

Abdul Sattar Vs. Masuryadin

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Court : Madhya Pradesh

Decided On : Oct-27-1960

Reported in : AIR1961MP158

Judge : P.K. Tare, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 42 - Order 21, Rule 6; Limitation Act - Schedule - Article 182(5)

Appeal No. : Misc. Second Appeal No. 71 of 1960

Appellant : Abdul Sattar

Respondent : Masuryadin

Advocate for Def. : Y.S. Dharmadhikari, Adv.

Advocate for Pet/Ap. : A. Razak, Adv.

Disposition : Appeal dismissed

Judgement :

P.K. Tare, J.

1. This appeal is by the judgment-debtor, against the order, dated 7-3-1960, passed by Sri H. D. Jha. Second Additional District Judge, Chhindwara, in Civil Appeal No. 11--B of 1950, affirming the order, dated 18-11-1959, passed by Sri L.

P. Agarwala, Civil Judge, Second Class, Sausar, in execution proceedings arising out of a transferred decree, passed by the Munsiff, Allahabad, in Civil Suit No. 233 of 1944, dated 22-12-1945.

2. The respondent, after obtaining a decree for Rs. 2774/9/- and costs amounting to Rs. 426/6/6 and interest at the rate of Rs. 4/8/- per cent per annum on the decretal amount, filed an execution application in the Allahabad Court on 25-11-1948 and also prayed for transfer of the decree to the District Court at Chhindwara for the purpose of execution as the appellant lives within the jurisdiction of that Court. By order, dated, 20-1-1949, the Court passed an order transferring the decree for execution to the District Court, Chhindwara. But in pursuance of the order, the decree was not sent to the District Court Chhindwara, nor was any Certificate of non-satisfaction under Order 21, Rule 6 of the Civil Procedure Code sent to Chhindwara.

3. The respondent filed another execution application in the Allahabad Court on 18-9-1951 and again prayed for transfer of the decree to the District Court, Chhindwara. The Allahabad Court, by order, dated, 4-11-1951, again directed the execution proceedings to be transferred to the District Court, Chhindwara. But, in pursuance of the order, the decree was not sent to the Chhindwara Court nor was any certificate of non-satisfaction sent in pursuance of the order.

4. The decree-holder again filed another execution application in the Allahabad Court on 21-5-1954 with a prayer that the decree be transferred to the Court at Chhindwara. That execution application was dismissed in default on 20-7-1954. Ultimately, on 5-10-1955, a certificate of non-satisfaction of the decree was issued by the Allahabad Court and sent to the District Court, Chhindwara. The decree was accordingly transferred to the Chhindwara District Court. The learned District Judge sent the decree for execution to the Court of Civil Judge at Sausar. The decree-holder filed an execution application at Sausar on 10-12-1957.

5. On behalf of the judgment-debtor, an objection was taken that the execution application was barred by time under Article 182 of Schedule 1 of the Limitation Act. The learned Judges of the Courts below rejected the judgment-debtor's objection on the point of limitation. Hence the present appeal.

6. The learned counsel for the judgment-debtor appellant urged that as the Allahabad Court had already passed an order, dated 20-1-1949, for transfer of the decree to the Chhindwara District Court and as the decree-holder did not take further steps in pursuance of the said order of transfer of the decree, the execution application filed on 10-12-1957 in the Court at Sausar was barred by time under Article 182(5) of Schedule 1 of the Limitation Act. The learned counsel pointed out that the decree-holder, by filing infructuous applications for execution and meaningless prayer for transfers, could not extend limitation in his own favour. After the order of the Allahabad Court, dated, 20-1-1949, transferring the decree for execution, the Allahabad Court had no jurisdiction to pass any further orders. The jurisdiction vested in the transferee Court only thereafter. As such, any infructuous proceedings taken by the decree-holder in the Allahabad Court were of no avail for the purpose of saving limitation under Article 182(5) of Schedule 1 of the Limitation Act.

7. It is, therefore, necessary to see as to what a decree-holder is required to do after he files an execution in the transferor Court wherein he prays for a transfer of the decree for execution to another Court.

