
(1959) 09 CAL CK 0002
In the Calcutta High Court
Case No : A.F.O.O. No. 230 of 1958

Sarkar Dutt Roy and Co.

APPELLANT

Vs

Shree Bank Ltd. (In Liquidation)

RESPONDENT

Date of Decision : 22-09-1959

Acts Referred:

Banking Companies Act, 1949 — Section 45B, 45C, 45O, 45O(1)
General Clauses Act, 1897 — Section 6
Limitation Act, 1908 — Article 182, 182(7), 183, 3, 28

Citation : AIR 1960 Cal 243 : (1960) 30 CompCas 416

Hon'ble Judges : S.C. Lahiri, C.J; R.S. Bachawat, J

Bench : Division Bench

Advocate : A.P. Chatterji, for the Appellant; Sabyasachi Mukherji, for the Respondent

Final Decision : Allowed

Judgement

Lahiri, C. J.

1. This appeal arises out of an order of Bose J. dated June 2, 1958, by which His Lordship confirmed an interim order appointing the Court Liquidator High Court as the Receiver of certain amounts of money payable on bills submitted by the appellant firm to the Executive Engineer, Works and Buildings Department, Midnapore Division and authorising the Receiver so appointed to collect the outstanding debts and claims due in respect of the aforesaid bills. The aforesaid order was made by Bose J. upon a Tabular Statement filed by the respondent Bank verified by an affidavit dated the 24th of August, 1957. The question that arises for consideration is whether the application for execution filed by the respondent is barred by limitation.

2. The facts which are not in dispute may be briefly stated as follows:

On March 29, 1947, the respondent Banking Company obtained a compromise decree against the appellant firm for a sum of Rs. 31,000/-. On the date of the

compromise decree the appellant firm paid a sum of Rs. 2115/- towards the decretal dues and it was agreed that a sum of Rs. 68857- would be paid on May 9, 1947 and it was further agreed that the balance of Rs. 22,000/- would be paid according to the following instalments:

- (1) Rs. 1,000/- on May 30, 1947.
- (2) Rs. 2,000/- on December 30, 1947.
- (3) Rs. 4.000/- on December 30, 1948.
- (4) Rs. 4.000/- on December 30, 1949.
- (5) Rs 4.000/- on December 30, 1950.
- (6) Rs. 4,000/- on December 30, 1951.
- (7) Rs. 3,000/- on December 30, 1952.

According to paragraph 4 of the petition of compromise the decree-holder was entitled to realise by execution the amount of instalment in default and according to paragraph 5 the decree-holder was further entitled to realise the entire amount of the decree after four months of the due dates if any of the instalments still remained unpaid. It is admitted that the appellant firm paid the sum of Rs. 2115/- and also the sum of Rs. 6,8857- on the dates on which they were due to be paid. It is also admitted that the appellant firm paid the first instalment of Rs. 1,000/- on or before the 30th May, 1947 but did not pay the remaining instalments. On August 3, 1948, the respondent Bank was wound up by an order of the Court on a petition for winding up presented on May 11, 1948. Before the winding up order the respondent Bank filed an unsuccessful application for execution in the court of the Subordinate Judge, Midnapore in Title Execution Case No. 16 of 1948. After the winding up order the respondent Bank through its Liquidator filed a second application for execution in the same court on July 16, 1930 and this execution case was registered as Title Execution Case No. 29 of 1950. Before the filing of the second application for execution the Banking Companies Amendment Act (Act XX of 1950) had come into operation on March 18, 1950. u/s 11 of the Banking Companies Amendment Act of 1950, Title Execution Case No. 29 of 1950 of the Court of the Subordinate Judge, Midnapore was transferred, to this Court on or about August 16, 1950 and it was registered in this Court as T.B.C. Suit No. 11 of 1950. In T.B.C. Suit No. 11 of 1950 a precept was issued by this Court to the District Judge, Midnapore under sec. 46 of the CPC with the direction to attach the amounts payable on the bills submitted by the appellant firm to the Executive Engineer, Works and Buildings Department, Midnapore. On an application by the appellant firm Bose J. by an order dated December 11, 1957 cancelled the precept and lifted the attachment. Thereafter the respondent Bank through its Liquidator filed a Tabular Statement on or about August 26, 1957 upon which the order under appeal has been made.

