
(2008) 09 PAT CK 0099
In the Patna High Court
Case No : Civil Revision No. 2105 of 2000

Ram Lakhan Sahani

APPELLANT

Vs

Lakshmi Sahani and Others

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Citation : (2008) 09 PAT CK 0099

Final Decision : Dismissed

Judgement

R.K. Datta, J.—The Civil Revision application is directed against that part of the order dated 23.9.2000 passed by Subordinate Judge-IV, Darbhanga in Title Execution Case No. 1 of 1998 by which he has held the final decree dated 4.6.1982 passed in Title Suit No. 212 of 1971 as not executable being time barred according to Article 136 of the Limitation Act, 1963.

2. The facts relevant for the decision in this revision application are not in dispute and may be briefly enumerated. Title Suit No. 212 of 1971 was filed by the petitioner Ram Lakhan Sahani claiming one-fifth share in the lands mentioned in the schedule of the plaint. After some initial hiccups ultimately all the parties and their lawyers joined in a compromise petition which had been filed on 27.1.1977 and by judgment dated 27.7.1977 it was ordered that let the compromise be accepted and the suit be disposed of in terms of the compromise and that the compromise petition shall form part of the decree and the same be drawn up.

3. On 23.1.1977 the decree was sealed and signed. Thereafter on 31.5.1982 the plaintiffs filed an application to prepare the final decree and stamp was also filed for its preparation; the final decree was prepared on 4.6.1982 and finally it was sealed and signed. On 4.6.1982 the defendant Nos. 5 and 7 filed an application to stay the further proceedings but the final decree having been sealed and signed the application was kept on the record.

4. On 31.5.1982 the defendants Surji Malahin, Paro Malahin and Inder Malahin defendant Nos. 5 to 7 in Title Suit No. 212 of 1971 filed Title Suit No. 75 of 1982

for a declaration that the compromise decree passed in Title Suit No. 212 of 1971 is not binding upon them and is void and illegal and in consequence the partition of the properties defining the share of the plaintiffs as one-fourth share each in the suit lands and also for a declaration of title over 5 Katha of land from North out of 10 Katha in Khata No. 22, Kheshra No. 1. The defendants appeared and contested the suit and by judgment dated 22.2.1992 the Trial Court held that the compromise decree is valid and binding on the parties and further that the said suit was barred under the provisions of Order 23 Rule 3A. The suit was accordingly dismissed. On 5.3.1992 the decree was signed. The plaintiffs thereafter filed First Appeal No. 337 of 1992 before this Court. On 21.5.1998 the decree holder filed Execution Case No. 1 of 1998 for execution of two decrees dated 4.6.1982 passed in Title Suit No. 212/1971 and 5.3.1992 passed in Title Suit No. 75/1982. The execution was being claimed for possession as per the decree in the earlier Title Suit No. 212 of 1971 and for cost as per the decree passed in Title Suit No. 75 of 1982. The plaintiffs of the Title Suit No. 75 of 1982 sought to obtain stay of execution from this Court which was dismissed as withdrawn on 18.8.1998 with the observation to raise the maintainability of the proceeding before the executing Court. Thereafter an objection was filed by judgment-debtor No. 5 Surji Malahni to reject the execution case as not maintainable. On 3.6.2000 the Executing Court directed to deliver possession against which C.R. No. 1143 of 2000 was filed which was disposed of by order dated 6.9.2000 with the direction to keep the order of executing Court in abeyance. In C.R. No. 755 of 2000 this Court had earlier disposed of the matter on 22.8.2000 directing the Executing Court to dispose of the objection regarding limitation on the basis of dates which were already on record.

5. Thereafter by the impugned order dated 23.9.2000 passed by the learned Subordinate Judge IV, Darbhanga the Title Execution Case No. 1 of 1998 was dismissed so far as execution of decree passed in Title Suit No. 212 of 1971 was concerned but it was directed to proceed with the execution for cost in the decree passed in Title Suit No. 75 of 1982.

6. Mr. Sukumar Sinha learned Senior Counsel for the petitioner has sought to assail the order of the Executing Court on three broad grounds. The first challenge is based upon the provisions of Section 14(2) of the Limitation Act. It is submitted that the decree-holder is entitled to exclusion of the period spent in bona fide litigation pending before the Court at the instance of the judgment-debtor dragging the decree-holder and compelling him to fight the litigation and thus if the period from 31.5.1982, the date on which Title Suit No. 75 of 1982 was instituted, till 22.2.1992 on which date it had been dismissed by the trial Court, is excluded then the filing of execution case No. 1 of 1998 on 25.5.1998 would come within 12 years period of limitation provided by Article 136 of the Limitation Act.

