a subsequent order within the meaning of section 48 (*1*) (*b*). I think that the District Judge had some excuse for following the decision in *Jurawan Pasi* v. *Mahabir Dhar Dube*[1] as there was no decision of this Court on the same point. We allow the appeal, set aside the order of the District Judge dismissing the appeal before him, as that appeal was dismissed on a preliminary point, which was raised neither in the trial Court nor in the grounds of first appeal, and remand the appeal for further hearing before the District Judge. The appellant will be entitled to his costs in this Court.

COYAJEE, J. :—I am of the same opinion.

Decree reversed.

J. G. R.

[1] (1918) 40 All. 198.