
(1918) 10 PAT CK 0001

In the Patna High Court

Brij Nath Sahai Singh and Others

APPELLANT

Vs

Hari Charan Ray and Others

RESPONDENT

Date of Decision : 23-10-1918

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1918 Patna 254 : 48 Ind. Cas. 187

Hon'ble Judges : Dawson Miller, C.J.; Mullick, J

Bench : Division Bench

Judgement

Dawson Miller, C.J.—In my opinion this appeal should be dismissed. This is a second appeal from a judgment of the District Judge of Shahabad refusing to reverse a judgment of the Court below, which dismissed a petition for execution on the ground that it was time-barred. Another objection was taken, but with that we are not now concerned. The question is a very short one. It appears that in the year 1806 the appellant obtained a decree. Between that time and 1912 he appears to have made three separate attempts to execute his decree. Each of these attempts proved in-fructuous. Then on the 12th April 1912 a fresh petition for execution was filed. That, for reasons which do not concern us, was dismissed. On appeal to the District Judge on the 5th July 1913 the appeal was allowed and the petition for execution granted. From that time until the 20th July 1916, which was more than three years, the appellant took no steps to try and obtain execution. From the order of the District Judge, dated the 5th July 1913, the judgment-debtor appealed to the High Court at Calcutta and on the 20th April 1915 the High Court at Calcutta dismissed the appeal. Then on the 20th July in the following year an application was made by the present appellant, which has been called an application to continue the previous petition for execution, that is to say, the petition which was filed on the 12th April 1912. No doubt the reason why the petition has been so described and why probably it was set out in that form was because it was more than three years since the appellant had obtained his decree before the District Judge in July 1913 and he had taken no steps-in-aid of his execution since then, except that he had

defended an appeal to the High Court at Calcutta. That obviously was not a step-in-aid of execution, because the appeal by the judgment-debtor to the High Court at Calcutta was no bar to the execution or to the carrying out of the decree which the appellant already had from the District Judge. That application, whether it is called an application to continue the previous petition or whether it is called a petition for the execution of the decree, was dismissed for default. Then the present petition was brought for execution on the 1st February 1917, and both the lower Appellate Court and the Court of first instance who tried these proceedings have come to the conclusion that the petition is time-barred. It seems to me that that decision is one which cannot be impeached. The Article in the Limitation Act which in my opinion clearly relates to a petition of this sort is Article 182, and the period of limitation prescribed by that Article is three years from the date of applying in accordance with law to the proper Court for execution or of taking some step-in-aid of execution of the decree or order. It is quite clear to my mind that the last step which was taken in execution in accordance with law was not later than the 5th July 1913 and as the present petition was not filed until the 1st February 1917, it seems to me that it is quite clear that that petition is out of time and ought to be dismissed.

2. It was contended in the first place that the petition of February 1917 was within 3 years of that filed on the 20th July 1916 and was, therefore, in time. But the earlier petition which was dismissed for default was itself time-barred and being out of time, cannot constitute a fresh starting point within three years of which another petition can be lodged. To hold otherwise would be to defeat the whole object of the Limitation Act.

3. It was also contended on behalf of the appellant that Article 182 does not apply to the case at all, although it cannot be denied that this is a petition for execution, but it is contended nevertheless that Article 181 applies, which provides for applications for which no period of limitation is provided elsewhere in this Schedule or by Section 47 of the Code of Civil Procedure. I cannot accept this view. It is quite clear to my mind that Article 182 is the proper Article to apply to a petition of this sort. But even if Article 181 applies, it is very difficult to see how it can assist the appellant in any way, because there the time begins to run when the right to apply accrues. That part of the Artiste the learned Vakil for the appellant has not dealt with, but it seems to me that the right to apply is existing all along and that only shows that Article 181 was clearly not meant to cover the case of a petition for execution such as that provided for in Article 182.

4. It has not been suggested when the right to apply accrued or before what time it was impossible to make this application. It is not necessary for me to say more than this that the Article which is clearly applicable to the present case is Article 182. That being so and it being quite clear that three years had elapsed since the last step taken by the appellant in aid of the execution, it follows that this application is time-barred and that this appeal ought to be dismissed with costs.

Mullick, J.

5. I agree.