
(1972) 09 CAL CK 0010
In the Calcutta High Court

Sm. Susama Bala Sur alias Susama Dasi	APPELLANT
Vs	
Bibhuti Bhusan Mondal	RESPONDENT

Date of Decision : 27-09-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1973 Cal 295 : 76 CWN 1091 : (1974) 1 ILR (Cal) 172

Hon'ble Judges : Sankar Prasad Mitra, C.J.; Salil Kumar Datta, J.; Sabyasachi Mukharji, J.; S.C. Ghose, J.; A.K. Janah, J

Bench : Full Bench

Advocate : D. Mukherjee, Barun Kumar Roy Choudhury, Bijan Behari Mitter and Sakti Prasad Mukherjee, for the Appellant; Radha Kanta Bhattacharjee and Madan Mohan Ghose, for the Respondent

Final Decision : Dismissed

Judgement

1. In this reference two questions have been referred to the Special Bench, to wit:

(1) What, in law, is the nature of a notarial bond (Gross Copy) under the French Law in relation to the Indian Law and what is the mode of its enforcement?

(2) What, if any, is the law of limitation, applicable to such enforcement and what, if any, is the article of the Indian Limitation Act, applicable to such cases, after the introduction of that Act in the French territory of Chandernagore?

2. Originally the reference was heard by a Bench consisting of three learned Judges. As Their Lordships could not come to a unanimous decision, Their Lordships under Rule 6A read with Rule 9 of Chapter VII of the rules of the Appellate Side of this Court referred the matter to my Lord the Chief Justice for referring it to a larger Bench. Hence this matter has come before us.

3. The cases arises out of an objection petition filed u/s 47 of the CPC whereby the Appellant before us objected to the execution of a Grosses Copy of a Notarial Mortgage Bond executed by the Appellant on September 2, 1949, in the City of

Chandernagore, then a part of the French Republic. Chandernagore until it was defacto transferred to India on May 2, 1950, was governed by the French Laws. A Decret which corresponds to an Ordinance or Regulation in our country was promulgated on November 23, 1887, by the Governor of French India. The said Decret was in regard to the organization of the profession of Notaries. According to the profession of Notaries. According to the said Decret, a Notary or Notarie was a public officer appointed to take charge of deeds and contracts for the purpose of authenticating the same. The party had to deposit the original deed before the Notary and obtain the authenticated copy known as "Grosses Copy". A mortgage bond deposited with a Notary, a "gross copy" whereof used to be delivered to the mortgagee, was made out in an executory form, that is to say, in the same terms as a judgment of a Court of Law. If the mortgagor defaulted in payment of the mortgagee's dues under the mortgage within the stipulated date, the grosses copy of the mortgage bond could be executed as a decree of a Court of Law in accordance with Article 545 of the French Civil Procedure Code. To bring the law applicable at Chandernagore in conformity with those in West Bengal after Chandernagore was transferred to India, *de facto* and then *de jure* several orders were promulgated and/or statutes enacted.

4. The first in point of time was the Chandernagore (Application of Laws) Order, 1950, which was promulgated by the Central Government in exercise of the powers conferred by the Foreign Jurisdiction Act, 1947, (Act XLVII of 1947). By and under the said order the laws prevalent in Chandernagore immediately before the commencement of the said order, that is to say, immediately before May 2, 1950, as correspond to the enactments to these statutes mentioned in the schedule of the said order ceased to be operative or have any effect "save as respects things done or omitted to be done before the commencement of the said order".

5. Two of the said enactments mentioned in the said schedule were Bengal Agra and Assam Civil Courts Act, 1887, and the code of Civil Procedure, 1903. With effect from May 2, 1950, Civil Courts under the Bengal, Agra and Assam Civil Courts Act were set up, proceedings wherein were governed *inter alia* by the CPC and the corresponding French Law and the French Civil Procedure Code, amongst others ceased to be operative in Chandernagore.

6. The second Ordinance for the purpose above-mentioned was the Chandernagore (Administration) Regulations, 1952 which was published in the Gazette of India on June 30, 1952, and was promulgated by the Government of India after the *de jure* transfer of Chandernagore to India with effect from June 9, 1952, by means of a Treaty between French and Indian Governments. Section 11 of the said Regulation empowered the Central Government to extend certain further Indian statutes to Chandernagore which were done in fact and corresponding laws enforced in Chandernagore were repealed.

