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in the case of *Kewal Ram v. Khadim Husain* (1) that that application was an application to take some steps in aid of execution, and was therefore sufficient to avoid the bar of limitation. We concur in the view taken by the learned Judges who decided that case, that an application by a decree-holder, praying that a petition of the judgment-debtor to set aside the sale of property belonging to him should be rejected and the sale be confirmed (which the application of the 28th January 1889 in fact is), is an application falling within the meaning of art. 179 (4), schedule II of Act XV of 1877. The learned District Judge relies on the decision of this Court in *Raghnandan Pershad v. Bhugoo Lal* (2), which, however, we think is not applicable to the present case.

We observe that the appeal before the District Judge was argued *ex parte*, and apparently the application of the 28th January 1889 was not brought to his notice.

In this view of the case, we set aside the order of the District Judge, and restore that of the Munsif with costs.

Appeal allowed.

J. V. W.

Before Mr. Justice Rampini and Mr. Justice Gordon.

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 June 29.
 LALLA TIRHINI SAHAI (JUDGMENT-DEBTOR) v. LALLA HURRUK
 NARAIN (DECREE-HOLDER).*

Transfer of Property Act (IV of 1882), ss. 88, 90—Decree not satisfied after sale of mortgaged property—Procedure necessary to obtain balance of decree.

Where a decree-holder has obtained a decree under section 88 of the Transfer of Property Act, and on sale of the mortgaged property the proceeds of sale are insufficient to satisfy the decree, he must, unless the decree gives him the right to proceed against other property or against the person of his judgment-debtor, apply under section 90 of the Act for a decree for the balance remaining unsatisfied.

* Appeal from Order No. 324 of 1892, against the order of A. C. Brett, Esq., District Judge of Gaya, dated the 29th of July 1892, affirming the order of Moulvi Hamiduddin, Munsif of Gaya, dated the 18th of June 1892.

(1) I. L. R., 5 All., 576.

(2) I. L. R., 17 Calc., 268.

IN this case the decree-holder (the plaintiff in a suit on a mortgage bond) had obtained a decree, dated 1st June 1885, for Rs. 433 in the following terms :—

“ That the defendant do pay to the plaintiff the decretal money with interest at the rate of 6 per cent. per annum for the period of pendency of the suit, and further interest till the day of realization ; that should the decretal money be not paid within six months, the mortgaged property be duly sold at auction for the realization of the decretal money due to the plaintiff ; that the costs of the defendant be considered as lost ; and that the defendant do pay to the plaintiff Rs. 433, the amount decreed, together with Rs. 57-11-6, the plaintiff’s costs in this suit, with interest at the rate of 6 per cent. per annum till realization.”

On default of payment the decree-holder executed this decree, and under it in execution the mortgaged property was sold, but did not realize sufficient to satisfy the decree. The decree-holder then applied for execution of his decree against property other than that mortgaged for the balance remaining due under it.

The Munsif allowed execution to proceed, overruling the objection of the judgment-debtor that the decree could not be further executed, inasmuch as no permission to do so had been obtained by the decree-holder under section 90 of the Transfer of Property Act ; and an appeal to the District Judge from this decision was dismissed. The judgment-debtor then appealed to the High Court on the ground (among others) that “ the decree-holder could not follow any property of the judgment-debtor other than that mortgaged without permission under section 90 of the Transfer of Property Act, which was admittedly not obtained.

Moulvi *Mahomed Habibulla* for the appellant.

Babu *Mahabir Saha* for the respondent.

The judgment of the Court (RAMPINI and GORDON, JJ.) was as follows :—

IN this case the respondent obtained a decree upon a mortgage bond for the sum of Rs. 433, for costs, and for the sale of the mortgaged property. He then proceeded to sell the mortgaged property, and the proceeds of that sale were insufficient to satisfy his decree. He next applied to be allowed to execute his decree for the balance of the decretal amount, but he did not make any application under section 90 of the Transfer of Property Act.

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The Lower Courts have held that it was not necessary for the respondent to make such an application; and the judgment-debtor now appeals to this Court, and contends that it was not open to the respondent in this case to execute his decree further against other property of the judgment-debtor, it not being a decree under the provisions of section 90 of Act IV of 1882.

We think that there is no doubt that the contention of the appellant is correct. The terms of the decree which the respondent has obtained is substantially one under the provisions of section 88 of the Transfer of Property Act, and it merely gave the respondent a right to sell the mortgaged property and to satisfy his decree from the proceeds, but did not expressly give him any right against other property or the person of the judgment-debtor. We think, in these circumstances, that it was necessary for him to apply under section 90 for a decree for the balance. We may refer in this connection to the case of *Sonatan Shah v. Ali Nawaz Khan* (1), in which it was held that such an order should be applied for. We may also refer to *Batak Nath v. Pitambar Dhus* (2), in which it was held that it was not necessary for the decree-holder in that case to obtain a separate decree under section 90 of the Transfer of Property Act, because the decree which he had obtained expressly provided that, should the mortgaged property not realize sufficient to satisfy the amount decreed, other property of the judgment-debtor should be liable. Now, in the present case it is quite clear that the decree which the respondent has obtained contains no such express provision. In these circumstances we think that the contention of the appellant in this case must prevail.

We therefore decree this appeal with costs.

Appeal allowed.

J. V. W.

(1) I. L. R., 16 Cal., 423. . . . (2) I. L. R., 13 All., 360.