3. The main point raised in the appeal is whether the respondent's claim is

barred by limitation. That question will have to be answered by a correct interpretation of Section 45-O of the Banking Companies (Amendment) Act of 1953 (Act LII of 1953) which came into operation on December 30, 1953. But before I address myself to that question I have to decide a preliminary question, namely, what is the starting point of limitation in the present case. On behalf of the appellant a faint attempt was made to establish that the starting point of limitation is four months after the date of the first default, that is the end of the month of April, 1948 because under the terms of the decree, in default of payment of any of the instalments within four months of the due date the entire decretal amount would become due. In view of the decision of the Full Bench of this Court in the case of Rangalal v. Shyamlal 50 C.W.N. 735 : (AIR 1946 Cal 500), this argument is untenable. In that case it was authoritatively laid down that the right of the decree-holder to apply for execution for the entire decretal amount in default of any instalment is a right in addition to and not in restriction of his right to apply for execution for each instalment as and when it falls due. Consequently the decree-holder has the option to realise the entire decretal amount or to realise the amount of each instalment and if the application for realisation of the subsequent instalment or instalments in default be made within three years from the date of the default it will not be held to be barred under Article 182(7) of the Indian Limitation Act, although it was made more than three years from the date of the first default. Applying this rule to the present case I hold that under Article 182(7) of the Indian Limitation Act the decree-holder gets a period of three years from the date of each default to realise the amount or amounts for which default has been made. Under the Indian Limitation Act, therefore, the starting point of limitation will be the date on which each instalment became due and since the application for execution in the present case was filed on or about the 26th of August, 1957, there can be no doubt that under Article 182(7) of the Indian Limitation Act the application for execution in respect of the instalments was barred by limitation on that date.

4. The question now is whether the right of the decree-holder to apply for execution is saved by Section 45O of the Banking Companies Act which came into operation on 30-12-1953. The effect of Section 45-O(1) of the Banking Companies Act is to suspend the running of limitation in suits or applications by a Banking Company which is being wound up from the date of the presentation of the petition for winding up. That section reads thus: Section 45O -- The special period of limitation.

"(1) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 or in any other law for the time being in force, in computing the period of limitation prescribed for a suit or application by a banking company which is being wound up the period commencing from the date of the presentation of the petition for winding up of the banking company shall be excluded."

Sub-section (2) is not relevant.

"(3) The provisions of this section in so far as they relate to banking companies

being wound up shall also apply to a banking company in respect of which a petition for the winding up has been presented before the commencement of the Banking Companies (Amendment) Act, 1953".

It is settled law that a proceeding is to be governed by the law of limitation which is in force on the date of its commencement (See *Soniram v. Kanhaiyalal* 40 IA 74. As the execution proceeding in the present case was started after the coming into operation of the Banking Companies (Amendment) Act, the rights of the parties will be governed by Section 450. The point that has to be decided is what is the effect of the application of Section 450,