7. Secondly, learned Counsel has sought also to argue that provisions of Section 15(1) of the Limitation Act would also enure to the benefit of the petitioner since

the filing of the Title Suit No. 75 of 1982 had jeopardized the very existence of the compromise decree dated 4.6.1982.

8. Lastly, it is argued by learned Counsel that in terms of the provisions of Article 136 itself even without the assistance of Sections 14 and 15 of the Limitation Act, it must be held that upon filing of Title Suit No. 75 of 1982 the matter decided by the final decree dated 4.6.1982 becomes sub judice before the Court and the enforceability of the decree dated 4.6.1982 was thereby jeopardized; hence the limitation cannot begin to run until the subsequent suit was disposed of. It is contended that a compromise decree can be challenged by filing an appeal or an application or a suit. It is submitted that all the three would have the ultimate result of putting the compromise decree in jeopardy until the final decision of the Court in the appeal, application or suit. It is argued that there are any numbers of decisions that limitation will not continue to run until the order passed in appeal since the original decree shall merge in appellate decree and thus limitation of 12 years prescribed by Article 136 would run from the date of the order passed by the appellate Court. It is urged that similar principle would apply and ought to apply when instead of filing an appeal against the compromise decree, the same is challenged by filing a suit to set aside the compromise decree since the effect of the decree in the said suit would be precisely the same as that of an appeal and therefore, in the present matter also limitation ought not to be taken to run until the subsequent suit itself has been disposed of. It is submitted that the judgment-debtor himself having chosen to file a suit, he cannot derive any advantage on that ground of taking a plea of limitation.

9. In support of the aforesaid propositions learned Counsel relies upon various decisions of the Supreme Court and this Court and in particular upon the decision of the Privy Council in the case of AIR 1932 165 (Privy Council) which has been cited with approval in subsequent decisions of the Supreme Court also. The relevant part of the said decision relied upon by learned Counsel is quoted below:

Their Lordships think that nothing would be gained by discussing these varying authorities in detail. They think that the question must be decided upon the plain words of the article;

where there has been an appeal," time is to run from the date of the decree of the appellate Court. There is, in their Lordships' opinion, no warrant for reading into the words quoted any qualification either as to the character of the appeal or as to the parties to it; the words mean just what they say. The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is, their Lordships think, the only safe guide. It is at least an intelligible rule that so long as there is any question sub judice between any of the parties those affected shall not be compelled to pursue the so often thorny path of execution which, if the final result is against them, may lead to no advantage. Nor in such a case as this is

the judgment-debtor prejudiced. He may indeed obtain the boon of delay, which is so dear to debtors, and if he is virtuously inclined there is nothing to prevent his paying what he owes into Court.

10. Learned Counsel was at pains to emphasize that part of the observations which says that so long as there is any question sub judice between any of the parties, those affected shall not be compelled to pursue the so often thorny path of execution which, if the final result is against them, may lead to no advantage. It is submitted that the petitioner could not have been compelled to pursue thorny path of execution in view of Title Suit No. 75 of 1982 filed by the judgment-debtor for setting aside the compromise decree as on the filing of the same the matter became sub judice between the parties and if the subsequent title suit had been decided against the petitioner then the compromise decree itself would have been set aside and nothing would have remained to be executed and thus the petitioner rightly awaited for the decision of the said case before filing the execution case No. 1 of 1998.

11. It is submitted by learned Counsel that the decision of the Supreme Court in the case of *Ratansingh v. Vijaysingh and Ors.* AIR 2001 SC 279, which had not applied the Privy Council decision in the case of *Nagendra Nath Dey (supra)* on the ground that it related to the scope and interpretation of Article 182 of the Old Limitation Act and in view of the legal position contained in Article 136 of the Limitation Act, 1963, has been held to be not good law in the subsequent decision in the case of *Shyam Sundar Sarma Vs. Pannalal Jaiswal and Others*, Learned Counsel also relies upon several decisions of this Court which have followed the above decision of the Privy Council and applied it even with respect to the provisions of present Article 136 of the Limitation Act, 1963. The first case is the Full Bench decision in *Jokhan Rai Vs. Baikunth Singh*, of which it has been held as follows:

It seems to me that the question here is so well covered by principle; language of the statute; and binding precedent; that it would be somewhat wasteful to launch on too elaborate a dissertation. Nevertheless the silent and axiomatic aspects of the issue may be briefly recapitulated. Perhaps what first meets the eye is the fact that the language of Article 136 talks of a decree and its enforceability. It does not limit or constrict itself to the original decree alone. The words employed are "any decree" and "when the order becomes enforceable". To read Article 136 as confined to the decree of the trial Court or the original decree alone would be doing violence to the language of the statute by unceremoniously inserting the words "trial Court" or "original" along with the words "decree or order" wherever used in the said article. Thus, even on a plain and meaningful reading of Article 136 as now enacted, it is manifest that it cannot be read as a decree of the trial Court or the original decree alone. Consequently, the somewhat hyper technical harping of the learned Counsel for the petitioner on the stand that the word "decree" must be construed as the original decree or that of the trial Court must be categorically rejected.

To the same effect are the separate decisions of two learned Single; Judges of this Court in the cases of Nawal Kishore Patel Vs. Most. Indrapari Devi and Uma Shankar Sharma Vs. The State of Bihar and Another

12. On the question of applicability of Sections 14 and 15 of the Limitation Act learned Counsel relies upon a decision of the Supreme Court in the case of Union of India (UOI) and Others Vs. West Coast Paper Mills Ltd. and Another, In the said case revision of railway freight was challenged by the respondent and the Railway Rates Tribunal declared the revised freight as unreasonable and SLP against the same was filed by the Railways which was ultimately dismissed. Thereafter the respondents filed a suit for refund of excess freight whereupon the plea of limitation was raised by the Railways on the ground that cause of action for filing the suit arose immediately after the judgment of the Tribunal, and further that since no stay had been granted against the decision of the Tribunal the period during which the matter was pending before the Supreme Court would not be excluded in computing the period of limitation. It was held by the Supreme Court that once an appeal is filed before the Supreme Court and the same is entertained, the judgment of the High Court or the Tribunal is in jeopardy and unless the subject-matter of the lis is determined by it, it cannot be said to have attained finality. In such circumstances the grant of stay may not be of much relevance once special leave is granted and the Supreme Court decides to hear the matter. It was thus held that the starting point of limitation for filing a suit for the purpose of recovery of the excess amount of freight illegally realized would begin from the date of the order passed in appeal before the Supreme Court and the respondents were entitled to benefit of Sections 14 and 15 of the Limitation Act, 1963. In the said decision it was also held that an appeal is in continuation of a suit and the decree becomes executable only if the same is disposed of by the Appellate Court.

13. Learned Counsel also refers to the subsequent decision of the Supreme Court between the same parties in the case of Union of India and Ors. v. West Coast Paper Mills and Anr. AIR 2004 SC 3079 in which the respondent-Paper Mill after the decision of the Supreme Court approached the High Court in its writ jurisdiction for a direction to the Railway Administration to refund the amount of freight which had already been held as not entitled to recover but the High Court not being inclined to grant such relief in exercise of its writ jurisdiction left it open to the Paper Mill to seek its remedy by way of civil suit. The plea of limitation was raised regarding the filing of the suit in which the paper Mill claimed that the period during the pendency of the writ proceeding is liable to be excluded for computing the period of limitation u/s 14(2) of the Limitation Act. The High Court as well as the Supreme Court held that it was entitled to such exclusion and thus the suit filed was within the period of limitation.

14. On the basis of the aforesaid decisions learned Counsel for the petitioner urges that liberal interpretation of the provisions of the Limitation Act should be applied so as not to defeat the rights which had accrued in favour of the decree

holder on the plea of limitation raised by the judgment-debtor that too on account of the suit filed for setting aside of the earlier compromise decree filed by the judgment-debtor which had put the said compromise decree in jeopardy. The matter being sub judice between the parties until the decision of the civil suit the period of limitation would run from the date of the decree in the subsequent civil suit or alternatively the petitioner would be entitled to exclude the period during which he was contesting the subsequent Title Suit No. 75 of 1982 for the purpose of the Execution case No. 1/98 and in either of the given case the; execution case was within the period of 12 years limitation provided by Article 136 of the Limitation Act.

