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SooperKanoon Citation : sooperkanoon.com/477550

Court : Allahabad

Decided On : May-19-1914

Reported in : 24Ind.Cas.215

Judge : Piggott, J.

Appellant : Bhajan Lall

Respondent : Cheda Lall

Judgement :

Piggott, J.

1. This is a decree-holder's appeal. The decree was passed on July 1st, 1909. The application for execution was made on January 24th, 1913, the application being on the face of it barred by time. It is contended that limitation is saved by a payment out of Court of a sum of Rs. 25 said to have been made by the judgment-debtor on November 23rd, 1911. The Courts below have held that they are precluded by the terms of Order XXI, Rule 2, Clause (3) of the Code of Civil Procedure, from recognizing this payment. On behalf of the appellant reliance is placed on various older rulings of this Court of which it is sufficient to refer to the case of Roshan Singh v. Mata Din 26 A. 36 : A.W.N. (1903), 179. This argument overlooks the alteration effected by the passing of Act V of 1908. Comparing Order XXI, Rule 2 of this Act, with Section 258 of the Code of Civil Procedure of 1882, it is clear that certain words have been removed and Ors. added. The former section

was to the effect that an uncertified payment out of Court should not be recognized as a payment or adjustment of the decree. The present section says that such payment shall not be recognized by any Court executing the decree. I agree with the opinion expressed by Messrs. Ameer Ali and Woodroffe in their commentary on the Code of Civil Procedure (Act V of 1908) that it follows from this alteration that an uncertified payment or adjustment cannot now operate to prolong the period of limitation for applying for execution under the Limitation Act. An ingenious suggestion is put forward on behalf of the appellant, although I do not find that it is taken in any definite form in the memorandum of appeal, that the application for execution presented by him on January 24th, 1913, is in itself an application under Order XIX, Rule 2 of the Code of Civil Procedure, certifying the alleged payment of Rs. 25. It is suggested that no period of limitation has been laid down for the making of such an application by the decree-holder, that consequently the Court executing the decree should first of all have allowed the decree-holder to certify his payment and then have proceeded to recognize it and to inquire, if necessary, whether it was actually made. There is some support for this view in the case of Tuka Ram v. Babaji 21 B. 122. That was a case dealing with an instalment decree and cannot be quoted as an authority for the proposition that a decree-holder may certify payments after a decree has become time-barred. A similar point has been before a Judge of this Court recently, vide Gokul Chand v. Bhika 23 Ind. Cas. 753 : 12 A.L.J. 387., where the decision was against the decree-holder. I have no doubt that the Courts below were right in holding that this application for execution was time-barred under Article 182 of the first Schedule to the Indian Limitation Act (IX of 1908) and that they were not competent to enter into an inquiry with regard to the alleged payment of Rs. 25, said to have been made on November 23rd, 1911.

2. I dismiss this appeal with costs including fees on the higher scale.

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