5. On behalf of the appellant the question of limitation has been argued under three heads. In the first place, it is contended that Section 450 cannot have the effect of reviving any right which was already barred on the date on which it came into operation because the Legislature must be presumed not to have affected any vested right unless a different intention appears from the Act. This argument if accepted would bar the decree-holder's right in respect of the second, third and fourth instalments of the compromise decree the right to apply for execution of which was barred on the 30th of December, 1953, on which date Section 450 came into operation. It is a settled rule of construction of statutes that retrospective effect is not given to an enactment so as to affect substantive rights unless the contrary intention appears by express language or necessary Intendment. Section 45-O(I) has the effect of extending the period of limitation for filing an application for execution by a banking company and in the absence of express words or necessary intendment it cannot operate to revive and render effective a decree which has been barred under the previous law, namely. Article 182(7) of the Indian Limitation Act. This point has been settled by the decision of the Judicial Committee in the case of *Sacbindra Nath Roy v. Maharaj Bahadur Singh* 48 I A 335 at pp. 344-345: AIR 1922 PC 187. In that case the Privy Council held that a right to apply for execution of a decree which had become barred under the Limitation Act of 1877 could not be revived under the Limitation Act of 1908 in the absence of any "provision in the latter Act so retrospective in its effect as to revive and make effective a judgment or decree which before that date had become unenforceable by lapse of time". The relevant enquiry therefore is whether there is anything in Section 450 of the Banking Companies Act which makes its provisions applicable to rights which had already become barred before the date on which it came into operation. On this point it is significant to note that Subsection (3) of Section 450 makes the provisions of the section applicable only to a banking company in respect of which a petition for winding up has been presented before the commencement of the Banking Companies (Amendment) Act of 1953; but does not make the provisions of the section applicable to debts due to the banking company which had become barred by lapse of time before the date of such commencement. Then again Sub-section (1) of Section 450 provides that the period commencing from the date of the presentation of the petition for the winding up of the banking company shall be excluded and does not say that this period shall always be deemed to have been excluded. The use

of the future tense in Sub-section (1) indicates that the Legislature did not intend its provisions to operate on decrees which had before the date of its commencement become unenforceable by lapse of time. There is, therefore, neither any express words nor any necessary implication in Section 45O to indicate that its provisions were intended by the Legislature to have retrospective effect.

6. On behalf of the decree-holder it has been contended that Article 182(7) of the Limitation Act merely bars the remedy of the decree-holder at the end of three years but does not extinguish the debt due by the judgment-debtor and since Section 45-O(I) of the Banking Companies Act has enlarged the period of limitation the decree-holder is entitled to enforce its remedy in respect of the debt which is still subsisting. It is true that in respect of a debt there is no provision in the Indian Limitation Act corresponding to section 28 which extinguishes title to property on the expiry of the period of limitation. It is also true that Article 182(7) of the Limitation Act does not extinguish the debt. But it does not follow from these facts that the decree-holder can enforce his claim by an application for execution in respect of a debt which has become barred before the date when the decree-holder became entitled to avail himself of the enlarged period of limitation. The right to apply for execution is not a mere matter of procedure and the immunity from execution which the judgment-debtor has acquired by lapse of time is a substantive right which cannot be taken away or impaired in the absence of express words or necessary implication in the statute enlarging the period of limitation. This conclusion seems to follow from the decision of the Judicial Committee in the case of 48 I.A. 335 at pp. 344-345: AIR 1922 PC 187 which is directly in point. Mr. Mukherjee appearing for the respondent decree-holder placed some reliance on a decision of this Court in the case of Maheshlal v. Busunt Kumaree ILR 6 Cal. 340. In that case the question that arose for the consideration of the Court was whether an acknowledgment of a debt which was insufficient to keep a cause of action alive under the Indian Limitation Act XIV of 1859 but was sufficient to sustain a suit on the same cause of action under the Indian Limitation Act IX of 1871, would save limitation in a suit instituted after the coming into operation of the Indian Limitation Act IX of 1871. Garth, C. J. and Maclean J. answered this question in the affirmative and held that the provisions of the Indian Limitation Act IX of 1871 regarding acknowledgments were retrospective. This decision has been dissented from by the Madras High Court in the case of Km. Kr. Ramanathan Chettiar Vs. N.M. Kandappa Goundan (died) and Others, . Strictly speaking the decision in Moheshlal's case ILR 6 Cal 340, applies to a case of personal obligation before it merges in a decree and has no application to a claim for enforcement of rights under a decree; but if the principle of that decision is sought to be extended to the latter case it comes into conflict with the observation of Lord Atkinson in Sachindra Nath Floy's case 48 IA 335: (AIR 1922 PC 187) and must be held to have been impliedly overruled by the latter decision. For these reasons I hold that Section 45-O(1) of the Banking Companies Act is not retrospective to the

extent that it revives the decree-holder's light to apply for execution in respect of instalments which had already become barred on the date when section 45O came into operation.