15. Although the contesting opposite parties had entered appearance in the present matter but no one appeared to oppose, the revision application on their behalf despite several opportunities granted by this Court.

16. On a consideration of the various submissions of learned Counsel for the petitioner based particularly on the decision of the Privy Council in Nagendra Nath Dey's case (supra) at first sight the arguments of learned Counsel appear quite attractive. However, learned Counsel was unable to cite a single case in support of the proposition that the principle laid down in the case of an appeal from or review of a decree would apply with equal vigor with respect to a suit to set aside the decree sought to be executed. The other line of decisions of the Supreme Court as well as of this Court, on the other hand, would go to show that such a plea is not available when the case is not one of an appeal from or review of the decree rather the same pertains to proceedings of the nature as in the present case.

17. For a proper appreciation of the matter it would be useful to quote the relevant provisions of the Limitation Act, 1963 with respect to execution so far as it concerns the matters in issue in the present case. Article 136 and Sections 14(2) and 15(1) are set out as follows:

136. For the execution of Twelve any decree (other than a years decree granting a mandatory injunction) or order of any civil court.

When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

Section 14(2): In computing the period of limitation for any application the time during which applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

Section 15. (1) - In computing the period of Limitation of any suit or application for the execution of a decree the institution or execution of which has been stayed by injunction or order, the day on which it was issued or made, and the day on which it was withdrawn shall be excluded.

18. Since the sheet anchor of the petitioner's case is based upon the decision of Privy Council in the case of Nagendra Nath Dey (supra) which was decided under Article 182 of the Indian Limitation Act, 1908, it would be useful to refer to the relevant part of the said Article.

182. For the execution of a decree or order of any civil Court not provided for by Article 183 or by Section 48 of the Code of Civil Procedure, 1908.

Three years, or, where a certified copy of the decree or order has been registered, six years.

(1) The date of the decree, or order.

or

(2) (where there has been an appeal) the date of the final decree or order of the appellate Court, or the withdrawal of the appeal, or

(3) (where there has been a review of judgment) the date of the decision passed on the review or

19. It will be seen from the phraseology of Article 182 of the Act of 1908 as compared with Article 136 of the present Limitation Act, 1963 that apart from extending the period of limitation in the execution of a decree from three years in general to 12 years, while under the earlier Act it was provided that limitation would run from the date of the decree or order or "where there has been an appeal from the same" from the date of final decree or order of the appellate Court or the withdrawal of the appeal and where there has been review of the judgment, the date of the decision passed in review, whereas under the present Act the words simply used are that the time begins to run when the decree or order becomes enforceable.

20. Although the words used appear to be quite different but in essence it does not appear that any change has been made in the law as to the starting point from which the limitation is to be counted. This is also evident from the various decisions cited even by learned Counsel for the petitioner and solitary decision of the Supreme Court in Ratan Singh's case (supra) which sought to take a different view of the matter, has been held as not good law in Shyam Sundar Sharma's case (supra). The issue therefore boils down as to the extent of the application of the observations of the Privy Council in Nagendra Nath Dey's case (supra) with regard to the parties not being compelled to pursue the so often thorny path of execution so long as there is any question sub judice between any of the parties which if the final result is against them, may lead to no advantage.

21. An early decision of the Supreme Court of a five Judges Bench in the case of

Bhawanipore Banking Corporation, Ltd. Vs. Gouri Shankar Sharma, , may be usefully referred to. In that case after the judgment-debtor's application u/s 36 of the Bengal Money-lenders Act for re-opening the preliminary mortgage decree was dismissed for default, a final decree was passed and subsequently the judgment-debtor made an application under Order 9 Rule 9 of the CPC for restoration of the proceedings under the Bengal Money-lenders Act but the same was also dismissed and so also the appeal from the said order of dismissal. In the said circumstances, it was held by the Supreme Court that it cannot be said that there has been a review of the final decree and the review if at all (which, in the opinion of the Supreme Court, it was not) was of the order dismissing the judgment-debtors application u/s 36 of the Act.

