

(1943) 10 AHC CK 0004
In the Allahabad High Court

L. Bhola Nath

APPELLANT

Vs

Parmeshwari Dayal

RESPONDENT

Date of Decision : 21-10-1943

Acts Referred:

Citation : AIR 1944 All 35 : (1944) 14 AWR 7

Hon'ble Judges : Collister, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Collister, J.—This is a decree-holder's appeal. On 21st May 1928, the appellant obtained a decree against Rai Sahib Parmeshwari Dayal and two other persons. We are not concerned with the latter, but only with the former, who is the respondent to this appeal. As against the respondent, the decree was in respect to the assets of his wife Mt. Shyam Kunwar in his hands. On 28th October 1929, the decree was affirmed in appeal and it was from that date that limitation began to run. The appellant applied for execution on various dates, but for one reason or another they were all dismissed. The first application was made on 18th October 1932, but it is unnecessary to say anything about it. On 21st October 1935, another application was preferred and it was decided on 6th December 1935. That was an application for attachment of moveable property and it appears that it was dismissed for the reason that the appellant did not point out the property that was to be attached and did not press his application. On 15th October 1938, another application was preferred. This was an application for arrest of the respondent and it appears to have been dismissed for the reason that the name of the appellant's father was wrongly stated and he did not correct it. On 11th September 1940, another application was made for arrest of the judgment-debtor and on 16th November 1940, it was dismissed on the ground that the respondent was not personally liable and that the application was, therefore, incompetent. Finally, on 10th February 1941, an application was made for attachment of property. The trial Court held that this last application

was within time, but the lower appellate Court is of opinion that it is barred by limitation. The learned Judge also finds that the relief claimed could not be allowed.

2. The learned Judge is of opinion that the applications of 1935, 1938 and 1940, were not "in accordance with law" within the meaning of Article 182, Clause (5) of Schedule 1, Limitation Act. Learned Counsel for the appellant challenges this finding. I will first consider the applications of 15th October 1938 and 11th September 1940. Clause (5) of Article 182 of Schedule 1 of the Limitation Act, reads as follows:

5. (Where the application next hereinafter mentioned has been made) the date of the final order passed on an application made in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree or order.

3. The first question to decide is whether this application of 11th September 1940, was or was not an application made "in accordance with law." The respondent was not personally liable under the decree and this fact was well-known to the appellant. There may be circumstances in which a person against whom a decree has been passed quoad the assets of a deceased person in his hands may become liable to arrest, but no such circumstances were stated in the application, and on the face of it therefore this was not an application which the Court was competent to execute : vide *Chattar v. Newal Singh* ("99) 12 All. 64, which was approved and followed in *Langtu Pande v. Baijnath Saran Pande* (06) 28 All. 387 and in *Firm Johar Mal-Paran Ram Vs. Bindeswari Prasad Singh and Others*, . Learned Counsel for the appellant then falls back on the plea that the two applications in question were at least steps-in-aid of execution and that the phrase "in accordance with law" does not apply to such steps-in-aid. It was held in *Bhagwan Jethiram v. Dhondi* ("98) 22 Bom. 83, that the phrase "in accordance with law" is lequally adjectival to the words "to take some step-in-aid of execution;" and in any ease there is no force in learned Counsel's argument, for it is clear that, whatever else they may be, the applications which I am considering are applications for execution. It is unnecessary to consider the application of 1935. In my opinion this application dated 10th February 1941 is clearly time-barred and the view taken by the lower appellate Court is right. This appeal is dismissed with costs.