
(1977) 01 DEL CK 0007

In the Delhi High Court

Case No : Election Second Appeal No. 18 of 1972

Trikha Ram Ved Parkashand Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-01-1977

Acts Referred:

Citation : AIR 1978 Delhi 73 : (1977) ILR Delhi 85

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : S.N. Anand and B. Dayal, for the Appellant;

Judgement

B.C. Misra, J.

(1) This order will dispose of three ESAs (No. 18 19 and 20 all of 1972), which are between the same parties and raise a common question, of law. These appeals have been filed against a common order of Mr. J. D. Jain, Additional District Judge, dated 5th June, 1972, by which he has dismissed the appeals and maintained the order of the Sub-Judge, dated 3rd September, 1971, dismissing the objections of the appellants and ordering restitution of the decretal amount.

(2) In these appeals, appellant No. 1, Trikha Ram Ved Parkash, is plaintiff, while appellant No. 2 is the surety. The plaintiff firm had instituted three suits for recovery of damages on account of no delivery of goods, which had been booked with the Railway and had not been delivered on account of being looted during the disturbances in September, 1947 at the time of the partition of the country. By judgment dated 30th November, 1951 the trial court decreed the suits of the first appellant. On appeal the High Court allowed the appeals and dismissed all the three suits. The judgment of the High Court was pronounced on 28th August, 1957. During the pendency of the appeal, the plaintiffs were allowed to withdraw the decretal amount deposited in the court on furnishing security and appellant No. 2 offered the surety.

(3) The plaintiff appellants then moved the High Court on 8th March, 1960 for

grant of certificates to appeal to the Supreme Court, which were granted and on furnishing requisite security for costs the appeals to the Supreme Court were declared to be admitted by the High Court by order dated 16th May, 1960. The printed record of the appeals was transmitted to the Supreme Court. The appellants thereafter did not take any steps whatsoever to prosecute the appeals in the Supreme Court. They neither filed the petition of appeal, nor did they lodge any statement of the case. Summons for non-prosecution of the Supreme Court Appeals was issued by the registry and eventually by order dated 25th August, 1965 the Supreme Court dismissed all the three appeals of the appellant firm. In this way, the fate of the suits of the appellant firm was finally sealed. This was, however, not the end of the matter and trouble arose in restitution of the decretal amounts, which the appellant firm had; obtained from the court upon security.

(4) The Union of India, respondent herein, on 25th October, 1961 made an application for restitution of the decretal amounts. On 8th January, 1962 the appellants applied for stay of restitution. Accordingly, on 3rd November, 1962; the execution court by consent of both the parties stayed the restitution application sine die. This happened during the pendency of the proceedings for appeal to the Supreme Court.

(5) On 30th January, 1969 the respondent Union of India, made an application for revival of the application for restitution mentioned above. This application was revived and contested by the appellants. The primary objection was that the application for restitution was barred by time. The surety, appellant No. 2, also raised an objection that the application was not sustainable against him and the remedy of the respondent was by way of suit. On the pleadings of the Parties, the following issue was framed in all the three cases :

""Whether the application under S. 144, CPC is within time? Opa (Onus objected to)."

The learned Sub-Judge repelled the objections of the appellants and held the applications to be within time. The appeals against the same filed before the lower appellate court failed. Hence these second appeals in this court.

(6) Mr. Anand, Advocate, has appeared to support the appeals and has raised two contention that the applications are barred by Article 182 of the Limitation Act of 1908, (which is applicable to the case) for two reasons, namely (i) there was no appeal before the Supreme Court, and (ii) the order of the Supreme Court dismissing the appeals for non-prosecution was not a judicial consideration or determination of the appeals and as such the respondents cannot have the benefits of the enhanced period of limitation prescribed by clause 2 of the said provision.