22. It was therefore, held that the execution of the final decree is not saved by Clause 3 of Article 182. It was further held that the case does not come under Article 182(2) because the expression "where there has been an appeal" must be read with the words in column 1 of Article 182, viz, "for the execution of a decree or order of any civil Court...." and however broadly the same may be construed, it cannot be held to cover an appeal from an order which is passed in a collateral proceeding or which has no direct or immediate connection with the decree under execution. From the said decision of the Supreme Court it is evident that no collateral proceeding which may have the effect of putting a decree in jeopardy can be taken into consideration for the purpose of extending the date when the time begins to run for execution of a decree.

23. A matter closer at hand was considered by a Full Bench of this Court in the case of Rameshwar Prasad Sahu Vs. Parmeshwar Prasad Sahu and Others, There the question which was referred to the Full Bench was as follows:

Whether the word "appeal" in col. 3 of Clause (2) of Article 182, Limitation Act, includes an appeal preferred against an order refusing to set aside an ex parte preliminary decree in a suit for partition in computing the period of limitation for executing the final decree passed in such a suit.

Before the Full Bench the issue of correctness of the decision by an earlier Division Bench of this Court in the case of Firm Dedhraj-Lachminarayan Vs. Bhagwan Das and Others>, was in question vis-?-vis the decision in the case of Rai Brijraj Vs. Nauratan Lal, . In Dedhraj-Lachminarayan's case the question which arose was whether in the event of an application being made to have an ex parte decree set aside and an appeal being preferred against an order rejecting the application, the period of limitation for the execution of the decree has to be computed from the date of the ex parte decree or from the date of the order of the appellate Court finally dismissing the application under Order 9 Rule 13 CPC. The Division Bench held that the limitation did not commence to run before the order of the appellate court affirming the order rejecting the application to have the ex parte decree set aside. In doing so, Courtney-Terrell, C.J. expressed the opinion that the long series of decision to the contrary had been impliedly overruled by the decision of their Lordships of the Judicial

Committee of the Privy Council in Nagendra Nath Dey's case (supra). Negating the said view and following the decision of the Supreme Court in Bhawanipore Banking Corporation Ltd. (supra) it was held by the Full Bench in para-5 of the judgment as follows.

The judgment of Sir Courtney-Terrell C.J. proceeds on the assumption that the long and uniform series of decisions going back at least to 1878 were impliedly overruled by their Lordships of the Judicial Committee in AIR 1932 165 (Privy Council) With the greatest respect, I should myself have thought it hazardous to make such an assumption when not a single one of the decisions was referred to and when the difficulties of construction in the way of taking a view different to that taken in them are so patent. Apart from this, it is, I think, plain that the point which their Lordships of the Judicial Committee had to consider was not at all the point with which we are concerned now. A final decree in a mortgage suit was obtained by certain co-mortgagees who had impleaded the other co-mortgagees in the suit as defendants. A question arose as between the plaintiffs and these defendants and what purported to be an appeal was preferred by the former against the decision of the trial Court on that question. In this appeal, while the co-mortgagees were made respondents the other defendants, that is, the judgment-debtors under the decree, were not. The appeal was dismissed as incompetent. When the decree was put into execution, it was contended, by the judgment-debtors that the application was barred by limitation and the High Court of Calcutta upheld this contention on the ground, mainly, that it could not be said that there had been any appeal as the decree as a whole had never been imperiled. The Judicial Committee reversed the decision on the ground that, although the appeal was incompetent and although the judgment-debtors under it were not made parties, it had nevertheless been entertained and must be regarded as an appeal within the ordinary grammatical meaning of the word which was the meaning that it had in Clause (2) of Article 182. The exact scope and effect of the judgment of Sir Dinshah Mulla have been the subject of elaborate decisions of the High Courts of Calcutta and Allahabad in Harish Chandra v. Dines Chandra AIR 1946 Cal. 375 : 224 I.C. 111 and Kunwar Bahadur Singh Vs. Sheo Shankar, . It will serve no useful purpose for me to repeat what has been said there. It is enough for me to say that I respectfully concur in the reasoning contained in the judgment of B.K. Mukharji J. Mr. Nandlal Untwallia, for the respondents, has drawn our attention to a very recent decision of the Supreme Court which, he suggests, is conclusive on the point before us. In Bhawanipore Banking Corporation, Ltd. Vs. Gouri Shankar Sharma, , a final decree in a mortgage suit was passed on 22.12.1941. No attempt was made to put the decree into execution until 9.4.1945. The reason was that the judgment-debtors under the decree had made an application u/s 36, Bengal Money-lenders Act. This application was dismissed for default in prosecution and an application under-Order 9 Rule 9, Civil P.C. to have it restored was dismissed. An appeal was preferred against the latter order and this appeal too was dismissed on 3.7.1944. It was contended on behalf of the decree-holder that limitation did not

