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**(1916) 03 BOM CK 0003**  
**In the Bombay High Court**

Nabibhai Vazirbhai

APPELLANT

Vs

Dayabhai Amulakh and Others

RESPONDENT

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**Date of Decision :** 17-03-1916

**Acts Referred:**

Limitation Act, 1963 — Article 182

**Citation :** AIR 1916 Bom 200 : (1916) ILR (Bom) 504

**Hon'ble Judges :** Shah, J;Batchelor, J

**Bench :** Division Bench

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## Judgement

Batchelor, J.—The present application is made by the judgment-debtor who was the 4th defendant in the suit. The suit was tiled by the plaintiffs to recover upon two documents, and the Court in. which the suit was instituted was the Court of Kalol in the territories of His Highness the Gaikwar of Baroda. There a decree was passed in the plaintiffs' favour, and ultimately the plaintiffs applied that this decree should be transferred for execution to the Court of the Subordinate Judge of Ahmedabad. That transfer was accordingly made, and the darkhast has been heard by the learned Subordinate Judge of the First Class.

2. The only one of his findings with which we are now concerned is the finding that the execution of this decree is not barred by time. That finding is challenged by Mr. Thakor on behalf of the present applicant, and it seems to me that Mr. Thakor's contention must be allowed.

3. There is some uncertainty as to what the law of limitation is in Baroda with regard to the execution of such decrees. But this much is agreed between the parties that the period of limitation is either six years or twelve years. Whether it is the one or the other is a matter of no moment. I will assume in favour of the opponent that it is six years. The decree was obtained on the 11th December 1909. Admittedly the first application made for execution was not made till 1913. That application was, therefore, within time according to the law in Baroda. It was admittedly beyond time according to the law in British India, which prescribes a period of three years for such an application. Now suits and

applications must be brought within the period prescribed by the local law of the country within which the suit or the application is brought, that is to say, it is the *lex fori* which governs. That being so, this decree became, in my opinion, incapable of execution in British India after the lapse of three years from the date the decree was made. And since the law to be applied is the law of British India, it is no answer to say that the decree was still alive and capable of execution in Baroda when the order was made transmitting it for execution to Ahmedabad. The learned Judge has, I think, misunderstood Sir Charles Sargent's decision in the case of *Husein Ahmad Kaka v. Saju Mahamad Sahid* (1890) 15 Bom. 28 which he has construed as authority for the proposition that he had no power to determine whether execution was barred or not, being bound by the order of the transferring Baroda Court. That decision is of no authority in regard to a decree ordered for transmission by a foreign Court. The very ground of the decision is that there is outstanding an order of a competent Court binding the parties and directing the execution of the decree. No such order as this either was made, or could have been made, by the Baroda Court so as to bind the Ahmedabad Court or the parties litigating in that Court. It was, therefore, competent to, and obligatory upon, the learned Subordinate Judge to consider and determine this question of limitation.

4. For the reasons which I have given and which are supported by this Court's decision in *Jeewandas Dhanji v. Ranchoddas Chaturbhuj* (1910) 35 Bom. 103 I am of opinion that this decree was incapable of execution in the Court of Ahmedabad being barred by time according to the British law of Limitation which, in my view, governed the case. Therefore I would make the rule absolute and order that the darkhast be dismissed against the present applicant with costs here and in the Court below.

Shah, J.

5. I am of the same opinion. The question is whether the application for execution made by the plaintiffs to the First Class Subordinate Judge's Court at Ahmedabad is in time.

6. The decree sought to be executed is a decree of the Court at Kalol in the Baroda territory and was passed in December 1909. The application for execution was made in 1915, after the decree was transferred by the foreign Court to the British Court for execution. It must be decided with reference to the law of limitation obtaining in British India; and it is clear that according to the provisions of the Indian Limitation Act, the application is beyond time. Even assuming, without deciding, that the applications made for the execution of the decree to the Court at Kalol could be treated as applications to the proper Court for execution within the meaning of Article 182 of the Limitation Act, it is an admitted fact in this case that no application was made even to the Court at Kalol within three years from the date of the decree for execution. The application is, therefore, clearly time-barred.

7. I think that it was competent to the lower Court to determine the point of limitation, and that the order of the foreign Court transmitting the decree for execution did not and could not conclude the question. The decision in Husein Ahmad Kaka v. Saju Mahamad Sahid (1890) 15 Bom. 28 has no application to the present case and is distinguishable on the grounds stated in the case of Jeewandas Dhanji v. Ranchoddas Chaturbhuj. (1910) 35 Bom. 103 It is not for the foreign Court to consider whether the execution in British India would be time-barred; and the order for transmission by the foreign Court cannot be treated as an order for execution.