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English cases cited by the learned pleader for the appellant can assist us in any way in interpreting the provisions of that section. In the absence of any Indian authorities to the contrary, we must hold that the 15 days' notice referred to in the section means 15 clear days, and we do not think that the terms of this section have been complied with by the plaintiff. In this case the plaintiff served his notices on the defendants on the 16th Falgoon, and required them to quit the land on the 30th of the same month, so the defendants had only 14 clear days' notice and the notice to quit is bad.

On this ground then we must affirm the decree of the Lower Appellate Court. The appeal is accordingly dismissed with costs.

M. N. R. *Appeal dismissed.*

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice and Mr. Justice Banerjee.

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BHOLANATH DASS AND ANOTHER (JUDGMENT-DEBTORS) *v.* PRAFULLA NATH KUNDU CHOWDHRY (DECREE-HOLDER).*

Res judicata—Order in execution of decree—Limitation—Previous application for execution refused and judgment-debtor's objection as to limitation disallowed—Effect of such an order in a subsequent application for execution.

On an application for execution an order for attachment having been issued, the judgment-debtor objected to the execution on the ground that it was barred by limitation. After several adjournments granted at the instance of the decree-holder, neither party having appeared at the date of hearing, the Court by its order refused the application for execution and disallowed the objection of the judgment-debtor. On a subsequent application by the decree-holder the judgment-debtor again objected to the execution on the ground that, inasmuch as the previous application was barred by limitation, the subsequent application was also barred. *Held*, that the judgment-debtor was not precluded from raising the objection that the previous application was barred by limitation.

Mungul Pershad Dichit v. *Grija Kant Lahiri* (1) distinguished.

* Appeal from Order No. 92 of 1900, against the order of H. R. H. Coxe, District Judge of Hooghly, dated the 8th of December 1897, reversing the order of Babu Gopal Krishna Ghose, Munsif of Howrah, dated the 31st of August 1899.

(1) (1881) I. L. R., 8 Calc., 51 ; L. R., 8 I. A., 123.

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THIS appeal arose out of an application for execution of a decree. The application was made on the 26th November 1896. On this a notice was issued upon the judgment-debtors, which was duly served. The decree was then transferred to another Court in consequence of a change of jurisdiction. An order of attachment was issued by the second Court. The judgment-debtors appeared and objected to the execution on the ground that it was barred by limitation. The case was then adjourned several times principally at the instance of the decree-holder, and at the time of the hearing neither party having appeared the Court by its order refused the application for execution and disallowed the objection of the judgment-debtors. It appeared that the case was adjourned at the instance of the decree-holder to enable his pleader to produce authority in support of his contention, and that there was nothing to show that the Court disallowed the objection of the judgment-debtors on the merits. A second application for execution was made by the decree-holder on the 11th July 1898, and the judgment-debtors objected that inasmuch as the previous application was barred by limitation the subsequent application for execution was also barred. The first Court held that the application was barred by limitation. On appeal the Lower Appellate Court reversed that decision.

Against this decision the judgment-debtors appealed to the High Court.

Babu *Mohendra Nath Roy* for the appellants.

Mr. *U. P. Roy* and Babu *Soshi Sekhur Bose* for the respondent.

1900, AUGUST 6. Babu *Mohendra Nath Roy* contended that the judgment-debtors were entitled to reopen the question of limitation. In the previous application for execution the order passed was that the application for execution be dismissed for default and the objection of the judgment-debtors be disallowed. There was no adjudication on the merits of the case, and therefore it would not be a bar to an adjudication whether the previous application was barred by limitation or not. The cases of *Dhonkal Singh* v. *Phakkar Singh* (1) and *Tileshar Rai* v. *Parbati* (2) supported this contention. In the case of *Mungul Pershad*

(1) (1893) I. L. R., 15 All., 84.
(2) (1893) I. L. R., 15 All., 198.

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Dichit v. *Grija Kant Lahiri* (1) there was no objection as to execution taken on the ground of limitation. On the other hand the validity of the attachment was admitted in that case.

Mr. *U. P. Roy* for the respondent.—The case came within the principle laid down in the case of *Mungul Pershad Dichit* v. *Grija Kant Lahiri* (1). In this case notice was issued before attachment. Inasmuch as the previous order for attachment subsisted, the attachment also subsisted. Therefore the judgment-debtor could not now say that the previous application was barred by limitation. The principle laid down in the case of *Tileshar Rai* v. *Parbati* (2) did not apply to the present case. Moreover the Privy Council case of *Mungul Pershad Dichit* v. *Grija Kant Lahiri* (1) was not cited in that case.

Babu *Mohendra Nath Roy* in reply.