8. Section 39 of the Civil Procedure Code provides for transfer of the decree for execution to a Court within the territorial jurisdiction of the same High Court, while Section 40, Civil Procedure Code provides for transfer of a decree to a Court situated in another State. The section provides that the decree is to be executed in such manner as may be prescribed by rules in force in the State where the decree is transferred for execution. Section 41 of the Civil Procedure Code provides that where a decree is sent for execution, the transferee Court shall certify to the transferor Court the fact of such execution or where the transferee Court fails to execute the decree, it has to state the circumstances attending such failure. Further Section 42 of the Civil Procedure Code provides that the Court executing a decree sent to it shall have the same power in executing such decrees, as if it has been passed by itself. The orders passed by the transferee Court are subject to the same rules in respect of appeals as if the decree has been passed by that Court.

9. Further Order 21, Rule 5 of the Civil Procedure Code provides as follows :

'Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, where the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.'

Order 21, Rule 6 of the Civil Procedure Code prescribes the procedure where a Court desiring its own decree to be executed by another Court wishes to transfer the same for execution. It is as follows :

'The Court sending a decree for execution shall send :

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(c) a copy of any order for the execution of the decree or, if no such order has been made, a certificate to that effect.'

10. Order 21, Rule 7 of the Civil Procedure Code provides as follows :

'The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.'

Further, Rule 8 of Order 21 of the Civil Procedure Code provides as follows :

'Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction.'

From the above provisions it would be seen that the transferor Court is not only required to pass an order for transfer of the decree, but it has to transfer the decree for execution to another Court and also to send a certificate of non-satisfaction of the decree to that Court or send the order for transfer. A mere order directing the decree to be transferred for execution in another Court would by itself not have the effect of transferring the decree for execution. Therefore, unless the decree accompanied by the order of transfer and the certificate of non-satisfaction reaches the transferee Court, the decree-holder would not be expected to take further steps in the matter of filing an execution application in the transferee Court. The mere fact that the Court has passed an order for transfer would not deprive the transferor Court of seisin of the execution proceedings.

11. It is well established that even if a decree is transferred for execution to another Court, the transferor Court does not lose jurisdiction to decide certain questions, such as, substitution of legal representatives or granting of instalments to the judgment-debtor. Such interlocutory orders even affecting the recovery of the amount due under the decree can be passed by the transferor Court, in spite of the fact that the decree has been transferred for execution. But, as long as the decree is not actually transferred to the transferee Court, would a decree-holder be able to save limitation by applying to the transferor Court by filing successive applications within limitation? This is the exact question involved in the present appeal.

12. The real test is whether the action of the decree-holder would fall within the meaning of step-in-aid as provided by Article 182 (5) of Schedule 1 of the Limitation Act. The said Article is as follows :

'For the execution of a decree or order of any Civil Court not, provided for by Article 183 or by Section 48 of the Code of Civil Procedure, 1908 (V of 1908).

Three years; or, where a certified copy of the decree or order has been registered, six years.

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application next hereinaftermentioned has been made the date of the final order passed on an application made in accordance with law to the proper Court for execution or to take some step in aid of execution of the decree or order, or

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13. The learned counsel for the appellant urged that in view of the order of the Allahabad Court, dated, 20-1-1949 ordering the decree to be transferred, the decree-holder could not, by filing infructuous execution application or by making infructuous request for transfer of the decree, extend limitation under Sub-clause (5) of Article 182 of schedule 1 of the Limitation Act. It was pointed out that the material fact would be the order of the Allahabad Court directing the decree to be transferred and not the fact of the decree being sent to Chhindwara Court for execution along with the transfer order and a certificate of non-satisfaction.

14. The learned counsel for the appellant invited attention to a case decided by Grille J. C. in Hanumanlala v. Sheonarayan, 31 Nag LR 333 : (ATR 1935 Nag 131). The learned Judicial Commissioner held that an execution application, which has been dismissed in default without any determination as to its propriety, would be effective for the purpose of saving limitation. The learned Judicial Commissioner further held that an oral application would be a step in aid of execution under Article 182 of the Limitation Act if it was necessary to make it in order to obtain the main relief prayed for in the execution application. The real test is whether the proceedings of the execution are advanced by any act done by the decree-holder. If the proceedings are advanced or if it be necessary for the decree-holder to take any steps which would advance his execution, that would

amount to a step in aid. As such, there can be no doubt that the action of the present decree-holder in filing execution application in the Allahabad Court would certainly constitute a step in aid within the meaning of Article 182 (5) of Schedule 1 of the Limitation Act. The said case, instead of helping the appellant, supports the contention of the respondent.