7. The Chandernagore (Merger) Act, 1954, and the Chandernagore (Assimilation of Laws) Act, 1955 which were passed on the merger of Chandernagore with

West Bengal were two of the last statutes enacted for the purpose of applying laws in Chandernagore uniformly with those in the rest of West Bengal. The first mentioned Act was a Central Act and the last was a West Bengal Act. Thus there was gradual transformation of laws enforced in Chandernagore as mentioned above.

8. The appeal including the aforesaid questions which have been referred to the Special Bench arises out of an order of the learned Subordinate Judge, Hooghly, of December 22, 1956, dismissing a petition of objection u/s 47 of the C.P.C. filed on April 9, 1956, by the appellant objecting to the prayer for execution in tabular form under O. 21 R. 11 of the CPC filed by the respondents on January 19, 1956, for service of notice to the appellant and thereafter issue of sale proclamation of the properties mentioned in the grosses copy of a Notarial Mortgage Bond executed by the appellant on September 2, 1949.

9. The first objection to the execution raised by Mr. Apurbadhan Mukherjee the learned Advocate for the appellant was that the grosses copy of a Notarial Mortgage Bond was not a decree within the meaning of the CPC and could not, therefore, be executed as a decree under the Code of Civil Procedure. The mortgagee has to file a suit in accordance with the provisions of the CPC for enforcing the mortgage and obtain a preliminary mortgage decree and thereafter a final mortgage decree before he can put the decree into execution or proceed to sell the mortgaged property.

10. Secondly, Mr. Mukherjee contended that assuming that the said Grosses Notarial Mortgage Bond had or has the force of a decree it could be executed only within three years from the date of the said mortgage bond which had expired long prior to the date when the application for execution was made. The said Grosses Notarial Mortgage Bond is now barred by the Laws of Limitation.

11. Lastly Mr. Mukherjee contends that at the most the said Grosses Notarial Mortgage Bond is a foreign judgment or decree and a suit has to be filed in accordance with the provisions of the CPC to obtain a decree on the said foreign judgment before execution can be applied for or had.

12. It has already been noted that a Notary under the French Law had to deliver a Grosses copy of a mortgage bond executed and filed before him in executory form by virtue of Article 545 of the French Civil Procedure Code. Such a grosses copy in executory form could be executed as a decree in accordance with the French Laws prevalent in Chandernagore and the holder of such a grosses copy could put the same into execution without having to file any suit for the enforcement of the mortgage. In the instant case the French Bond was executed on September 2, 1949 and was dated the same day. Upon such execution of the Notarial Mortgage Bond and delivery of a grosses copy thereof to the mortgagee the mortgagee acquired a right to execute the same without having to file a suit for the enforcement thereof. Upon the coming into force of the Chandernagore (Application of Laws) Order, 1950, such French Laws as corresponded with the

Statutes mentioned in the schedule to the said order stood repealed. Nonetheless the existing rights of parties on that date including the right of the respondent mortgagee to execute the said grosses copy of the Mortgage Bond without having to file a suit therefore were preserved by the saving clause contained in the para 7 of the said Order. According to the provisions of the said order, neither the French Laws nor the French Code of Procedure in their entirety ceased to be operative but only so much of it ceased to be in force as corresponded to the statutes stated in the schedule or subsequently added to the schedule.

13. The right to execute is in our opinion a substantive right like the right of appeal. This right had or has nothing to do with the procedure for execution. The right is the right to have the mortgaged property sold without filing a suit. The said right certainly is not the same as the method of manner or process to be followed in our opinion to execute the said bond.

14. The CPC does not contain any provision whereby a similar substantive right i.e. to have such an instrument executed without the necessity of filing a suit has been conferred. Analogy to such deeds may be had from certificates issued under Public Demands Recovery Act or the income tax Act which are executed straightway. Article 20 of the Decret of 1887 mentioned above reads as follows:

They (Notarial Deeds) are executory in the whole extent in the territory of the Republic etc.

The same was or is not inconsistent with the provisions contained in the CPC and thus was in force of or before the "appointed day mentioned in the Regulation of 1952. Such right was continued by Regulations 8 of the Chandernagore (Administration) Regulation of 1952, mentioned above. They said Regulation is set out hereunder:

Save as otherwise expressly provided in this Regulation all law in force in the free town of Chandernagore immediately before the appointed day shall continue in force until repealed or amended by a competent legislature or authority.