(7) The material portion of Article 182 of the Limitation Act reads as follows :
"For the execution of a decree Three 1, The date of the decree or order of any Civil Court years or order, or not provided by Article 183 2, (Where there has

been an or by section 48 of the Code appeal) the date of the final of Civil Procedure, 1908 decree or order of the (V of 1908) Appellate Court or the withdrawal of the appeal, Article 183 provides for enforcement of a judgment decree or order of any court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of the Supreme Court and prescribes 12 years period of limitation. Article 181 is a residuary article for all applications for which no period of limitation is provided by the Limitation Act or by section 48 of the Code of Civil Procedure. Under the residuary article the period is three years commencing from the date the right to apply accrues.

(8) It may, at this stage, be noticed that the Limitation Act of 1908 has been repealed and replaced by the Limitation Act of 1963 and Article 182 has been substituted by Article 136 and prescribes the period of 12 years for execution of all decrees and orders of the civil court including orders of the Supreme Court and the problem of three years limitation and steps in aid have been set at rest. Article 137 is the successor of the residuary Article.

(9) The counsel for the parties are agreed that the applications giving rise to the appeals are governed by Article 182 of the old Limitation Act. The claim for restitution arises on and in pursuance of the order of the High Court dated 28th August, 1957 allowing the appeals of the respondent. If clause I of Article 182 applies, then obviously the restitution applications are barred by time. Reliance has, however, been placed on clause 2. Clause 2, as the language reads, still provides for execution of the order of decree aforesaid but postpones the commencement of the limitation from the date of the initial decree to the date of the final decree or order of the appellate court; in the instant case the Supreme Court. Had the appeals been finally decided by the Supreme Court on merits and it was sought to enforce the order of the Supreme Court, in that case limitation would be 12 years under Article 183 and not Article 182 which would not come into play. We, have Therefore, to consider whether the application of the respondent is within time in view of clause 2 of Article 182 and in this context I will examine the contentions of the counsel for the appellants. 1. Whether there was appeal to the Supreme Court ?

(10) The first appeal to the High Court lay u/s 96 of the. Code of Civil Procedure. Any party who felt aggrieved by it and desired to appeal to the Supreme Court had to base his claim on sections 109 and 110 of the Code (apart from the Constitutional provisions). The heading of section 109 is-"Appeals to the Supreme Court", and the language of the section is to the effect that subject to the provisions.....of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgment, decree or final order passed on appeal by a High Court..... Section 110 prescribes the conditions, the fulfillment of which entitles the party to appeal. Order 45 of the Code provides the procedure for appealing to the Supreme Court. Rule 2 lays down that whoever desires to

appeal to the Supreme Court shall apply by petition to the Court whose decree is complained of. Rule 3 requires the grounds of appeal to be stated. The further rules provide for determination of the dispute regarding the valuation. Rule 7 provides that where a certificate is granted the applicant is called upon to furnish the requisite security and deposit required printing charges. Rule 8 provides that where such security has been furnished and deposit made to the satisfaction of the court, the court shall declare the appeal admitted, give notice thereof to the respondent and transmit to the Supreme Court under the seal of the Court a correct copy of the said record. Rule 9 provides that at any time before the admission of the appeal the court may, upon cause shown revoke acceptance of any such security and make further directions thereon. Rule 13 provides for powers of the court to be exercised pending appeal in the Supreme Court.