7. In the case of Suburban Bank Ltd. (in liqdn.) Vs. Nistaran Chakrabarti, my learned brother Bachawat J. on an exhaustive review of relevant authorities held that Section 45O of the Banking Companies Act does not apply to suits which were instituted before the coming into operation of that section and his decision has since been affirmed on appeal in Appeal from Original Decree No. 119 of 1954 (unreported). In that case, however. His Lordship expressly left open the question as to the effect of section 45-O(1) in proceedings which were started after it came into force. That question which was left open in that case has now arisen for our consideration. In that case my learned brother Bachawat J. held that a statute of limitation ceases to be a mere matter of procedure if it impairs a vested right and is presumed not to have retrospective operation. The same principle applies to a case where a proceeding has been started after the commencement of the Banking Companies (Amendment) Act LII of 1953. In the case of Punjab Commerce Bank Ltd. Vs. Brij Lal Mahandi Ratta, , a Division Bench of the Punjab High Court also held that Section 45-O(1) of "the Banking Companies (Amendment) Act did not apply to a suit which had been instituted prior to "the date on which that section came into force, though the reasons given by the Punjab High Court were different from those given by this Court. For the reasons given above I hold that the decree-holder's right to apply for execution of the second, third and fourth instalments of the decree were barred on the 26th August, 1957 on which date the application for execution was filed by it and that this right was not revived by Section 45-O(1) of the Banking Companies Act, The first point urged by the appellant accordingly succeeds.

8. The second point argued by Mr. Chatterjee in support of the appeal is that according to section 6 of the General Clauses Act (Act X of 1897) the decree-holder's right to apply for execution which had already become barred cannot be revived by the operation of the Banking Companies (Amendment) Act of 1953. This point also relates to the decree-holder's right to apply for execution of the second, third and fourth instalments of the decree. As the appellant has succeeded with regard to these instalments on the first point it is not really necessary to decide the second point but since the point has been argued at length I may briefly record my views on the merits of this argument. On behalf of the appellant it is contended that the non-obstante clause at the beginning of Section 45-O(1) has the effect of repealing Article 182(7) of the Indian Limitation Act so as to attract the operation of section 6 of the General Clauses Act. The effect of the non-obstante clause in Section 45-O(1), however, is not a total abrogation of Article 182(7) but a pro tanto repeal of any provision in Article 182(7) which is inconsistent with its provisions. The question, therefore, arises what is the meaning of the word "repeal" in section 6 of the General Clauses Act. Mr. Mookerjee appearing for "the decree-holder contends that the word "repeal" in Section 6 means repeal simpliciter that is total abolition and not amendment

and he relies upon a decision of 12 Judges of this Court in the case of Jagadananda y. Amritalal ILR 22 Cal. 767 and another decision of a Full Bench of five Judges or. (this Court in the case of Deb Narayan v. Narendra ILR 16 Cal. 267. There are no doubt some observations in these two cases which favour the narrower interpretation of the word "repeal" in section 6 of the General Clauses Act which Was then in force, namely Act I of 1868. With regard to the word "repeal" which also occurs in General Clauses Act X of 1897, the Supreme Court has held that the application of Section 6 is not confined to cases of repeal simpliciter but extends to cases where the repeal of the earlier enactment is followed by fresh legislation (See State of Punjab v. Mohar Singh (S) AIR 1955 S.C. 84). The present case, however, does not come within the extended meaning given by the Supreme Court to the word "repeal" because Section 45-O(1) of the Banking Companies Act does not really repeal Article 182 out merely adds to the period prescribed by Article 182 for an application for execution of a decree. Section 45O does not repeal but merely amends Article 182 of the Limitation Act and does not, therefore, attract the operation of section 6 of the General. Clauses Act.