15. The learned counsel for the appellant further invited attention to another case decided by a Division Bench consisting of Pollock and Bose JJ. in *Maruti Bansi v. Nanjappa Chetty*, ILR (1942) Nag 539 : (AIR 1942 Nag 63), where the learned Judges held that an application to recall a decree sent to another Court for execution, and to send it back to that Court for execution, though made to the proper Court would not be a step in aid of execution under Article 182 (5) of the Limitation Act. I am in respectful agreement with the observations of the learned Judges in holding that an application to recall a decree sent for execution would not be a step in aid. As already pointed by me earlier, the relevant test is whether the cause of execution is advanced by any step that the decree-holder, takes, An application for recalling of the decree would certainly not be such a step in aid, as would advance the cause of execution. Therefore, even agreeing with the learned Judges of the Division Bench, I do not find that the said question arises in the present case.

16. In *Prayagdas v. Indirabai*, ILR (1947) Nag 497 : (AIR 1948 Nag 189), Bosc J. (as he then was) held that an application merely to transfer a decree to another Court for execution would not be an application for execution, as it did not state the mode of assistance required of the Court in the matter of the execution of the decree. The learned Judge further held that a subsequent prayer made in another execution application praying for a relief different from the earlier one would not be an application for revival of the earlier execution application. In view of the fresh application of a different nature, the latter execution application was held to be within time under Section 48 of the Civil Procedure Code, as also the question whether limitation was extended on account of a fraud within the meaning of Section 48(1)(b) of the Civil Procedure Code was involved. Therefore, the test as laid down by Bose J. would also be the same, namely the step in aid should advance the cause of the execution.

17. In *Sheolal v. Ramrao*, ILR (1947) Nag 572 : (AIR 1948 Nag 197), Hidayatullah J. (as he then was) held that an application for the transfer of a decree to another Court would be a step in aid of execution within the meaning of Article 182 (5) of Schedule 1 of the Limitation Act. The learned Judge was further of opinion that a step in aid of an execution could be taken before an application for execution of the decree had been made to that Court. Such a step-in-aid would save limitation in favour of the decree-holder under the said Article. I am in respectful agreement with the view of the learned Judge. It is futile for the learned counsel for the appellant to urge that the execution application filed by the decree-holder in the Allahabad Court would not be a step-in-aid within the meaning of Article 182 (5) of Schedule 1 of the Limitation Act. It is to be noted that the cause of execution was advanced, by the act of the decree-holder in filing an execution application in the Allahabad Court.

He had a right to file an execution application in the Allahabad Court as long as the decree was not transferred, for execution to the Chhindwara Court. Such an execution application filed by him in the Allahabad Court would save limitation, at it would amount to a step-in-aid under Article 182 (5) of Schedule 1 of the Limitation Act. The mere fact that an order for transfer had been made by the Allahabad Court would not by itself have any significance, unless the decree were actually sent to the Chhindwara Court along with a transfer order and a certificate of non-satisfaction. The Allahabad Court would not lose seisin of the case and any successive applications made by a decree-holder within the period of limitation would save limitation for him under the said Article.

18. In *Nagireddi v. Kotamma*, ILR (1948) Mad 117 : (AIR 1947 Mad 431), a Division Bench consisting of Horwill and Bell JJ. held that an application for retransfer of the decree from the transferee Court to the transferor Court would be a step in aid of the execution and would save limitation in favour of the decree-holder. The learned Judges further held that the Court to which the decree has been transferred would retain its jurisdiction to execute the decree till it certified the result of the execution under Section 41 of the Civil Procedure Code. I am unable to agree with the view of the learned Judges, as I am bound by a reported ruling of this Court, namely, ILR (1942) Nag 539 : (AIR 1942 Nag 63) (supra),

wherein the learned Judges held that an application to recall the decree sent to another Court would not amount to a step in aid of execution. In case I do not accept the view, I would be required to refer the matter for consideration by a larger Bench. However, it is not necessary to consider that point, as it does not arise in the present case.