Thus both the substantive and the adjective French Law applicable to a Grosses Copy of notarial mortgage bond were continued both the Order of 1950 and the Regulation of 1952 and were only repealed by the Chandernagore Merger Act of 1954. Our aforesaid view is consonant with that of the Special Bench in (1) Sandur Mawli Dutt v. The State 56 C.W.N. The Special Bench in that case had to consider only the Chandernagore (Application of Laws) Order 1950.

15. By section 18 of the Chandernagore (Merger) Act, 1954, all the laws in force in Chandernagore which had not till then been superseded were repealed but sub-section 2 of section 18 of the said Act kept alive the right to execute a grosses copy of a Notarial Mortgage Bond which was a substantive right acquired prior to the enactment of the said Act. The said sub-section in express term also preserved or kept alive the remedy in respect of such right. The method or

manner of enforcing the said grosses copy by executing the same is one of the remedies kept alive by the said sub-section 2 of section 18 of the said Act. We set out below sub-section (2) of section 18:

18(2) The repeal by sub-section (1) of any corresponding law shall not affect -

(a) the previous operation of any such law; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under any such law; or

(c) any penalty, forfeiture or punishment in respect of any offence committed against any such law; or

(d) any investigation, legal proceedings or remedy in respect of such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceedings or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed as if this Act had not been passed.

Neither the Order of 1950 nor the Regulation of 1952 as we have noted earlier did affect any right including such right of a mortgagee, or any privilege, obligation or liability acquired, accrued or incurred prior to May 2, 1950.

16. By reason of the premises in the instant case the mortgagee acquired the right to execute the said grosses copy of the Notarial Mortgage Bond without having to file a separate suit for the enforcement of the mortgage prior to May 2, 1950, and cannot be said to have lost that right even though that right was sought to be enforced only on January 19, 1956, after the period of payment provided in the said Bond had expired.

17. The procedure in execution being a part of the adjective law must be governed by the procedural law prevalent at the time of execution that is to say, the CPC of 1908. For, there is no vested right in procedure. That a grosses copy of a Notarial Mortgage Deed could be executed as a decree has been held in the unreported case of (2) Gour Mohan Sett v. Gokul Chandra Chatterjee (F.M.A. No. 50 of 1953), a decision of S. R. Das Gupta J. and Mullick J. of January 20, 1955. Reference may also be made in this connection to two Division Bench decisions of this Court in (3) Sourindra Kumar Saha Vs. Bibhuti Roy and Another, and (4) Tulsi Charan Surul Vs. Kangali Charan Dey and Another, and a Single Bench decision of P. Chatterji J. in (5) Bhuban Chandra Sadhukhan Vs. Biswanath Dey, . Although there is some conflict in the decision reported in (3) Sourindra Kumar Saha Vs. Bibhuti Roy and Another, with that of Tulsi Charan Surul Vs. Kangali Charan Dey and Another, in regard to the question as to whether a grosses copy of a Notarial Mortgage Bond executed after May 2, 1950, can be executed straightway, we are not called upon to decide the said point in the instant reference.

18. Thus in our opinion the first and 3rd contention of Mr. Mukherjee must fail.

19. The second contention of Mr. Mukherjee must also fail in view of the fact that by a Notification dated 24th May, 1952, the Indian Limitation Act 1908 with the modification in s. 29(2) thereof was applied to Chandernagore. The said Notification is set out hereunder:

N. 220/Eur. I Government of India Ministry of External Affairs. New Delhi, the 24th May, 1952

NOTIFICATION

In exercise of the powers conferred by section 4 of the Foreign Jurisdiction Act, 1947 (XLVII of 1947), and all other powers enabling it in that behalf, the Central Government hereby directs that the following amendment shall be made in the Chandernagore (Application of Laws) Order, 1950, namely:

To the entries in the Schedule annexed to the said order, the following entry shall be added, namely:

"1908 The Indian Limitation Act. In sub-section (2) of section 29 for the words "special or local law" wherever they occur, substitute the words "special law or local French Law".

Sd/- S. Gupta Under Secretary.

Copy to the Ministry of Law with reference to their U.O. No. 633/52 SRO dated the 2nd May 1952.

2. Copy to the Administrator, Chandernagore with reference to his letter No.551/CH/52 dated the 7th April, 1952.

3. Copy to the Ministry of Home Affairs.

By Order Sd/- S. Gupta Under Secretary.