9. It was faintly suggested by the appellant that since Section 45-O repeals section 45F of the Banking Companies (Amendment) Act XX of 1950, section 6 of the General Clauses Act is attracted to the case. This argument however is based on a misconception. The repeal of section 45F has no bearing in the present case because the appellant does not base its claim on Section 45F but On Article 182(7) of the Indian Limitation Act. I accordingly hold that section 6 of the General Clauses Act is of no help to the appellant with regard to the second, third and fourth instalments of the decree. But the decree-holder's right to apply for execution of those instalments is barred on general principles as to the presumed intention of the Legislature.

10. The third point raised by the learned counsel for the appellant is that the application of section 45-O is confined to cases where the period of limitation has already commenced to run before the presentation of the petition for winding up and does not extend to a case where the petition for winding up is presented before the starting of limitation. In the present case it will be seen that the petition for winding up was presented on May 11, 1948, after the second instalment became due but before the due dates of all the subsequent instalments. According to the appellant's argument the decree-holder is not entitled to the benefit of section 45-O in respect of the instalments which fell due after the presentation of the petition for winding up. In order to decide this question it is necessary to closely examine the language of the section. The mandate of the section is to exclude the period from the date of presentation of the petition for winding up in computing the period of limitation for a suit or application by a Banking Company in liquidation. To my mind the words "computing" and "excluded" furnish the key to the proper interpretation of the section. There can be no question or computation of the period of limitation unless limitation has begun to run and there can be no question of exclusion

unless the starting point of the period of limitation has been fixed. The period of limitation starts from the date of accrual of the cause of action. It is unthinkable that a period anterior to the date of accrual of the cause of action should be excluded in calculating the period of limitation. In my view, therefore, section 45-O(1) presupposes that the cause of action or the right to apply has already accrued prior to the date of presentation of the petition for winding up. This conclusion is supported by a recent decision of Rajamannar C.J. and Ganapatia Pillai J. in the case of *Brahmayya and Co., Official Liquidators of Hanuman Bank (In liqn.) Vs. Mohammedsa Rowther (died) and Others*, with which I respectfully agree. The industry of the learned counsel for the respondent enabled him to find a decision u/s 13 of the Indian Limitation Act which apparently lends support to a broad construction of Section 45-O(1) of the Banking Companies Act. That decision is a decision of a Division Bench of this Court in the case of *Atul Kristo v. Lyon and Co.* I.L.Rule 14 Cal. 457. It is to be noted that the words "in computing the period of limitation" and "excluded" also occur in section 13 of the Indian Limitation Act which provides that the time for which the defendant has been absent from India and from the territories beyond India shall be excluded. The question that arose for the consideration of the Court was whether the word "absent" occurring in that section means presence at the time of accrual of the cause of action but absence thereafter. The Court below in that case held that the word absence implied previous presence and some presence after the time that limitation began to run. But this Court held that the word "absent" should be construed broadly. The significance of the words "computing the period of limitation" and "excluded" was not considered in that case and it proceeded merely upon the interpretation of the word "absent". The actual decision therefore does not support the respondent's contention because the word "absent" does not occur in section 45-O of the Banking Companies Act. I am accordingly unable to apply the principle of that decision in interpreting the words of Section 45-O(1) of the Banking Companies Act. The third point argued by the appellant accordingly succeeds with the result that the application for execution in so far as it relates to the third, fourth, fifth, sixth and seventh instalments of the compromise decree, all of which became due after the presentation of the petition for winding up does not fail within the scope of Section 45-O(1) of the Banking Companies Act. If the decree-holder does not get the benefit of Section 45-O of the Banking Companies Act as I hold it cannot, the application for execution in respect of all the instalments which accrued due after the presentation of the petition for winding up is also barred by limitation under Article 182(7) of the Indian Limitation Act.

11. For the reasons given above, I would allow this appeal and set aside the order of Bose, J., dated 2-6-1958, by which his Lordship directed the appointment of a Receiver in execution for the realisation) of the amounts payable on bills submitted by the appellant to the Executive Engineer, Works and Buildings Department, Midnapore, and the application made on the tabular statement dated 24-8-1957 and filed on or about 26-8-1957 will stand dismissed.