commence to run until 3.7.1944, and this contention was overruled. Fazl Ali J. expressed the opinion that the application under Order 9 Rule 9 did not involve a review of the judgment thereby negating the argument which commended itself to Courtney-Terrell C.J., and went on to point out that the word "appeal" in Clause (2) of Article 182 meant an appeal from the decree of which execution was sought, thereby affirming the series of decisions which Courtney-Terrell C.J. had taken to have been impliedly overruled. The plea taken by Mr. Nandlal Untwallia for the respondents was, in my opinion, a sound one. I would answer the question that has been referred to us in the negative and say that Rai Brijraj Vs. Nauratan Lal, was rightly decided and that Finn Dedhraj Lachminarayan v. Bhagwan Das 16 Pat 306 : AIR 1937 Pat. 337 is not good law.

24. Relying on the aforesaid Full Bench decision the Division Bench of this Court decided almost a similar matter to the present one in the case of Mangal Mahto Vs. Bihari Mahto and Others, . In that case the compromise decree was passed on 14.9.1960. The appellant before this Court in the said case filed an application u/s 151 of the CPC asking the Court which had passed the decree to set it aside or to recall it on the ground of fraud. The application was rejected on 18.2.1961 holding that fraud was not proved. The appellant then preferred an appeal before this Court which was dismissed by order dated 6.4.1964 on the ground that it was not maintainable. The decree-holder respondents then levied Execution case on 27.4.1966. The appellant, inter alia, took objection that the execution case is barred by limitation which having been upheld by the court below the matter came before this Court. This Court in para-2 of the judgment held that the execution case filed on 27.4.1966 is clearly barred by limitation stating as follows:

According to Article 182 of the Limitation Act of 1908, the execution case had to be filed within three years of the date of the decree. This date expired on 14.9.1963. The view of the court below that since an application u/s 151 of the CPC was filed for setting aside that decree and an appeal was taken to this Court from the order of the court below refusing such an application, the dismissal of the appeal by the High Court on 6.4.1964 would give the starting point of limitation for filing of the execution case is not correct. It is against the Full Bench decision of this Court in (1) Rameshwar Prasad Sahu Vs. Parmeshwar Prasad Sahu and Others, . It does not appear from the order under appeal that either in the miscellaneous case started by the filing of the application u/s 151 or in the appeal which was preferred to this Court from the order dated 18.2.1961 there was any order of stay of the execution case. Obviously, there could be none because no execution seems to have been filed during the pendency of the application u/s 151 in the court below or the appeal in the High Court. In our opinion, therefore, the period of limitation prescribed by the Indian Limitation Act, 1908, having expired before the commencement of the Act of 1963, the execution case filed on 27.4.1966 was clearly barred by limitation.

25. From a consideration of the aforesaid decisions it is evident that running of

time for the purpose of limitation can only stop in the case of an appeal or review directly from or of the decree in question. All the cases cited by learned Counsel for the petitioner, including the Privy Council decision in the case of Nagendra Nath Dey (*supra*), were those where appeal from or review of the decree in question were directly involved and accordingly, it had been decided that time would run from the date of the decision on appeal or order under review. It must be remembered that even the Privy Council in that case had decided the issue upon the reading of the plain words of Article 182 which stated that if there had been an appeal then time was to run from the date of the decree of the appellate Court. It was also observed by their Lordships of the Judicial Committee in the said case that fixation of period of limitation must always be to some extent arbitrary, and may frequently result in hardship, but in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide. The observations that it is at least an intelligible rule that so long as there is any question sub judice between any of the parties, those affected shall not be compelled to pursue the so often thorny path of execution, must be read in the context of the salutary principles enumerated prior to it.

26. In any case, the decision of the Supreme Court in the case of Bhawanipore Banking Corporation Ltd. (*supra*), the Full Bench decision of this Court in Rameshwar Prasad Sahu's case (*supra*) and the decision in Mangal Mahto's case (*supra*) make it evident that the principle regarding matters being sub judice cannot be carried to the extent of including application or suit to set aside *ex parte* decrees or compromise decrees.