Section 29(2) of the Limitation Act, 1908, reads as follows:

29(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefore in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law -

(a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as and to the extent to which they are expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply.

Under the French Law prevalent in Chandernagore the period for enforcing the Mortgage Bond inter alia by way of execution was 30 years. By virtue of the aforesaid notification dated May 24, 1952 read with s. 29(2) of the Limitation Act

the provision of French Law of Limitation which was prevalent in Chandernagore shall apply. The instant application for execution was filed long prior to that period and thus was not barred by the laws of limitation.

20. For the purpose of this appeal we have relied on the relevant provisions of Decret of 1887 as well as French Procedural Law quoted extensively in (3) Sourindra Kumar Saha Vs. Bibhuti Roy and Another, wherein also Mr. Mukherjee appeared for appellant. By reason of the premises we propose to answer the questions posed before us in the manner following:

Question No. 1: A Grosses copy of a Notarial Mortgage Bond is in the nature of a decree of a competent court of Law and has the force of such a decree under the French Law and also under Indian Law. The mode of its enforcement is by way of execution as stated in the earlier part of the judgment.

Question No. 2: In view of the aforesaid Notification dated May 24, 1952 and section 29(2) of the Limitation Act, 1908 as altered by the said Notification the French Law of Limitation is applicable to such enforcement and shall be deemed to have been prescribed in the schedule to the Indian Limitation Act.

By reason of the premises, the appeal is dismissed. In the facts and circumstances of the case we make no order as to costs.

Sankar Prosad Mitra, C.J.

21. I agree.

Sabyasachi Mukharji, J.

22. I agree.

A.K. Janah, J.

23. I agree.

Salil Kumar Datta, J.

24. I am in agreement with the answers on the questions of law in the reference as proposed by my lord Ghose, J. As the reasons I have in support are different to some extent, I propose to deliver a separate judgment.

25. A notarial bond was executed by the debtor appellant on December 3, 1949 (incorrectly mentioned at places as September 3, 1949) in the presence of the officiating Notary of Chandernagore and witnesses. The bond recited inter alia that a loan of Rs. 10,000/- was received from the creditor respondent by the debtor appellant, carrying interest at the rate of 6% per annum and repayable within three years. It further recited that as security for the said loan with interest the said debtor hypothecated in favour of the respondent a piece of land situate at Hatkhola, Chandernagore, agreeing to keep the property in mortgage. There was a provision in the bond which recited as follows:

The President of the Republic therefore declares and orders that on prayer being made to enforce the deed all Nazirs will enforce the same and the Pandits of Courts will take steps for enforcement of this deed and on proper prayers being made to the Commanders and Officers of the army all of them will take initiative and take steps for enforcement of this deed.

26. The relevant French Law about the Notarial bonds and its enforcement is contained in the Decret (in effectiveness similar to an Act or Regulation in India) promulgated by appropriate authority on November 23, 1887. The relevant articles are as follows:

Art. 2. Notaries are public officers set up to entertain all deeds and contracts to which the parties should or intend to clothe with the character of authenticity attached to the acts of public authority, and to attest their date, to preserve them in deposit to deliver "grosses" copies and copies of them. Art. 20. All notarial deeds make full evidence in Courts of Justice of the agreement that they contain between the contracting parties and their heirs and assigns. They are executory in the whole extent of the territory of the Republic and in all French possessions.

Art. 26. Only "grosses" copies are delivered in executory form: they are titled and terminated in the same terms as the judgments of courts of justice.

There is and can be no dispute that the grosses copy of notarial bond by itself, under the French Law, was capable of execution and the effect of endorsement of "grosse" upon it was to make the said bond virtually as having the force of a decree of a civil court. This right to enforce the bond in execution without obtaining a decree through suit, is a substantive right granted by the said Article 20, as was held in (5) Bhuvan Chandra Sadhukhan Vs. Biswanath Dey, while its enforcement is an adjective right.