12. In the circumstances of the case there will be no order as to costs here and the Court below.

13. The Liquidator will be entitled to retain costs of this Court and of the Court below out of the assets in his hands.

Bachawat, J.

14. On 29-3-1947, the respondent Shree Bank Ltd., instituted Title Suit No. 25 of 1947 against appellant firm in the first court of the Subordinate Judge, Midnapore. On 1-5-1947, a compromise decree for the sum of Rs. 31,000/- was passed in that suit in favour of the respondent against the appellant. On the same date the appellant paid Rs. 2,115/-. The decree provided that the appellant would pay Rs. 6,885/- by 9-5-1947, and would pay the balance of Rs. 22,000/- in seven instalments. The appellant duly paid Rs. 6,885/- on 9-5-1947. The first instalment of Rs. 1,000/- fell due on 30-5-1947, and was duly paid. The appellant defaulted in payment of the second and subsequent instalments. The second instalment fell due on 30-12-1947. On 25-2-1948, the Midnapore branch of the respondent bank instituted in the first court of the Subordinate Judge, Midnapore, Title Execution case No. 26 of 1948 praying for execution of the decree. This Execution case was dismissed on 17-7-1948. On 11-5-1948, a petition for the winding up of the respondent bank, was presented to this High Court. On this petition an order for the winding up of the respondent bank was made on 3-8-1948. On 30-12-1948, the third instalment of Rs. 4,000/- payable under the decree fell due. On 10-9-1949, the Banking Companies Ordinance (XXIII) of 1949 came into force. It amended the Banking Companies Act X of 1949 and inserted in it Part III-A which consisted of a group of sections including Section 45F. On 30-12-1949, the fourth instalment of Rs. 4,000/- fell due. On 18-3-1950, the Banking Companies (Amendment) Act XX of 1950 came into force. It repealed Ordinance XXIII of 1949 and re-enacted many of its provisions including Section 45F which provided for the exclusion of one year immediately preceding the date of the order for the winding up of the Banking company in computing the period of limitation prescribed for any suit or application by a banking company. " On 16-7-1950, the respondent bank represented by its official liquidator instituted Title Execution case No. 29 of 1950 in the first court of the Subordinate Judge, Midnapore, praying for execution of the decree. On or about 16-8-1950, the Title Suit No. 25 of 1947 was transferred to this Court and was numbered T. B. C. Suit No. 11 of 1950. On 30-12-1950 the fifth instalment of Rs. 4,000/- payable under the decree fell due. On 30th December, 1951, the sixth instalment of Rs. 4,000/- fell due. On the 30th December, 1952, the seventh and the last instalment of Rs. 3,000/- fell due. On 24-10-1953, the Banking Companies (Amendment) Ordinance IV of 1953, came into force. It amended Act X of 1949 and substituted a new Part III-A in place of the existing Part III-A. The new Part III-A consisted of a group of sections including Section 45-O. On 30-12-1953 the Banking Companies (Amendment) Act LII of 1953, came into force. It repealed Ordinance IV of 1953 and re-enacted many of its

provisions including Section 45-O. In this appeal we are concerned mainly with the construction of this section. On or about 19-3-1957, in Title Execution case No. 29 of 1950, this Court ordered the issue of a precept to the District Judge, Midnapore, for attachment of certain bills in execution of the decree but this precept and the attachment levied thereunder were set aside by a subsequent order dated 11-12-1947. The respondent is not now proceeding with Title Execution case No. 29 of 1950. On 26-8-1957, the respondent bank filed in this Court a tabular statement praying for execution of the decree and obtained an interim order for appointment of Receiver of certain bills. On 2-6-1958, Bose, T., ordered that the interim order dated 26-8-1957, do continue. He did not, however, deliver any judgment. This appeal has been preferred from his order dated 2-6-1958. The sole point argued on behalf of the appellant is that the execution of the decree dated 1-5-1947, was barred by limitation and that, therefore, the Court ought to have dismissed the application made on 26-8-1957.

