

Ramchandra Sadashiv Vs. Laxman Sadashiv

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Court : Mumbai

Decided On : Nov-19-1906

Reported in : (1906)8BOMLR892

Judge : Batty and ;Heaton, JJ.

Appellant : Ramchandra Sadashiv

Respondent : Laxman Sadashiv

Disposition : Appeal allowed

Judgement :

Batty, J.

1. In this case an application for the execution of a decree was held to be time-barred, notwithstanding that within three years of its presentation, a prior application for execution had been put in. That prior application was held insufficient for the purpose of saving limitation, on the ground that it was not accompanied by a copy of the decree as required by Rule 80 of the High Court Circulars (Civil) framed-under Section 562, Civil Procedure Code. The objection taken was, that as the prior application did not comply with the requirements of the High Court Rules, it was not in accordance with law, within the meaning of Article 179, Limitation Act.

2. This is a view, which has no doubt been accepted by a Division Bench of this Court, in the case of *Sadashiv v. Bamchandra* (1903) 5 Bom. L.R. 394. That decision however has been criticised and disapproved in the case of *Pachiappa Achari v. Poojali Seenan* I L R(1905) Mad. 557. We have had the opportunity of consulting Mr. Justice Chandavarkar and understand that his Lordship would not now adhere to the decision of his colleague, who pronounced the judgment in *Sadashiv v. Ramchandra*.

3. We think that the proper view to take of the Rule that requires a Darkhast to be accompanied by a copy of the decree, is not that it prescribes the essentials which an application for execution must contain, and which are necessary to constitute the application itself an application in accordance with law, but that it requires something further besides the application itself, an accompaniment extraneous to the application, as a condition precedent to further action by the Court executing the decree.

4. The Limitation Act as an enactment of a restrictive character must be strictly construed: *Umiashankar v. Chhota-lal* (1875) I.L.R. 1 Bom. 19. We must take the Darkhast now in question to be in time, if the previous Darkhast was in accordance with law, notwithstanding that certain accompaniments, accessories or extraneous details may have been wanting and that there may have been a failure to comply with the requirements of rules not strictly affecting the application itself.

5. For these reasons we reverse the decree of the lower appellate Court and return the case to that Court, in order that it may be proceeded with according to law.

6. Costs to follow event.