19. In *M. Arunachalam Iyer v. K. N. Lingiah and Bros.*, AIR 1953 Mad 71, a Division Bench consisting of Govinda Menon (as he then was) and Chandra Reddi JJ. held that it was up to a decree-holder to file an execution in the transferee Court even before the transfer certificate was received. The learned Judges further opined that the jurisdiction of the transferee Court would begin no sooner the order of transfer is passed and not from the time the transfer certificate is received. I am in respectful agreement with the view of the learned Judges. But, that does not solve the question in the present case.

The question in the present case is whether the decree-holder can save limitation by filing execution applications in the transferor Court even after the order of transfer is made. As already indicated by me earlier, the decree-holder would not lose limitation merely because an order of transfer has been made. If he files applications in the transferor Court, that would amount to a step in aid, which furthers the cause of execution. Although it may be open to him to apply for execution to the transferee Court even before the transfer of the decree along with the certificate of non-satisfaction, he cannot be deprived of limitation, if he takes a step-in-aid in the transferor Court.

20. The learned counsel for the appellant invited attention to the pronouncement of their Lordships of the Supreme Court in *Mohanlal Goenka v. Benoy Krishna Mukherjee*, AIR 1953 SC 65, wherein their Lordships laid down that the Civil Procedure Code did not prescribe any particular form for an application for transmission of a decree under Section 39 of the Civil Procedure Code. It was always open to the Court passing the decree to send it for execution to another Court suo motu. Their Lordships further laid down that an omission to send a copy of the decree or an omission to transmit to the Court executing the decree the certificate referred to in Order 21, Rule 6(b) of the Civil Procedure Code would not

prevent the decree-holder from applying for execution to the Court to which the decree has been transmitted.

As such omission did not amount to a material irregularity within the meaning of Order 21 Rule 90 of the Civil Procedure Code, their Lordships of the Supreme Court held that an auction sale held by the transferee Court could not be set aside on the ground of such an alleged irregularity. Their Lordships further laid down that even an erroneous order passed in execution proceedings would operate as res judicata and would not be open to a challenge at any subsequent stage of the execution proceedings. Thus their Lordships have approved of the view of Govinda Menon and Chandra Reddi JJ. in AIR 1953 Mad 71 (supra), that the decree-holder can apply for; execution to the transferee Court even before the decree is transferred along with the transfer order and a certificate of non-satisfaction.

The exact question of limitation was not for consideration before their Lordships. Therefore, in all humility accepting the dictum laid down by their Lordships of the Supreme Court, I am of opinion that if the decree-holder, instead of filing an execution application before the transferee Court, files an execution application before the transferor Court till such time as the decree is actually sent with a certificate of non-satisfaction to the transferee Court, that would save limitation in favour of the decree-holder under Article 382 (5) of Schedule 1 of the Limitation Act.

In this view, I am supported by some other High Courts. I shall presently refer to those cases. In *Radheshyam v. Devendra*. AIR 1952 Pat 213, a Full Bench of the Patna High Court consisting of Reuben J., Imam J. (as he then was) and Das J. (as he then was) held that where a decree is transferred for execution to another Court, the transferee Court would get jurisdiction to execute the decree as if it were a decree passed by that Court. The transferee Court would retain jurisdiction until it sent a certificate as required by Section 41 of the Civil Procedure Code.

It was further held that in spite of the fact that the decree had been transferred for execution, the transferor. Court would not lose seisin and would be able to exercise jurisdiction to execute the decree except to the extent that the matter had

been sent for execution to the transferee Court. Only in respect of that matter a transferor. Court would not be able to exercise any jurisdiction. In the view of the learned Judges, the jurisdiction of the Court, which passes a decree would always be there to execute the decree in certain circumstances, even in spite of the absence of a certificate under Section 41 of the Civil Procedure Code from the transferee Court.

