

(1915) 07 CAL CK 0026
In the Calcutta High Court

Gopal Proshad Bhagat and Others

APPELLANT

Vs

Rajendra Lal Panja and Others

RESPONDENT

Date of Decision : 20-07-1915

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148
Limitation Act, 1963 — Article 182(5)

Citation : 34 Ind. Cas. 625

Hon'ble Judges : Roe, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. This Rule was granted upon an application u/s 25 of the Provincial Small Cause Courts Act.

2. The main question raised in the Rifle is, whether an application by a decree-holder certifying partial satisfaction of a decree is a step-in-aid of execution of the decree within the meaning of Article 182 (5) of the Second (First?) Schedule of the Limitation Act.

3. The question has been considered in several cases and answered in the affirmative. In Tarini Das Bandyopadhyaya v. Bishtoo Lal Mukhopadaya 12 C. 608 the learned Judges held that such an application is a step-in-aid of execution of the decree, and observed: "when a judgment-creditor comes into Court and certifies to the Court the payment of a sum, that proceeding takes place in consequence of an arrangement as to payment between him and the judgment-debtor, and because if he had not certified, the judgment-debtor could, under the law, compel him to do so. The effect of the certificate is to satisfy the decree so far as the sum certified is concerned." The same view was taken by a Full Bench of the Allahabad High Court in Sujan Singh v. Hira Singh 12 A. 399 : A.W.N. (1890) 125. Mahmud, J., in that case observed that the rule laid down by this Court in the case of Tarini Das Bandyopadhyaya v. Bishtoo Lal Mukhopadaya 12 C. 608 is "a sound rule of law," because where a decree-holder has not only out of Court acquired a partial satisfaction of the decree, but where ha also comes to

certify such partial satisfaction u/s 258 of the Civil Procedure Code, he is taking a step by which he asserts enforcement of his decree in the exercise of those powers which are vested in him because he is a decree-holder."

4. A similar view has been taken in subsequent decisions of this Court. [See Wasi Imam v. Poonit Singh 20 C. 696 and Chhoto Rakhal Das v. Jogendra Narain 3 Ind. Cas. 391 : 10 C.L.J. 467 at p. 470.]

5. It is contended on behalf of the opposite party, that in the present case the decree-holder by his application certifying payment also prayed that the execution case might be struck off, and this fact was relied upon strongly by the learned Subordinate Judge. No doubt an application to the Court to strike off an execution case cannot possibly be a step-in-aid of execution, but if an application certifying payment to the Court is a step-in-aid of execution, the mere fact that there is a prayer in the application that the execution case might be struck off after satisfaction, cannot take away the effect of certifying payment to the Court.

6. Having regard to the authorities cited above, we must hold that an application by the decree-holder certifying payment of a portion of the decretal amount out of Court is a step-in-aid of execution of the decree within the meaning of Article 182 (5) of the Limitation Act provided, of course, the payment asserted has actually been made. In the present case it is not disputed that the payment was actually made.

7. It is pointed out on behalf of the opposite party that although the present application for execution was originally filed on the 22nd May 1914 which was within three years from the date of the application certifying payment to the Court referred to above, it was returned on the 9th June for amendment (of certain formal defects) within five days from that date, and the application was not re-filed within the time allowed, but on the 27th June. It is contended that there is no express order u/s 148, Civil Procedure Code, enlarging the time for amendment, and the case of Budhan Shah v. Sita Nath Shah 7 Ind. Cas. 578 : 13 C.L.J. 78 is relied upon. But in the present case, the decree-holder filed a petition on the 27th June, stating the reason why the application had not been filed within the period allowed and praying that the delay might be excused. There was thus an application for enlargement of the period allowed and the order of the Court, taken along with the above petition, goes to show that the circumstances under which the application for execution was re-filed after the period originally allowed were considered and the Court in the exercise of its discretion enlarged the time.

8. We are of opinion that the application for execution of the decree was not barred by limitation. The Rule is accordingly made absolute, and the case sent back to the Court below for proceeding with the execution. Costs one gold mohur.