27. In my opinion, the same principles would apply even under Article 136 of the Limitation Act, 1963 which provides that time begins to run when the order or decree becomes enforceable. It is evident that a decree is enforceable from the date on which it is passed by the original Court unless it is challenged before the appellate authority or a review of the same is sought before the original court and the same is admitted for review in which case it would be the date of the appellate decree or the order upon review subject to any further appellate decree, on which the decree would become enforceable by application of the doctrine of merger. On no account it can be said that mere filing of a suit for setting aside the decree makes a decree of the court unenforceable although if the said suit is itself decreed then the earlier decree may become a nullity and non-existent but the mere filing of the said suit does not by itself affect the enforceability of the decree nor the issues decided by the earlier decree are the issues before the Court in the subsequent suit which has only to consider whether the decree in question in the suit is to be set aside for reasons germane under the law or not. In the present matter, although the same may not clinch the issue, but it should also be remembered that *prima facie* the suit that was filed to set aside the compromise decree was barred under the provisions of Rule 3A of Order 23 of the CPC.

28. So far as the reliance by learned Counsel for the petitioner on Section 14(2) of the Limitation Act is concerned, the benefit of the said Section would accrue only if the petitioner had been "prosecuting" another civil proceedings for executing the decree dated 4.6.1982 which is not the case in the present matter. The subsequent suit had been brought by the judgment-debtors of the first case and not by this petitioner and therefore he cannot claim to be prosecuting any civil proceedings when he was merely defending them. In such circumstances, no benefit can enure to him from the provisions of Section 14(2) of the Limitation Act, 1963.

29. I also find that the provisions of Section 15(1) of the Limitation Act have no application to the facts of the present case as the same is confined to a case where an execution of the decree has been stayed by any injunction or order and only the period of continuance of such injunction or order is to be excluded for the purpose of computing the period of limitation. Admittedly there was no injunction or stay order in the present matter at any stage for levying execution of decree dated 4.6.1982 and at no point the petitioner was prevented from filing the execution case with respect to the decree dated 4.6.1982. Hence, no benefit can be granted to him merely on account of the filing of the subsequent suit for setting aside the decree. In support of the said proposition reference may be made to the 3 Judges Bench decision of the Supreme Court in the case of Sirajul Haq Khan and Others Vs. The Sunni Central Board of Waqf, U.P. and Others, of which it has been held as follows:

The next question which calls for our decision is whether the appellants' suit is saved by virtue of the provisions of Section 15 of the Limitation Act. That is the only provision on which reliance was placed before us by Mr. Dar on behalf of the appellants. Section 15 provides for "the exclusion of time during which proceedings are suspended" and it lays down that "in computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded"... It is plain that, for excluding the time under this section, it must be shown that the institution of the suit in question had been stayed by an injunction or order; in other words, the section requires an order or an injunction which stays the institution of the suit. And so in cases falling u/s 15, the party instituting the suit would by such institution be in contempt of court. If an express order or injunction is produced by a party that clearly meets the requirements of Section "15. Whether the requirements of Section 15 would be satisfied by the production of an order or injunction which by necessary implication stays the institution of the suit is open to argument. We are, however, prepared to assume in the present case that Section 15 would apply even to cases where the institution of a suit is stayed by necessary implication of the order passed or injunction issued in the previous litigation. But, in our opinion, there would be no justification for extending the application of Section 15 on the ground that the

institution of the subsequent suit would be inconsistent with the spirit or substance of the order passed in the previous litigation. It is true that rules of limitation are to some extent arbitrary and may frequently lead to hardship; but there can be no doubt that, in construing provisions of limitation, equitable considerations are immaterial and irrelevant, and in applying them effect must be given to the strict grammatical meaning of the words used by them: Nagendra Nath Dey v. Suresh Chandra Dey 34 Bom I.R. 1065 : AIR 1932 PC 165.

30. Thus, on a consideration of all aspects of the matter, this Court is of the view that Execution Case No. 1 of 1998 in so far as it concerns the execution of the decree dated 4.6.1982 passed in Title Suit No. 212 of 1971 was beyond the period prescribed under the Limitation Act for executing the decree in question and the court below has rightly held by its order dated 23.9.2000 that it is barred by limitation in terms of Article 136 of the Limitation Act, 1963.

31. There is thus, no merit in the civil revision application and it is accordingly dismissed.