As regards the limitation, the learned Judges constituting the Full Bench were of opinion that where a decree is transferred for execution to another Court, the question whether an application for execution of the decree made to the transferor Court before the transferee Court has sent a certificate under Section 41 of the Civil Procedure Code-would depend on the fact whether the transferor Court has jurisdiction to grant the relief prayed for. If the transferor Court has the jurisdiction to grant the relief, the application made to the transferor Court would be to a proper Court within the meaning of Article 182 (5) of Schedule 1 of the Limitation Act. Imam J. (as he then was) further observed that the question would depend entirely upon the facts of a particular case.

In the opinion of the learned Judge, if the application for execution was with reference to property within the jurisdiction of the transferor Court, or for the arrest of the judgment-debtor residing within its jurisdiction, then it would be the proper Court. If, on the other hand, the application for execution sought the execution of the decree against property outside the jurisdiction of the Court, which passed the decree or for the arrest of the judgment-debtor residing beyond its jurisdiction, then such an application would not be an application made to a proper Court. In the light of the observations of the learned Judges of the Full Bench, it may have to be examined in each case whether any steps taken by the decree-holder constitute an application to the proper Court under the particular circumstances of a case.

Applying the principle as indicated by the learned Judges to the, facts of the present case, I am of opinion that if a decree-holder files successive execution applications to the transferor Court till the decree is actually sent for execution to the transferee Court along with a certificate of non-satisfaction, that would be an

application to a proper Court within the meaning of Article 182 (5) of Schedule 1 of the Limitation Act, as it would be a step-in-aid, which would advance the cause of execution and would, therefore, be sufficient to save limitation in favour of the decree-holder.

21. A Full Bench of the Mysore High Court in *S. Sundara Rao v. B. Appiah Naidu*, AIR 1954 Mys 1, had the occasion to consider the case of ILR (1942) Nag 539 : (AIR 1942 Nag 63) (supra), decided by Pollock and Bose JJ. The learned Judges of the Full Bench made the following observations with reference to the case of ILR (1942) Nag 539 : (AIR 1942 Nag 63) (supra) :

'The decision in AIR 1942 Nag 63 was relied on by the learned advocate for the judgment-debtors. It has been held in that case that

'The Court which passes a decree does not lose its power to execute the decree after it transfers the decree to another Court for execution. Consequently, an application to the Court which passed the decree to recall it from the Court to which it was transferred by it for execution and to send it back there again would be an application made to the proper Court within the meaning of Article 182 (5) but such an application would in no way assist the execution and would therefore not be a, step in aid of execution and hence would not save limitation under Article 182 (5).' This decision follows the observations in *Vishwanath Singh v. Mahabir Prasad*, AIR 1937 Nag 305, though in that decision the point was left undecided. It was observed in that case :

'It is, however, desirable to warn litigants against wasting the time of Courts by useless applications (that is applications which if granted do nothing) merely to mark time and save limitation.' In this case an application to transfer the decree was filed to the Court that passed the decree for transferring it to a Court in Mysore more than six months after the decree had previously been transferred to the latter Court. The rule of practice contained in para 246 of the Civil Rules of Practice and Circular Orders, Vol. I runs as follows :

'If after a decree has been sent to another Court for execution, the decree-holder does not within six months from the date of transfer, apply for the execution

thereof, the Court to which the decree has been sent shall certify the fact that no application for execution has been made to the Court which passed the decree and shall return the decree to that Court.' It is contended in this case that in spite of this Rule of Practice no certificate was sent to the transferring Court though the decree-holder had not applied for the execution of the decree. Assuming that it is so, it is clear that the decree-holder could only have presumed that the transferring Court must have followed the Rule of Practice and sent a report under Section 41, C. P. C. along with the decree copy within six months' time after the decree was sent for execution as the decree-holder had not taken any steps within that time to execute the decree. If, therefore, under a bona fide belief that the decree had been sent back to the transferring Court he applies to that Court for transferring the execution case again, it cannot be said that the decree-holder is making a nominal application and he is attempting to gain time.

