

(1921) 06 CAL CK 0027
In the Calcutta High Court

Paresh Nath Pal Choudhury and Others

APPELLANT

Vs

Ismail Sordar and Others

RESPONDENT

Date of Decision : 13-06-1921

Acts Referred:

Limitation Act, 1877 — Section 7, 8, 9
Limitation Act, 1908 — Section 19

Citation : 64 Ind. Cas. 993

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

Bench : Division Bench

Judgement

1. The question involved in the appeal is whether the application for execution of a decree is barred by limitation.
2. The decree was one for rent and the amount for which it was passed was less than RS. 500. It was dated the 27th January 1916. The present application for execution was made on the 28th March 1919, i.e., more than three years from the date of the decree. The decree holder, however, relied upon certain acknowledgments of liability within three years of the date of the decree, and the Court of first instance held that such acknowledgments saved limitation.
3. On appeal the learned District Judge held that Section 19 of the Limitation Act was inapplicable to the case, as it was a decree for rent which is governed by the special limitation prescribed by Article 6, Schedule III of the Bengal Tenancy Act.
4. There is no doubt that under Article 6, Schedule III of the Bengal Tenancy Act, the period of limitation is three years from the date of the decree, and Section 184 of that Act lays down that any application made after the period of limitation prescribed in Schedule III annexed to the Act shall be dismissed although limitation has not been pleaded, Section 185, Sub-section (1), lays down that Sections 7, 8 and 9 of the Limitation Act, 1877, shall not apply to the suits and applications mentioned in Section 184. Sub-section (2), however, provides that subject to the provisions of this Chapter, the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals and applications mentioned in the last

foregoing section. Under that sub-section, therefore, it appears that Section 19 of the Limitation Act would apply to a decree for rent.

5. Article 6, Schedule III of the Bengal Tenancy Act, provides that when the judgment debtor has by fraud or force prevented the execution of the decree, the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877, but it does not follow that in cases where there is no force or fraud, the general provisions of the Indian Limitation Act (other than those mentioned in Section 185 (1) of the Bengal Tenancy Act) will not apply. The Article merely says that the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877. The question appears to have been considered in the case of Harihar Lal v. Gunendar Pershad 19 C.W.N. 1025. The learned Judges held that an acknowledgment of liability, u/s 19 of the Limitation Act, made by a judgment-debtor in respect of the decree-holder's right to execute a rent-decree, gives the decree-holder a fresh starting point for counting the period of limitation prescribed by Article 6 of Schedule III of the Bengal Tenancy Act.

21. It is contended on behalf of the appellant that, if the decree-holder is allowed a fresh starting point for limitation for the execution of a rent decree from the date of acknowledgment u/s 19 of the Indian Limitation Act, it would affect or alter the period of limitation prescribed by Article 6 of the Bengal Tenancy Act.

22. As pointed out by the learned Judges in the case cited above: "The answer to this would seem to be that the acknowledgment u/s 19 does not affect or alter the period of limitation so prescribed, though it may seem practically to do so, but only gives the decree holder a fresh starting point for counting the period prescribed by Article 6, Schedule III of the Bengal Tenancy, Act, which the judgment debtor has himself given him by the petition on containing the acknowledgment of his debt."

23. We are accordingly of opinion that Section 19 of the Limitation Act applies to such a case.

24. It is contended on behalf of the respondent that there was no acknowledgment of liability within the meaning of Section 19 of the Limitation Act.

25. It appears, however, that the judgment-debtor expressly admitted that there was an instalment decree in favour of the decree-holder, that several instalments had already been paid, that the instalment for Pous remained unpaid but as it had not become due, the decree holder could not proceed with the execution. That was a sufficient acknowledgment within the meaning of the section.

26. It is contended that the admission should be confined to the actual amount payable for the Pous instalment. But there was an acknowledgment of liability under the decree and that, we think, is sufficient for the purpose of the section.

27. The result is that the order of the lower Appellate Court is set aside and that

of the Court of first instance restored with costs here and of the lower Appellate Court, the costs in this Court being assessed at one gold mohur.

28. The execution of the decree will be proceeded with.