(11) These provisions of law leave no room for doubt that all these steps are essential to be taken by a party who wishes the appeal to the Supreme Court and the High Court having been given the power under Rule 8 to declare the appeal admitted upon fulfillment of the prescribed condition and it has a duty to transmit the record to the Supreme Court and give notice thereof to the respondent. These steps are not to be taken by any party, who does not want to appeal, but whoever wishes to appeal has got to take such steps. The reason for these steps under Order 45 is that before attainment of independence, the appeals lay to the Privy Council in England and taking of various steps in connection with the appeal including furnishing security, admission of appeal and printing of record would have proved onerous and expensive and so provisions had been made in the statute for all steps to be taken in the High Court in India in relation to the appeals to the Privy Council. The jurisdiction of the Privy Council has been taken away and conferred first upon the Federal Court and then the same has been acquired by the Supreme Court and the provisions of law are, substantially the same. The result is that the legal position has remained the same. Proceedings under Order 45 are certainly proceedings in and for appeal to the Supreme Court and the contention of Mr. Anand that the appeal to the Supreme Court only commences on the presentation of a petition or appeal in the Supreme Court is too narrow to be taken. Even on the contention of Mr. Anand, it is impossible to deny that an appeal to the Supreme Court must undoubtedly be governed by the Rules of the Supreme Court and there is no scope for the argument that the proceedings complying with the said rules are not appeals to the Supreme Court.

(12) I shall, Therefore, consider the Supreme Court Rules, 1959 (as then applicable) to find out if they justify any different conclusion. Order Xii of the said Rules provides that subject to any special directions which the court may give in any particular case, the provisions of Order Xlv of the Code, and of any rules made for the purpose by the High Courtso far as may be applicable, shall apply in relation to appeals preferred under Article 132(1), 133(1) and 135 of the Constitution. Rule 2 provides that the appellant who has obtained a certificate from the High Court may at any time prior to the making of an order admitting

the appeal, withdraw the appeal on such terms as to costs and otherwise as the High Court may direct. Rule 3 provides that where an appellant, having obtained a certificate from the High Court, fails to furnish the security or make the deposit required, that court may, on its own motion or on application in that behalf made by the respondent cancel the certificate and may give such directions as to the costs of the appeal and the security entered into by the appellant as it shall think fit or make such further or other order as the justice of the case requires. Rule 4 provides that where an appellant whose appeal has been admitted desires, prior to the dispatch of the record to the Supreme Court, to withdraw his appeal, the High Court may, upon an application by him, grant him a certificate to the effect that the appeal has been withdrawn, and the appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without an express order of the Supreme Court, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the High Court may think fit to direct. Rules 4A and 5 deal with the other situations of appeals on certificate by the High Court. Order Xii Therefore, clearly lays down the various stages at which the appellant may withdraw his appeal by an order of the High Court without an order of the Supreme Court by the force of the Rules of the Supreme Court. But obviously the appeal that will be withdrawn will be the one that is an appeal to the Supreme Court and not in the High Court. Rule 5 provides that where the appellant, whose appeal has been admitted fails to show due diligence in taking all necessary steps in connection with the preparation of the Record, the Registrar of the High Court shall call upon the appellant to explain his default, and if no Explanation is offered, or if the Explanation offered is unsatisfactory, the said Registrar shall call upon the appellant to show cause before the said High Court why a certificate should not be issued that the appeal has not been effectually prosecuted by the appellant, and the High Court has been given the power to dismiss the appeal for non-prosecution without an express order of the Supreme Court.

(13) In the instant case, all the provisions of Order Xii had been complied with. The appellant had applied for and obtained a certificate on furnishing security, and had the record printed and transmitted to the Supreme Court. So the provisions of Order Xii would not apply to the instant case, except to show that the appeal which the High Court was dealing with was an appeal to the Supreme Court.

(14) The other provisions of the Supreme Court Rules indicate the procedure after the dispatch of the record. Order Xv Rule 6 provides that after the record has been made ready, the Registrar of the High Court shall at the expense of the appellant transmit to the Registrar of the Supreme Court the requisite number of copies and give notice of the dispatch to the parties. Rules 7 and 7B read as follows .- .

"7.As soon as the record is received in the Registry of this Court, it shall be registered in the said Registry with the date of arrival, and the names of the

parties. 7B. Appeals shall be numbered consecutively in each year in the order in which they are registered."

Further provisions of this Order allow the parties to inspect the record and to extract all necessary particulars there from and then the parties are allowed to enter appearance.