27. As is well known, since 1948 great events relating Chandernagore took place. On June 8, 1948 the French Government declared its intention to leave to the populations of French settlements in India their right to pronounce their future fate and future status. In the referendum held on June 19, 1949, the citizens of Chandernagore voted in favour of merger with India. On May 1, 1950 the Central Government made the Chandernagore (Application of Laws) Order 1950 (hereinafter referred to as 1950 Order), which came into force on May 2, 1950 when de factor administration of Chandernagore was transferred to the Government of India. By the said Order under paragraph 3 the enactments specified in the schedule to the said order were made to apply to Chandernagore, subject (i) to amendments to which the enactments for the time being were subject (ii) to modifications specified in the said schedule and (iii) also to the subsequent provisions of the Order. Paragraph 7 of the order provides:

Unless otherwise specially provided in the schedule to this Order all laws in force in Chandernagore immediately before the commencement of this Order which correspond to the enactments specified in the schedule shall cease to have

effect, save as respects things done or omitted to be done before the commencement of this Order.

28. By the above paragraph the enactments referred in the schedule of 1950 Order, in absence of any special provisions, had no application to things done or omitted to be done before May 2, 1950. In (1) Sandar Mawli Dutt v. State 56 C.W.N. 500, a Special Division Bench of this Court held on April 10, 1952 that Paragraph 7 abrogated all laws in force in Chandernagore before May 2, 1950 which corresponded with the Penal Code and Criminal Procedure Code save as regards "things done" before the commencement of the Order and this expression includes offences previously committed. Accordingly paragraph 7 preserved the right to prosecute the accused under the French Penal Code, and the Magistrate or the Session Judge appointed by the Central Government had no respective jurisdiction to commit or try the accused under the French Law in respect of offences which occurred before the commencement of the 1950 Order and it is to be remembered that the petition of compliant was filed before the Magistrate on January 31, 1951. On the above principle, it is obvious that 1950 Order has no application to the notarial bond of December 3, 1949 with which we are concerned here, as it was a thing done before May 2, 1950.

In the above case it was further observed at page 505:

Paragraph 7 of the Order states that all laws in force at the date of the commencement of the order remained in force as regards prior offences. The reference to the enactments in the schedule which include both the Penal and the Criminal Procedure Code shows that both the substantive and the adjective penal laws were preserved in respect of such prior offences.

Paragraph 7 exempts from its operation things done before May 2, 1950 and also connected procedural laws if action is omitted to be taken in respect thereof before the said date. If any proceedings had been taken prior to May 2, 1950 in respect of such transaction or thing happening prior to that date, such proceeding under provisions of paragraph 7 of the said Order would have to be conducted by the corresponding Indian Law mentioned in its schedule. Accordingly proceeding under French Procedure Code if pending on May 2, 1950 would have to be carried on by our CPC 1908 which along with Bengal, Agra and Assam Civil Court Act 1887 was made applicable to Chandernagore with effect from the said date.

29. No step in the present case was taken for execution of the bond till April 9, 1956 and accordingly the position seems to be that both the French substantive law as also the French adjective law prior to May 2, 1950 in respect of the prior transactions including the transaction before us, were preserved. The creditor had the right to pursue his remedy by putting in execution of the bond under the French Law as such right was preserved in its entirety and 1950 Order did not alter the position of the parties as under the French Law. Accordingly notwithstanding the promulgation of 1950 Order, the creditor here was entitled

to enforce his bond under the French Law by execution straightway without recourse to suit and obtaining a decree thereon.

30. The Central Government since May 1, 1950, by orders made appointments of Administrators, District Judge, Subordinate Judge, Munsif and other officers in Chandernagore and extended application of various other enactments and rules to Chandernagore with or without modifications. The Indian Limitation Act, 1908 was extended by order dated May 24, 1952 with the following modification.

In Sub-section (2) of section 29 for the words "special or local law" wherever they occur, substitute the words "special law or local French law."

As a result of this notification which has not been amended or abrogated the limitation for institution of suits or proceedings provided in the French law has been preserved in its entirety.

31. On February 2, 1951 the Treaty of Cession of the Territory of the Free Town of Chandernagore was signed at Paris between the Presidents of India and French Republic. The instrument of Ratification of the said Treaty was signed by the President of India on May 30, 1952 (published in Gazette of India Extraordinary on August 19, 1952 Part II Section 3 p. 795). Article 1 thereof is as follows:

France transfers to India in full Sovereignty, the territory of the Free Town of Chandernagore.

Article VIII is as follows:

Art. VIII. Judgments and decrees passed before 2nd May 1950 by French judicial authorities having jurisdiction over the territory of the Free Town of Chandernagore and which have become final shall be executed by the appropriate Indian authorities.

Appeals which lie from judgments and decrees passed by the said authorities before 2nd May, 1950 shall subject to the law of limitation in force immediately before the said day, be filed and disposed of as though the said territory had not been transferred to India.