15. Now the decree dated 1-5-1947, is a decree passed by a Civil Court namely the first court of the Subordinate Judge, Midnapore. On the passing of the Banking Companies Amendment Act XX of 1950, this High Court became vested with exclusive jurisdiction to decide all claims made by or against the respondent bank including claims arising out of this decree. But nevertheless the decree retained its character of a decree of a Civil Court and did not become a decree of the High Court in the exercise of its Ordinary Original Civil Jurisdiction. The application for execution of the decree is, therefore, governed by Article 182 of the Indian Limitation Act, 1908 and not by Article 183 thereof.

16. Clause 4 of the compromise decree clearly gave to the respondent decree-holder an option to realise the amount of an instalment on default of that instalment. Clause 5 of the decree gave a further option to the respondent to realise the entire amount of the decree in default of payment of any one instalment. The respondent decree-holder was not bound to exercise the option given by Clause 5. The respondent could waive and in fact has waived the benefit of that option and became entitled to enforce payment of each instalment as and when it fell due. The application for execution of the decree is governed by Article 182. Clause (7) of the Indian Limitation Act, 1908 and the starting point of limitation to enforce the payment of an instalment payable under the decree is the date when the payment was directed by the decree to be made.

17. In this view of the matter an application for execution of the decree to enforce payment of the second, third and fourth instalments was barred by the Law of Limitation on 24-10-1953, when the Banking Companies (Amendment) Ordinance IV of 1953 came into force as also on 30-12-1953 when the Banking Companies (Amendment) Act LII of 1953 came into force.

18. In my opinion Sub-section (1) of Section 45-O of the Indian Banking Companies Act X of 1949, introduced by the Banking Companies (Amendment) Ordinance IV of 1953 and later by the Banking Companies (Amendment) Act LII of 1953, does not revive a right to apply which was already barred by the

operation; of the previously existing laws.

19. Unless the contrary appears by express words or by necessary implication a statute extending; the period of limitation is presumed not to operate retrospectively so as to revive a decree which has become un-enforceable by operation of the Laws of Limitation: see ILR 48 IA 335: (AIR 1922 PC 187). A statute which has the effect of reviving a barred decree is not a mere matter of procedure and such a statute is presumed not to have retrospective operation. This rule of construction rests upon the presumed intention of the Legislature and arises independently of Section 6 of the General Clauses Act, 1897.

20. I find nothing in Sub-section (1) of Section 45-O inconsistent with this general rule of construction. That sub-section provides that in computing the period of limitation prescribed for a suit or an application by a banking company which is being wound up, the period commencing from the date of the presentation of the petition for the winding up of the banking company shall be excluded. It does not provide that this period shall be deemed always to have been excluded. In spite of sub-section (1) of Section 45-O we must, therefore, act upon the footing that this period was not excluded before the sub-section came into force. Consequently, by operation of the laws existing before that sub-section came into force the execution of the decree so far as it related to the second, third and fourth instalments became barred by the Law of Limitation. Now Sub-section (1) of Section 45-O provides for exclusion of a certain period of time in computing the prescribed period of limitation. On the face of it the sub-section does not provide for revival of a right to sue or a right to apply and which has become unenforceable by lapse of time. Prima facie such an enactment providing for a simple alteration of the period of limitation does not revive a right which has already become barred and unenforceable. An intention of the Legislature to the contrary is not shown by the express words of the sub-section or the necessary implication of its provisions or from its scope and object. The effect of the non-obstante clause at the beginning of the sub-section is to abrogate all existing laws which are clearly inconsistent with the sub-section. The period commencing from the date of the presentation of the petition for the winding up of the banking company must be excluded in making the computation of the prescribed period of limitation though the other existing laws do not permit such exclusion. But there is nothing in the sub-section which abrogates the general rule that an enactment extending the period of limitation is presumed not to apply retrospectively so as to revive a right which has already become barred and unenforceable. The general words "a suit or application" can be given full effect by limiting them to suits and applications to enforce rights which are still enforceable. Subsection (3) of Section 45-O specially provides for the retrospective application of the section to a banking company in respect of which a petition for the winding up has been presented before the commencement of the Banking Companies (Amendment) Act, 1953. But the Legislature deliberately has not provided that Sub-section (1) of Section 45-O should have a larger retrospective operation. In my opinion Sub-section (1) of

Section 45-O does not revive a right to apply for execution of a decree which has already become unenforceable by lapse of time.