(15) In the instant case it is significant to note that notice of the dispatch of the record had already been served on the respondent. Order Xvi makes further provisions and it is the main contention of Mr. Anand that the provisions of this order had not been complied with. In this Order, Rule I requires the appellant to enter appearance before taking any steps in the prosecution of the appeal and Rule 2 allows the appellant to lodge his petition within the requisite time and the notice of the petition of appeal is required by Rule 5 to be served on the respondents. Rule 6 provides that where the appellant has not lodged his petition of appeal desires to withdraw his appeal, he shall make an application to the Registrar, who will certify to the Registrar of the High Court that the appeal had been withdrawn and the said appeal shall thereupon be deemed to be dismissed as from the date the said certificate without an express order of the Court and the costs of appeal and the security entered into by the appellant shall be dealt with in such manner as the court appealed from may think fit to direct. Rule 7 provides that where an appellant who wishes to withdraw his appeal, shall present a petition to that effect to the Court and on the hearing of any such petition a respondent may apply to the Court for his costs.

(16) The Rules for purposes of the instant cases are contained in Rules 8, 9 and 10 of Order Xvi of the Supreme Court Rules, which read as follows :-

"8.If an appellant fails to take any steps in the appeal within the time fixed for the same by these Rules, or. if no time is specified, it appears to the Registrar that he is not prosecuting his appeal with due diligence, the Registrar shall call upon him to explain his default and. if no Explanation, or no Explanation which appears to the Registrar to be sufficient, is offered, he may issue a summons calling upon him to show cause to the Court why the appeal should not be dismissed for want of prosecution. 9. The Registrar shall send a copy of the summons mentioned in the last specified Rule to every respondent who has entered an appearance. 10. The Court may, after hearing the parties, dismiss the appeal for non-prosecution or give such other directions thereon as the justice of the case may require."

The substance of these Rules is that if the appellant fails to take necessary steps as prescribed by Order Xvi and he appears to be not prosecuting the appeal with due diligence, the Registrar calls upon him to explain his default, and if no Explanation is offered, a summons is issued to him to show cause to the court why the appeal be not dismissed for non-prosecution. A copy of the summons is also sent to every respondent who has entered appearance. As provided by Rule 10, the court, after hearing the parties, is empowered to dismiss the appeal for

non-prosecution or give such other direction as the justice of the case may require. In the instant cases, the order that has been passed by the Supreme Court is clearly under Rule 10 and it reads thus :-

""The summons for non-prosecution in the appeals above- mentioned being called on for Orders before this Court on the 25th day of August, 1965, Upon Perusing the papers This Court Doth Order That the appeals above-mentioned be and are hereby dismissed for want of prosecution."

What the Supreme Court has dismissed are the appeals and it is difficult to agree that there was no appeal pending before the Supreme Court.

(17) In AIR 1932 165 (Privy Council) , the Judicial Committee observed that there was no definition of appeal in the Civil Procedure Code, but there was no doubt that any application by a party to an appellate court, asking it to set aside or revise a decision of a Subordinate Court, was an appeal within the ordinary acceptation of the term, and that it was no less an appeal because it was irregular or incompetent. The facts of this case have an interesting bearing on the facts of the instant case. In that case, the Subordinate Judge had delivered a judgment on 24th June, 1920 against which a decree was drawn up on 2nd August, 1920, but under date 24th June. The party on 27th August, 1920 filed an application to the High Court purporting to be an appeal from the order dated 24th June, 1920 and alleging that no decree had been drawn up and the party raised grounds of objection against the order of the Subordinate Judge. This appeal though irregular in form as not being an appeal from the decree of the Subordinate Judge, and being insufficiently stamped for this purpose, was admitted and heard in due course by the High Court. Eventually, an objection was taken to the form of appeal and the amendment sought for was refused and in the result the appeal was dismissed both on the ground of aforesaid irregularity and upon merits by an order of the High Court, dated 24th August, 1922. On execution being taken out, an objection was raised that under Article 182 of the Limitation, the limitation for execution commenced from the decision of the Subordinate Judge and not the High Court and so manifestly the execution application was barred by time. Benefit was sought for commencement of the time from the date of decision of the High Court in 1922. To this an objection had been raised that there was no appeal at all, but only an abortive attempt to appeal and that an appeal must be the one where both the parties had been impleaded and the whole decree had been imperiled and. Therefore, the benefit of the extended period of limitation under clause 2 could not be availed of. This objection having been repelled by the High Court it was reagitated before the Judicial Committee. which noticed the conflict of decisions in India and finally observed that the expression that "where there has been an appeal" was no warrant for reading into the words any qualification either as to the character of the appeal or as to the parties to it. The Judicial .Committee further observed that it was at least an intelligible rule that so long as there was any question sub-judice between any of the parties those affected shall not be compelled to pursue