It is not a case in which he wanted to recall the decree from the transferee Court and to send it again. If it were so it could have been said that he was aware of the transferee Court not having followed the Rules of Practice referred to above. Dealing with a case in which an application was made for a transfer of a decree to a Court which at that time had not the necessary jurisdiction, but shortly before that, had such jurisdiction, it was held in the case reported in *Bishundeo Narain v. Raghunath Prasad*, AIR 1940 Pat 677, that the application was in accordance with law, and in that case Meredith, J. observed as follows : 'What the rulings state is that the phrase 'made in accordance with law' does not include an application to the Court to do something which either from the decree-holder's direct knowledge in fact or from his presumed knowledge of law he must have known the Court was incompetent to do.' '

In that particular case before the Full Bench, the decree-holder had made applications to the transferor Court on the assumption that the transferee Court must have issued a certificate about the result of the execution. Therefore, the learned Judges held that the successive applications filed by the decree-holder before the transferor Court were bona fide. In that view of the case, the learned Judges held that the execution application was within time. In *Kapildeo Narain v. Sheo Prasad Singh*, AIR 1960 Pat 209, Untwalia, J. opined that a mere order

directing preparation of a certificate of transfer, would not be a final order within the meaning of Article 182(5) of Schedule 1 of the Limitation Act.

According to the learned Judge, limitation would be from the date the certificate is prepared and signed, as in his opinion that would be necessary as required by Order 21, Rule 6 of the Civil Procedure Code. However, it is not necessary to decide as to what would be the starting point of limitation. Even as observed by the learned Judges constituting the Full Bench of the Mysore High. Court, any application made by a decree-holder to a transferor Court till a certificate of non-satisfaction is actually prepared and transmitted to the transferee Court, for execution filed by the decree-holder could certainly be considered to be bona fide and amounting to a step-in-aid within the meaning of Article 182 (5) of Schedule 1 of the Limitation Act.

It may be a debatable question as to whether the starting point of limitation would be from the date of the order of transfer or from the date of the actual issuance of a certificate of transfer and certificate of non-satisfaction. But, I have no doubt that on the basis of the observations of the learned Judges of the Full Bench of the Mysore High Court, such an execution application to the transferor Court would be a step-in-aid, so as to save limitation in favour of the decree-holder. The learned counsel for the appellant invited attention to the observations of Gurtu, J. in *Parsottam Pasi v. Raj Narain Sharma*, (S) AIR 1957 All 336, wherein the learned Judge held that any execution application made to a transferor Court before the receipt of a certificate of non-satisfaction from the transferee Court would not be an application made to a proper Court, so as to be treated as a step-in-aid of execution, which could save limitation in favour of the decree-holder.

The learned Judge further opined that the decree-holder ought to have taken steps in the transferee Court, which alone could save limitation in his favour. The case, in my opinion, is distinguishable. In the present case, the decree-holder had taken steps in the transferor Court after the passing of the order for transfer and before the actual certificate of non-satisfaction was issued by the transferor Court on 5-10-1955. To conclude, I am of opinion that the action of the decree-holder in filing execution applications in Allahabad Court within limitation would be bona fide and

would amount to a step-in-aid within the meaning of Article 182 (5) of Schedule 1 of the Limitation Act, so as to save limitation in his favour.

If the decree-holder acted under the impression that he could not file an execution application in the transferor Court before the certificate of transfer actually reached the transferee Court, he cannot be said to have acted not bona fide. Consequently, his action in filing execution applications in the Allahabad Court would save limitation, as it would undoubtedly amount to a step-in-aid within the meaning of the Article.

22. As a result of the discussion aforesaid, I agree with the conclusion of the Courts below that the decree-holder's applications filed in the transferor Court on 25-11-1948, 18-9-1951 and 21-5-1954 and the last one on 20-7-1954 save limitation within the ambit of Article 182(5) of Schedule 1 of the Limitation Act, as they were made to the transferor Court before the certificate of transfer was actually issued on 5-10-1955. As the decree-holder filed an execution application in the transferee Court on 10-12-1957, his execution application could not be said to be barred by time.

23. As a result, I uphold the order of the Courts below and dismiss this appeal with costs. Counsel's fee in this Court Rs. 100/-, if certified. The costs of the Courts below shall be borne as directed by that Court.