
(1907) 02 BOM CK 0019
In the Bombay High Court
Case No : Civil Application No. 236 of 1906

Hanmant Raghavendra

APPELLANT

Vs

Shankar Raoji

RESPONDENT

Date of Decision : 21-02-1907

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 108

Citation : (1907) 9 BOMLR 323

Hon'ble Judges : K.C.I.E., C.J.;Lawrence Jenkins, J;Beaman, J

Bench : Full Bench

Judgement

Lawrence Jenkins, C.J.—This application arises out of a refusal by the lower appellate Court to set aside an ex parte decree u/s 108.

2. The first Court refused to set aside the decree on the ground that the application for that purpose was beyond time and also on the ground that summons had been duly served.

3. The District Court confirmed the determination of the Court of first instance on the ground that the application u/s 108 was beyond time.

4. Now the Article of the Limitation Act which governs such an application is 164 which provides that " an application by a defendant from an order to sot aside a judgment ex paste must be brought within 30 days from the date of executing any process for enforcing the judgment."

5. It has been determined in Raoji Ramchandra v. Ramji, Bhikaji (1888) P.J. 56, that whore the decree is against two defendants and the decree is executed against one only then that is not an execution of process for enforcing judgment against the other within the meaning of Article 164.

6. Hero there have been two applications for execution but in each the persons against whom execution was sought were stated to be defendants 1 and 2 and not defendant 3 who is the present applicant.

7. It is therefore clear that the District Judge came to an erroneous decision.
8. We must make the rule absolute and send back the case for determination by the District Court.
9. Costs of this application and the costs hitherto incurred in the matter will be dealt with by the District Court before whom the matter comes on remand.