the so often thorny part of execution which, if the final result was against them, might lead to no advantage; nor in such a case as this was the judgment debtor prejudiced; he may indeed obtain the boon of delay, which was so dear to the debtors, and if he was virtuously inclined there tent. It also observed that if there were any matter sub-judice bet-whether there be or be not a theoretical justification for the provision in question, the .words of the article were plain and that there having been in that case an appeal from decree of the Subordinate Judge. the time for execution ran from the date of the appellate court, though appeal to it might have been incompetent or irregular.

(18) This case very strongly supports the contention of the respondent and the finding of the lower appellate court. In the case before the Judicial Committee there was legally no appeal, since the appeal against an order did not lie and no appeal had been filed as against a decree. Yet the sub- judice dicial Committee has strongly observed that appeal is no less an appeal because it was irregular or incompetent, It also observed that if there were any matter sub-fudice between the parties, then the decree-holder was not bound to take out execution. Consequently, the decree-holder cannot be deprived of the opposite party files an appeal or proceeding in appeal jeopardising the decree sought to be executed and by some method of his own, whether tricky or otherwise; he after the expiry of sufficient time, allows the appeal either to abate or to be withdrawn or dismissed for no prosecution or otherwise. The law in such cases is clear that the limitation for execution of the decree will commence from the final order passed by the appellate court and not from the decree of the trial court. This authority of the Privy Council has been quoted with approval in Mannan Lal Vs. Chhotaka Bibi, (Dead) by Lrs. B. Sharda Shankar and Others, .

(19) Mr. Anand has rightly not challenged the rule of law laid down by the Privy Council in the above mentioned case. But he contends that the words in the Privy Council judgment are "an application to the court of appeal for revising the order" and in the instant cases, the application had been moved only to the High Court. In my opinion, this will not make any difference. So far as the High Court is concerned, it had finally disposed of the appeals by its judgment delivered in August, 1957 and thereafter it was, if I can with respect use the expression, functus officio. All the proceedings that took place in the High Court for grant of certificate and admission of the appeal were for and in an appeal to the Supreme Court for the purpose of revising the decree that had been passed by the High Court. I, Therefore, conclude that after the decree of the High Court all the steps that a party takes in the High Court or in the Supreme Court for purposes of appealing to the Supreme Court and obtaining a decision of the Supreme Court to review the judgment of the High Court are steps in the appeal in the Supreme Court, whether they are taken in the High Court or in the Supreme Court; provided they are taken in accordance with the relevant statutory provisions, namely, the rules contained in the CPC and the Rules of the Supreme Court framed under Article 145 of the Constitution of India. As a result, I find that there is no substance in the first contention of Mr. Anand and I have no

hesitation in rejecting the same. 2. Whether dismissal of the appeal by the Supreme Court was a Judicial act ?