Judgments and decrees from which appeals are pending on 2nd May, 1950 shall be dealt with by the judicial authorities before whom such appeals are pending.

The provisions of the first paragraph of this Article regarding the execution of the judgments and decrees shall apply to the decisions of judicial authorities made under the second and third paragraphs of this Article." On June 9, 1952 Chandernagore was de jure transferred to India. On June 30, 1952, the President under powers of Article 243(2) promulgated the Chandernagore (Administrative) Regulation 1952, hereinafter referred to as 1952 Regulation.

32. "Law" under this regulation included laws in force immediately before the appointed day (June 9, 1952) including any law made by the Government of the

French Republic (vide para 2(e)). Paragraph 10 of the Regulation is as follows:

Para. 10. Special provision in the application of certain laws. Notwithstanding anything contained in the Regulation or in any law in force in the free town of Chandernagore on the 2nd day of May, 1950.

(a) all proceedings, civil or criminal which immediately before the aforesaid date, were pending in any court in Chandernagore shall, by virtue of this Regulation, stand transferred or be deemed to have been transferred to the corresponding court constituted under the Bengal, Agra and Assam Civil Courts Act, 1887 (Xii of 1887) or the Code of Criminal Procedure, 1898 (Act V of 1898), as the case may be:

(b) any decree, order or sentence made or passed by any court of competent jurisdiction immediately before the aforesaid date shall for all purposes, have effect as if it were a decree, order or sentence made or passed by the corresponding court constituted under the Bengal, Agra and Assam Civil Courts Act, 1887 or the Code of Criminal Procedure, 1898 as the case may be:

(c) the provisions of the Code of Civil Procedure, 1908, (Act V of 1908) or the Code of Criminal Procedure, 1898, as the case may be, shall apply to all proceedings instituted after the 2nd day of May, 1950, and so far as may be, to all cases pending in any civil or criminal courts on the aforesaid date.

33. By this regulation, all proceedings pending immediately before May 2, 1950 stood transferred or deemed to be transferred to the corresponding court constituted under Bengal, Agra, Assam Civil Court Act or the Code of Criminal Procedure. Any decree order of sentence passed by any court of competent jurisdiction before May 2, 1950 was to have effect passed by the corresponding courts of the said Acts. Provisions of the CPC or of Criminal Procedure were made applicable to all cases instituted after May 2, 1950 or pending on that date. The provisions about pending matters on May 2, 1950 was necessary as Chandernagore by then became a part of India.

34. After the de jure transfer of Chandernagore to India on June 9, 1952, it could be said that the Article 20 of the decret providing for executability of notarial bond within the French territory remained unenforceable, as Chandernagore was no longer a French possession. Such right however was made enforceable in law by paragraph 8 of the 1952 Regulation which is as follows:

Para 8. Existing laws to continue save as otherwise expressly provided in this Regulation all laws in force in the free town of Chandernagore immediately before the appointed day (June 9, 1952) shall continue in force repealed or amended by a competent Legislature or authority.

35. It is thus obvious that all laws in force before June 9, 1952 became enforceable by the 1952 Regulation. The law relating to the executability of the notarial bond was in force before the said date and such law was preserved and continued to be valid and enforceable after the de jure transfer of Chandernagore

by the said provisions of paragraph 8 of the 1952 Regulation, though under its clause (c) of paragraph 10 it could be enforced under the provisions of Code of Civil Procedure. Thereafter tracing the sequence of events it appears that the Calcutta High Court's jurisdiction was extended to Chandernagore by the Calcutta High Court (Extension of Jurisdiction) Act, 1953.

36. In the unreported decision in (2) F.M.A. No. 50 of 1953 (S.R. Das Gupta and Mallick JJ.) decided on January 20, 1955, it was held that the notarial bond had the force and effect of a decree and as the proceeding was pending on May 2, 1950 it could be carried on, by the 1950 Order, under the provisions of the Code of Civil Procedure, 1908.

37. In (6) Sachindra Nath Das v. Lilabati Dasi 57 C.W.N. 522, decided on May 9, 1952, it was held that the decree in question was passed on April 12, 1950 before 1950 Order came into operation and "The procedure for setting aside the decree will therefore be governed by the French Law under the saving clause of section 7 of the aforesaid Order and the Courts constituted under the Bengal, Agra, Assam Civil Court Act had then no jurisdiction to try the case under the French Code.

