

(1920) 12 PAT CK 0011
In the Patna High Court

Ragho Prasad Singh and Others

APPELLANT

Vs

Jadunandan Prasad Singh and Others

RESPONDENT

Date of Decision : 07-12-1920

Acts Referred:

Limitation Act, 1908 — Article 179, 182

Citation : AIR 1921 Patna 6 : 59 Ind. Cas. 896

Hon'ble Judges : Dawson Miller, C.J.; Ross, J

Bench : Division Bench

Judgement

Dawson Miller, C.J.—This is an appeal under the Letters Patent from a decision of a Single Judge of this Court, dated the 4th July 1917.

2. On the 27th June 1914 the appellants obtained judgment in a suit instituted against them by the respondents in the Court of the Subordinate Judge of Patna. The decree which dismissed the suit awarded costs to the appellants. The respondents subsequently appealed to the High Court from that decision but failed to pay the printing costs, although several extensions of time were granted for the purpose. Finally, on the 6th November 1917, the matter was placed before a Division Bench of the Court and the appeal was dismissed for want of prosecution. Up to that time the appellants had taken no steps by way of execution to enforce their decree for costs made in their favour by the Subordinate Judge on the 27th June 1914 but had awaited the decision of the High Court in the pending appeal. On the 21st March 1913 the appellants applied for execution but were met by the objection that the application was barred by Article 182 of the Indian Limitation Act, 1908, more than three years having elapsed since the date of the decree. In answer to this objection the appellants contended that, as there had been an appeal, the period of limitation was extended to three years from the date of the final decree or order of the Appellate Court under the provisions of Clause (2) of Article 182 of the Limitation Act. The learned Subordinate Judge who heard the objection came to the conclusion that the period of limitation was three years from the order of

dismissal of the appeal passed by the High Court on the 6th November 1917 and that the application for execution was not time-barred. He accordingly made an order dismissing the objection.

3. The respondents appealed from that order to the High Court. The appeal was heard by a Single Judge of the Court. The learned Judge considered that the case was governed by the decision of the Judicial Committee in the case of *Abdul Majid v. Jawahir Lal* 28 Ind. Cas. 649 : 86 A. 360 : 12 A.L.J. 624 : 16 Bom. L.R. 395 : 18 C.W.N. 963 : 19 C.L.J. 626 : 27 M.L.J. 17 : (1914) M.W.N. 485 : 16 M.L.T. 44. : 1 L.W. 483 .. He accordingly allowed the appeal, overruling the decision of the Subordinate Judge, and dismissed the application for execution.

4. From that decision the appellants have preferred this appeal. So far as the 182nd Article of the Limitation Act is concerned, there appears to me, with great respect to the learned Judge, to be little doubt as to what the exact interpretation of that Article ought to be. The period for execution of a decree or order is primarily three years from the date of the decree or order which it is sought to execute. By Clause (2), however, in the third column of the Article where there has been an appeal the date from which the three years limitation runs is said to be the date of the final decree or order of the Appellate Court or the withdrawal of the appeal. Now, giving their natural interpretation to the words in Sub-clause (2) I should say that where an appeal has been instituted then the period of limitation is extended to three years from the date of the final decree or order in that appeal. In the present case it is not disputed that there has been an appeal and that the presentation of that appeal was within time. It can hardly be disputed that there has been a final order in that appeal because the appeal was dismissed by a Division Bench of this Court after considering the question of whether any further indulgence should be granted to the appellants who had failed to comply with the procedure requiring them to deposit certain printing cost. That that order is final I think there can be no doubt, because it finally disposed, so far as that appeal was concerned, of the rights of the parties. The learned Judge, however, considered that the case was governed by the decision of the Judicial Committee in *Abdul Majid v. Jawahir Lal* (ubi sup). It is necessary, therefore, to consider what the effect of that decision was. Two points arose for decision in that case. The first was whether an application, which was barred by Article 179 of the Limitation Act then in force at the expiry of three years from the date of the decree, could be revived by the operation of the CPC which came into force at a later date. We are not concerned with the decision on that point but the chief matter for argument in that appeal concerned the question not as to the construction of what is now Article 182 of the Limitation Act but the construction of Article 130 of the previous Act which corresponds to Article 183 of the present Act. It is only necessary to look at Article 183 to see that there is a considerable difference between that Article and Article 182. Article 183 provides for a limitation period of 12 years in the case of an application to enforce an order of His Majesty in Council and the period of 12 years begins to run from the time when a present right to enforce the judgment,