21. An application to enforce the decree so far as it relates to the fifth, sixth and seventh instalments was not barred by the law of limitation on the date when Sub-section (1) of Section 45-O came into force. The question is whether this right has become barred by limitation subsequently. The present application for execution was made On the 26th of August, 1957. There is no doubt that but for sub-section (1) of Section 45-O this application is barred by the law of limitation. The question is whether Sub-section (1) of Section 45-O applies so as to extend the period of limitation. In my opinion that sub-section does not apply to the present case. The right to apply for execution of the decree in respect of inter alia the fifth, sixth and seventh instalments arose long after the date when the petition for the winding up of the banking company was presented. The period of limitation prescribed for the application had not commenced to run on the date when the petition for the winding up was presented. The entire period commencing from the date of the presentation of the petition for the winding up cannot, therefore, be excluded in computing the period of limitation. On behalf of the respondent it is argued that though the whole of that period cannot be excluded, there is nothing to prevent the Court from excluding part of that period namely the period commencing from the date or dates when the right to apply accrued. I am unable to accept this argument. The structure of Sub-section (1) of Section 45-O suggests that the subsection applies to a case where the right to sue or the right to apply accrues after (Sic) the date of the presentation of the petition for winding up. The provision that the period commencing from the date of the presentation of the petition for winding up shall be excluded, implies that the period would otherwise have included in computing the period of limitation. In other words, that sub-section presupposes a right to sue or a right to apply which had accrued before the date of the presentation of the petition for the winding up. While sub-section (2) of Section 45-O provides that there shall be no period of limitation for certain claims by the banking company against its directors, Sub-section (1) seems to imply that there is some period of limitation for the suits and applications to which it applies. I reject the contention that the sub-section in effect provides that there shall be no period of limitation for claims of the banking company arising after the date of the presentation of the petition for its winding up, In my opinion Sub-section (1) of Section 45-O does not apply to a case where the right to sue or the right to apply accrued after the date of the presentation of the petition for the" winding up of the banking company. I am supported In this conclusion by the judgment of the Madras-High Court in *Brahmayya and Co., Official Liquidators of Hanuman Bank (In liqn.) Vs. Mohammedsa Rowther (died) and Others*, . I do not think that I am compelled to give a different construction by reason of the decisions of this Court in ILR 14 Cal. 457 and in *Porno Chunder Ghose v. Sassoon*. ILR 25 Cal 496. Those decisions relate to the construction of Section 13 of the Indian Limitation Act XV of 1877 corresponding to Section 13 of the Indian Limitation Act, 1908.

Somewhat curious distinctions have been engrafted by later decisions such as- Rathina Thevan Vs. Packirisami Thevan, and Sayaji Rao v. Madhav Rao ILR 53 Bom 12: (AIR 1929 Bom. 14). That section has a long ancestry commencing from the statute 21 Jac. .1C. 16 and its construction appears to have been somewhat coloured by its previous history. Section 13t of the Indian Limitation Act, 1908, provides for exclusion of the time during which the defendant has been absent from India in computing the period of limitation whereas Sub-section (1), of Section 45-O in effect provides for the stoppage of the running of time after the presentation of the petition for the winding up of the banking company. The history, object and effect of the two enactments appear to differ in material respects.

22. It follows that the right to apply for execution of the decree in respect of fifth, sixth and seventh- instalments also had become barred by the law of limitation on the 26th August, 1957. I have, there fore, come to the conclusion that the application for execution of the decree in its entirety was barred by the law of limitation and as such should have been dismissed. The appeal should, therefore be allowed" and the order proposed by my Lord shall be made.