38. This position stated earlier continued till the Chandernagore (Merger) Act, 1954 came into force with effect from October 2, 1954 which was the appointed day under its provisions. Chandernagore thereby became a part of West Bengal and all laws relating matters of List I and List III of the Seventh Schedule to the Constitution, in force immediately before October 2, 1954 in the State of West Bengal thereby extended to or came into force in Chandernagore subject to provisions for repeal and savings. The relevant provisions are in sections 17 and 18 as set out below:

17. Extension of laws to Chandrenagore : All laws which, immediately before the appointed day, extend to or are in force in the State of West Bengal generally shall as from that day, extend to, or as the case may be, come into force in, Chandernagore.

18. Repeal of corresponding laws and savings (1) Any law in force in Chandernagore immediately before the appointed day (hereinafter in this Act referred to as the "corresponding law") which corresponds to any law referred to in Section 17 whether such corresponding law is in force in Chandernagore by virtue of the Chandernagore (Application of Laws) Order, 1950 or by virtue of any notification issued under the Chandernagore (Administration) Regulation, 1952 or otherwise, shall, as from that day, stand repealed in Chandernagore.

(2) The repeal by sub-section (1) of any corresponding law shall not effect

(a) previous operation of any such law; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under such law; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any such law; or

(d) any investigation, legal proceeding or remedy in respect of such right, privilege, obligation liability, forfeiture or punishment as aforesaid, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

Similarly all laws relating matters of List II of the Seventh Schedule to the Constitution in force immediately before the said date in State of West Bengal by the Chandernagore (Assimilation of Laws) Act 1955 (West Bengal Act IV of 1955) extended to or came into force in Chandernagore : we are, however, not concerned here with this enactment.

39. As we have seen, by the 1952 Regulation the right of the holders of notarial bonds to execute it without recourse to suit was duly preserved. Notwithstanding the extension of laws in force in West Bengal to Chandernagore and repeal of corresponding laws by the Merger Act, the combined effect of clauses of sub-section (2) of section 18 is to preserve unaffected the right acquired by the previous operation of any law in force before October 2, 1954 and the remedy in respect of such right. The notarial bonds, (which could even be made and executed till October 2, 1954 according to the decision in (3) Sourindra v. Bhupati 63 C.W.N. 961, as the relevant decret was repealed only by the Merger Act), could therefore be put to execution without recourse to suit as under the French law. The procedure for execution under the French law, in view of clause 10(c) of 1952 Regulation was however no longer available as the CPC was made to apply to all proceedings instituted after May 2, 1950. According to Article VIII of the Treaty and paragraph 10(2) of 1952 Regulation, such bonds bearing date before May 2, 1950 which in effect are decrees under the French law and to be deemed as such could be executed in Courts constituted under the appropriate statute the Bengal, Agra and Assam Civil Court Act at Chandernagore brought into existence under 1950 Order. In this state of affairs, we find that in the case before us, the petition for execution of the notarial bond was drawn up in terms of the provisions of Order 21 Rule 11 of the CPC and was filed on January 19, 1956 before the Court of competent jurisdiction. Such application would be maintainable if not barred by the law of Limitation under the relevant law.

40. As has been pointed out by the learned Subordinate Judge, Limitation under Article 2262 of the French Civil Code prescribes a period of thirty years was and over this there is no dispute. When the Limitation Act 1908 was extended to Chandernagore, French local law was expressly preserved by incorporating it in section 29(2) of the Limitation Act. Accordingly the limitation for filing petition for execution as in the present case is thirty years from the date of notarial bond which is December 3, 1949. The application for execution is thus not barred by limitation. As there is no other legal impediment, the creditor respondent is entitled to proceed with the execution and the debtor appellant's objection on

the ground of the non-executability of the bond after merger of Chandernagore or of limitation cannot be sustained.

41. The question referred to the Special Division Bench may therefore be answered as follows:

(a) The notarial bond (Grosses copy) under the French law in relation to the Indian law is executory in character without recourse to suit and it can be enforced as if it were a decree, by execution under the provisions of the Code of Civil Procedure.

(b) The article for making application for execution of notarial bonds at Chandernagore is the relevant article in the French Law providing a period of thirty years therefore, which article is to be deemed to be incorporated in the Indian Limitation Act, 1908 by the notification referred to above.

The appeal in the circumstances should be dismissed as proposed.