decree or order accrues to some person capable of releasing the right and the question to be determined in that case was not whether Sub-clause (2) of the present Article 182 came into operation but whether what is now Article 183 came into operation in the circumstances of that case. What happened there was that there had been granted by the High Court leave to appeal from a decree of the High Court to the Privy Council. On the 13th May 1901 the appeal before the Privy Council had been dismissed automatically because of the failure on the part of the appellant to prosecute his appeal and the question for determination there was, whether that automatic dismissal of the appeal for want of prosecution was an order of His Majesty in Council within the meaning of Article 180 of the previous Act. Their Lordships came to the conclusion that it was not and that, therefore, there was no order of the Privy Council which could be enforced at all. It was a mere automatic dismissal of the appeal to His Majesty in Council and was not such an order in Council as could be enforced under Article 180 of the former Act. Therefore, that Article did not apply and the limitation period was not 12 years as therein provided but was three years from the date of the only decree that they could execute and that was the decree of the High Court made considerably more than three years before the application for execution. But when we turn to the Article upon the interpretation of which the present appeal depends, it seems to me that it is quite clear that, where there has been an appeal and where that appeal has been "properly presented and is within time, any order of the High Court dismissing the appeal or putting an end to the appeal in any way is either a decree or order within the meaning of the present Article 182, Clause (2), and I think that, although it may be that in many cases such an order is not an order of which execution could be sought, this is not necessary under the wording of the Article itself. Ever assuming that the decree which it is sought to execute is in the present case the decree of the Subordinate Judge, nevertheless, in my opinion, under Article 182 the three years limitation for presenting an application for execution of that decree does not begin to run until the final order of the High Court which puts an end to the appeal, and this view seems to me to be borne out by the fact that it is not only a decree or order of the High Court which is contemplated by Sub-clause (2) but even the withdrawal of the appeal would be sufficient within the terms of that clause to revive the period of limitation. It would be a strange thing if the period of limitation were to be revived where the appellant withdraws his appeal and yet it were not to be revived in cases where the appellant, instead of withdrawing his appeal, allows the appeal to be dismissed by default. I cannot believe that this was the intention of the Legislature. The wording of the clause appears to me clearly to be wide enough to cover the circumstances of the present case and, with great respect to the learned Judge, I think that he has not sufficiently realised in dealing with the decision of their Lordships of the Judicial Committee in the case referred to that that was not really a decision upon the Article in question at all but dealt solely with the question of whether there had been an order in Council under Article 183 which could be executed so that the period of limitation was 12 years within that Article.

5. Another decision of their Lordships of the Privy Council was also relied upon in which the question of the interpretation of Article 182 was raised. That was the case of *Batuk Nath v. Munni Dei* 23 Ind. Cas. 644 : 36 A. 284 : 18 C.W.N. 740. 12 A.L.J. 596 : 19 C.L.J. 574 : 16 Bom LR 360 : 27 M L J 1 : 16 M L T I 1 L W 729 : (1914) M.W.N. 437 : 41 I.A. 104 (P.C.). That case appears to-me to carry the argument no further. It was a case where a petition of appeal was presented to His Majesty in Council and it was not properly lodged by the appellant. The Registrar accordingly dismissed the appeal for non-prosecution under Rule 5 of the Standing Order in Council of the 13th June 1853 then in force and the question for determination there was, whether such a proceeding was within the meaning of Article 182 a final decree or order of His Majesty in Council so as to come within the words of Article 182, Clause (2), which refers to a final decree or order of the Appellate Court. Their Lordships came to the conclusion that there was in fact in the circumstances which I have mentioned no order of His Majesty in Council dismissing the appeal nor was it necessary that any such order should be made in the appeal and Sir John Edge who delivered the judgment of their Lordships" referred to Rule 5 of the Order in Council of the 13th June 1853 and observed that under that rule the appellant or his agent not having taken effectual steps for the prosecution of the appeal the appeal stood dismissed without any further order. Now, the ground upon which that decision was come to cannot possibly apply in the case of an order made by the High Court in an appeal of this nature for the simple reason that an appeal presented to the High Court is not automatically dismissed and cannot in fact be dismissed without an order made by the High Court itself, when the matter is considered not necessarily upon the merits of the case but is considered and dealt with. The decision which I have just referred to appears to me to be no authority for the proposition that an order made in circumstances in which the order was made in the present case is not an order within the meaning of Article 182, Clause (2) of the Limitation Act. In my opinion this appeal should be allowed and the decision of the learned Judge should be overruled and the order of the Subordinate Judge should be restored. The appellants are entitled to their costs. Hearing fee before Mr. Justice Das and in this appeal should be assessed at two gold mohurs in each case.

Rose, J.

6. I agree.