(20) The second contention of Mr. Anand is equally devoid of force. As noticed above, the dismissal of the appeal by the Supreme Court was in exercise of powers specified in Rule 10 of Order Xvi of the Supreme Court Rules. This power is exercised by the court and envisages a hearing of both the parties and it enables the Court the discretion to either dismiss the appeal for non-prosecution or give such other directions as justice of the case may require. Where the court of justice properly constituted is enjoined to hear the parties and pass a judicial order in its discretion, there cannot arise any doubt that the order is judicial and cannot possibly be called a ministerial or administrative. The power has been exercised after issue of summons to the party and notice to the other party and a hearing took place before the court and the court had to and did apply its mind to the facts of the case and it passed a judicial order according to law.

(21) Moreover, cause 2 of Article 182 of the Limitation Act does not require the order of the appellate court to be in any particular form or shape. The requirement is only that it should be final, that is to say not an interlocutory order and it should be an order of the court terminating the proceedings before the appellate court. It is interesting to observe that even the withdrawal of the appeal, which does not need a Judicial order of the court and solely depends on the volition of the appellant furnishes a starting point of limitation under this Article-

(22) At all events, there are a number of authorities to support the contention of the respondent that the dismissal of the appeal on any ground whatsoever so long as it terminates the proceedings before the appellate court are final orders of the appellate court within the meaning of this clause.

(23) In *Bank of Upper India v. Sri Krishna Das*, Air 1935 Lah 771, an appeal dismissed in default of appearance under Order 41 Rule 17 was construed as a final order within the meaning of this clause. In *Badhu Ram v. Mastaq Shah*, Air 1935 Pesh. 129, it was observed that the time for execution ran from the final order of the Appellate Court, whether that be an order of dismissal in default of prosecution or an order passed on the appeal on merits. In *P. Ram Kumar and Another Vs. Chaube Rudra Dutt*, , and *Ram Ranbijaya Prasad Singh Vs. Kesho Prasad Singh*, , it was held that an order dismissing an appeal for want of prosecution was a judicial order disposing of the appeal and since no further appeal was provided against such an order, it was a final order within the meaning of clause 2. In *Subsi Shia Majlise v. Savitri Devi*, 1965 Bljr 583, it was held that an appeal dismissed for failure to pay printing costs, limitation for execution started from the date of the dismissal. In *Mst. Santi and Another Vs. Pritam Singh Sarwan Singh*, , it was held that if an application for leave to appeal in forma pauperis was dismissed by a conditional order requiring the appellant to pay requisite court fees by a particular date, limitation for execution started from the date on failure to pay. This case, in effect, repels the contentions of Mr.

Anand, since an appeal for leave to appeal cannot strictly be called an appeal, which will become an appeal only on paying the requisite court-fees or on the court allowing the appeal to proceed in forma pauperis.

(24) In AIR 1933 68 (Privy Council) , it was held that an order of a final Appellate Court holding that the appeal had abated and refusing to set aside the abatement was a "final order of the Appellate Court" within the meaning of cl. 2, as such an order gave a new starting point for the period of limitation prescribed by Article 182. The argument that the limitation should start from the date of the abatement of the appeal upon the death of the party, which had occurred earlier was repelled.

(25) Mr. Anand, on the other hand, strongly relies on Chandri Abdul Majid v. Jawahir Lal Air 1914 Pc 66 which corresponds to 36 All. 350, and Sachindra Nath Roy v. Maharaj Bahadur Singh 49 Cal. 203, which corresponds to Air 1922 P.C. 187 . His Submission is that the Privy Council had in the first noted case observed that mere dismissal of the appeal for non-prosecution did not amount to a judicial order; and so the decision of the Supreme Court is not a judicial order.