Cur. adv. vult.

1900, AUGUST 29. The judgment of the High Court (MACLEAN, C. J. & BANERJEE, J.) was as follows :—

BANERJEE, J.—The question for determination in this case is whether the present application for execution of the decree obtained by the respondent is barred by limitation.

The first Court held that the application was barred by limitation. On appeal the Lower Appellate Court has reversed that decision, and hence this appeal by the judgment-debtors.

The contention on behalf of the appellants is, that the present application is barred, because the application preceding it was barred; and when once an application for execution is barred by limitation, no subsequent application, though made within three years after it, can be held to be in time. In answer to this contention, the learned Counsel for the respondent says, as the Court of Appeal below has said in its judgment, that though the last preceding application for execution might have been barred by limitation, yet the appellants are precluded by an order of the Court from urging that it was so barred.

Now this is how the facts as found by the Lower Appellate Court stand. The last preceding application for execution was

(1) (1881) I. L. R., 8 Calc., 51 ; L. R., 8 I. A., 123.
(2) (1893) I. L. R., 15 All., 198.

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made in November 1896. Thereupon notice was issued to the judgment-debtors. The decree was then transferred to another Court in consequence of change of jurisdiction. An order of attachment was issued by this second Court. The judgment-debtors then came and urged that the application for execution was barred by limitation. And after several adjournments granted principally at the instance of the decree-holders, when the case came on for hearing, neither party having appeared, the Court by its order refused the application for execution, and disallowed the objection of the judgment-debtors.

This last mentioned order disallowing the judgment-debtors' objection, it is contended for the respondents, precludes the appellants from urging now that the previous application was barred, and in support of this contention the case of *Mungul Pershad Dichit* v. *Girja Kant Lahiri* (1) is relied upon; while on the other hand, the learned Vakil for the appellants argues that the case cited is distinguishable from the present, that the order relied upon merely disallowed the judgment-debtors' objections for default, without deciding on the merits that they were invalid, and that such an order, as has been held by the Allahabad High Court in *Tileshar Rai* v. *Parbati* (2), cannot debar the appellants from raising the same objections again.

The case of *Mungul Pershad Dichit* v. *Girja Kant Lahiri* (1) differs from the present in this, that, whereas in that case, the judgment-debtors acknowledged the validity of the order for attachment made upon the previous application, in the case before us the judgment-debtors impugned the attachment, and the execution proceedings instituted by the previous application; and this is certainly a point of difference in favour of the appellants. But then it is argued that there is another point of difference between the two cases which has the opposite effect, and makes the present case a stronger one against the appellants than the case cited, and that point is this, that whereas in the case cited, there was only an order for attachment of property acquiesced in by the judgment-debtors which was held to preclude them from objecting to the validity of the application

(1) (1881) I. L. R., 8 Calc., 51; L. R., 8 I. A., 123.
(2) (1893) I. L. R., 15 All., 198.

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on which that order was made, here there was an express order disallowing the very objection that the judgment-debtors are now raising, namely, that the previous application was barred by limitation; and that order remaining unreversed must, upon the authority of the case cited, operate as a bar to the present contention of the appellants. But I am unable to accept this view as correct. There is nothing to show that the Court disallowed the objection of the judgment-debtors on the merits. On the contrary the fact, appearing upon the order sheet, that the case was adjourned at the instance of the decree-holder to enable his pleader to produce authority in support of his contention, would rather go to show that the merits were on the other side. The dismissal of the objection was evidently on account of the objector's default in appearing; and as simultaneously with such dismissal, the application for execution was itself refused and not simply struck off, the dismissal of the objection cannot rightly be held to operate as a bar to its being urged when the decree-holder applies for execution again. This view is in accordance with the case cited for the appellants.

Again, as the order refusing the application for execution, which was the order disposing of the execution proceeding instituted, was not based upon the order disallowing the judgment-debtors' objections, but was made in spite of it, the order disallowing the judgment-debtors' objections cannot be held to be conclusive against them. This view is supported by the observations of the Privy Council in the case of *Run Bahadur Singh* v. *Lucho Koer* (1). I may add that as the application for execution was refused and not simply struck off, the order for attachment, and any attachment made in pursuance thereof, must be taken to have become inoperative upon the refusal of the application for execution.

For the foregoing reasons, I am of opinion that the contention of the appellants should prevail, the order of the Court of appeal below should be set aside, and that of the first Court refusing the present application for execution restored with costs in this Court and in the Court below.

MACLEAN, C. J.—I concur.

S. C. G. *Appeal allowed.*

(1) (1884) I. L. R., 11 Calc., 301; L. R., 12 I. A., 23.