

**(1926) 12 PAT CK 0010**  
**In the Patna High Court**

Mt. Bibi Aisha

APPELLANT

Vs

Mahabir Prasad

RESPONDENT

---

**Date of Decision :** 31-12-1926

**Acts Referred:**

Limitation Act, 1963 — Article 179(4)

**Citation :** AIR 1927 Patna 324

**Hon'ble Judges :** Scroope, J;Das, J

**Bench :** Full Bench

---

**Judgement**

Das, J.—I am unable to agree with the view taken by the learned District, Judge. The first execution was taken on the 27th June 1922. Some of the decree-holders had died and their heirs, who were substituted, did not produce the succession certificate. On an objection being taken by the judgment-debtor the application for execution was dismissed. The present application for execution was filed on the 13th June 1925.

2. The question is whether this application was presented within time. Now, it is not open to doubt that if the application of the 27th June 1922 was an application to take some step in aid of execution, then the present application must be regarded as having been filed within time. The learned District Judge has taken the view that because the succession certificate was not produced the Court could not possibly entertain that application, and therefore that application could not be regarded as a proper application. I am unable to accept this view as correct. The Civil P.C. has authoritatively laid down what are the particulars which must be contained in an application for execution of a decree

3. It has been held in this Court in the case of Jogendra Prasad Narayan Sinha Vs. Mangal Prasad Sahu, that an execution application is one made in accordance with law within the meaning of Article 182(5) Schedule I, Limitation Act if the particulars required by Rule 11 to 14, Order 21, Civil P.C., are mentioned in the application. It is not disputed that all these particulars required by law were given in the application of the 27th June 1922. Precisely the same question was

debated in the Calcutta High Court in the case of Hafiziddin Choudhury v. Abdool Aziz [1893] 20 Cal. 755. In that case the decree-holders applied for execution of a decree without having taken out a certificate under Act 7 of 1889. The application was dismissed. Within three years from the date of the first mentioned application the decree-holders again applied for execution of the decree and it was contended that that application was barred by limitation. It was held that the first-mentioned application was made in accordance with law within the meaning of Article 179(4), Limitation Act, and that, therefore, the second application was within time. Those cases are distinct authorities against the view which has been taken by the learned District Judge.

5. The second question is whether the Court executing the decree should, have summarily rejected the application for execution when it was presented for the second time on the 13th June 1925, because from the former proceedings the decree-holders must have known that an application without a succession certificate could not be good in law. Now, in my opinion this is not a correct way of stating the position. An application without a succession certificate is perfectly in order; only no relief can be granted until the succession certificate is produced.

6. This being the position, the order of the learned District Judge must be set aside and the execution must be allowed to proceed. The decree-holder is entitled to the costs of this appeal.

Scroope, J.

I agree.