(26) In Chandri Abdul Majid's case AIR 1914 Pc 66 the rule under which the appeal before the Judicial Committee had been dismissed is quoted at the footnote of 2nd 36 All. 284, which reads as follows :

Order in Council, dated 15th June. 1953: Rule V:- That a certain time be fixed within which it shall be the duty of the appellant or his agent to make such application for the printing of the transcript, and that such time be within the space of six calendar months from the arrival of the transcript and the registration thereof in all matters brought by appeal from Her Majesty's colonies and plantations east of the Cape of Good Hope, or from the territories of the East India Company, and within the space of three months in all matters brought by appeal from any other part of Her Majesty's dominion abroad, and that in default of the appellant or his agent taking effectual steps for the prosecution of the appeal within such time or times respectively the appeal shall stand dismissed without further order".

(27) The rule shows that the dismissal for want of prosecution under the circumstances prevailing in that case was automatic without an order of the court. Therefore, there was no order dismissing it. This rule of the Judicial Committee has itself been altered in 1924 and thereafter there is no case of dismissal of the appeal by the Privy Council for want of prosecution without an order of the court. Moreover, in Abdul Majid's case the Privy Council was considering as to whether the decree that had to be executed was the decree of the High Court appealed from or the order in Council of the Privy Council. There is no doubt that in case the appeal in the Privy Council was dismissed for non-prosecution the decree that was to be executed was of the High Court appealed from. (In the instant cases, the decree that has to be executed is of the High

Court and not of the Supreme Court.) So far as the Rules of the Supreme Court are concerned, the Rules mentioned -above provide for an express order of the court dismissing the appeal for non-prosecution. So, Abdul Majid's case (supra) has no application to the facts of the instant cases.

(28) Mr. Bishamber Dayal, learned counsel for the respondent has submitted that the Supreme Court in Mahjibhai Mohanbhai Barot Vs. Patel Manibhai Gokalbhai and Others, has held that an application for restitution filed u/s 144 of the CPC is really an application for execution arising upon the variation of the decree by the court of appeal and is governed by Article 182 and not article 181 and it is not an independent application. As such in obtaining restitution in the instant cases, the decree-holder is trying to execute the decree of the High Court which had been passed on appeal and the limitation for it is governed by Article 182 of the Limitation Act. Mr. Bishamber Dayal points out that if the decree or order of the Supreme Court were to be executed, then the question raised in these cases of the applicability of Article 182 would not arise, but the limitation would be governed by Article 183 of the Limitation Act, 1908, which prescribes 12 years period of limitation. To obtain restitution in execution of the appellate decree of the High Court, Article 182, Therefore, applies. Clause I gives the starting point of limitation, as the date of the decree which in the instant cases, will be August, 1957. The second clause of the same Article prescribes the extended period of limitation. The party is trying to execute the decree of the High Court, but the starting point of the limitation for the purpose is the date of the final order of the court of appeal. In this view of the matter, it is not at all material as to whether the Supreme Court had dismissed the appeals for non-prosecution by a judicial order or otherwise. The only important point for consideration, in applying clause 2 of the said Article is whether the appeals in the Supreme Court had been terminated and whether a final order, as distinct from an interlocutory order, had been passed in its respect. Both these are fully satisfied in the present cases and the application of the respondent would, Therefore, be within lime.

(29) The decision of the Privy Council in Abdul Majid's case (supra) has been distinguished by the Privy Council itself in its decision reported AIR 1932 165 (Privy Council) , and AIR 1933 68 (Privy Council) . It has also been distinguished in various decisions of the High Courts, namely, P. Ram Kumar and Another Vs. Chaube Rudra Dutt, , Smt. Rabia Bibi and Others Vs. Smt. Mohammadi Bibi, , Maharaja Pateshwari Prasad Singh Vs. Aditya Prasad and Others, , and Kirpal Shah Sant Singh Vs. Shri Harkishan Das Narsingh Das, .

(30) As a result, I find that the second contention of Mr. Anand has no force. Both his contentions are accordingly rejected and the appeals are dismissed and the order of the lower appellate court affirming the order of the execution court is confirmed. The appellants will pay costs of these appeals.