

Amar Nath and ors. Vs. Mul Raj (Deceased) Represented by His Legal Representatives and ors.

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Court : Punjab and Haryana

Decided On : Feb-28-1975

Reported in : AIR1975P& H246

Judge : R.S. Narula, C.J.,; Prem Chand Jain and; Muni Lal Verma, JJ.

Acts : [Limitation Act, 1963](#) - Sections 5, 28 and 31; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 48, 48(1), 151 and 152 - Order 20, Rule 7 - Order 22, Rules 4 and 11; Arbitration Act - Sections 39(1)

Appeal No. : Letters Patent Appeal No. 397 of 1971 and Civil Misc. Nos. 1134 and 1135 of 1972 and 9152 of 1974

Appellant : Amar Nath and ors.

Respondent : Mul Raj (Deceased) Represented by His Legal Representatives and ors.

Advocate for Def. : H.L. Sarin, Sr. Adv. and; M.L. Sarin, Adv.

Advocate for Pet/Ap. : R.L. Aggarwal,; Amar Dutt abd K.G. Chaudhry, Adv.

Judgement :

Muni Lal Verma, J.

1.The question which has been referred by the Division Bench to us for decision, reads thus :--

'Whether the mere fact that according to the particular practice prevailing in the High Court before the decision of the Full Bench in the case of Mahant Bikram Das Chela Mahant Lachhman Dass Mahant, Amritsar v. Financial Commr. Revenue, Punjab, Chandigarh, (1974) 76 Pun LR 451 = (AIR 1975 Punj & Har 1) (FB) (supra) Letters Patent Appeals were entertained by the office contrary to the requirements of Rule 3 of Chapter 2-C of Volume V of the Rules and Orders of the High Court without being accompanied by three sets of spare paper-books, and time, was allowed to file the same, and for filing the copies even beyond the expiry of the period of limitation the appeals were entertained and admitted does or does not in law constitute sufficient cause for condonation of delay in filing the Letters Patent Appeals which were filed before the judgment of the Full Bench.'

2. The circumstances which necessitated the making of this reference are stated in the order of reference and need not be recapitulated. The expression 'sufficient cause' is not defined in the Limitation Act (No. 36 of 1963), hereinafter called the Act. It, in my opinion, means a cause which is beyond the control of the party invoking the aid of Section 5 of the Act. The test, whether or not a cause is sufficient, is to see whether it is a bona fide cause, inasmuch as nothing shall be taken to be done bona fide or in good faith which is not done with due care and attention. Subject to the above test, the words 'sufficient cause' should receive liberal construction so as to advance substantial justice. When no negligence nor inaction nor want of bona fides is imputable to a party for the delay in filing an appeal, it would constitute sufficient cause.

Relying on several judgments and Explanation to Section 5 of the Act, Shri Ram Lal Aggarwal, learned counsel for Amar Nath and others, who are appellants in L. P. A. 397 of 1971, contended that the wrong practice prevailing in this Court in receiving and admitting the Letters Patent Appeals, which were not in accordance with the requirements of Rule 3 of Chapter 2-C of Volume V of the Rules and Orders of the High Court (that is, when the memorandum of appeals were not accompanied by three sets of spare paper-books) had misled the counsel in filing

the aforesaid Letters Patent Appeal without the said spare copies. He added that the said mistake was honest and could not be attributed to any negligence or want of good faith of the counsel who filed the appeal, much less of the appellants, and, as such, the same should be considered as 'sufficient cause'. I find merit in his contention. Explanation to Section 5 of the Act, which runs as under :--

'The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court, in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.'

renders a practice of the High Court, which misleads an appellant or an applicant in ascertaining or computing the period of limitation, as sufficient cause under Section 5 for extending the prescribed period of limitation. Having regard to the said Explanation, it would be justified and reasonable to infer that wrong practice of this Court in receiving and admitting the Letters Patent Appeals, without the same being accompanied by three sets of spare paper-books, tantamounts to 'sufficient cause' as contemplated by Section 5 of the Act for granting extension in the time prescribed for an appeal. The judgments reported as Sukh Dial v. Jai Singh, 1890 Pun Re 101; Nibaran Chandra Dutt v. Martin and Co., AIR 1920 Cal 304; Jyotindranath Sarkar v. Lodna Colliery Co. Ltd., AIR 1921 Pat 175 (FB); Bhimasena Rao v. Venugopal Mudali, AIR 1925 Mad 725; Governor-General in Council v. Jesraj Tilakchand, AIR 1950 Assam 83; Nagindas Motilal v. Nilaji Moroba Naik, AIR 1924 Bom 399 and Kedar Lal v. Hari Lal, AIR 1952 Cal 176, support the view that a wrong practice of the High Court, which misleads an appellant or his counsel in not filing the appeal complete in all respects (without three sets of spare paper-books in the case in hand) should be regarded as 'sufficient cause' under Section 5 of the Act for enlarging the time prescribed for the appeal. No decision contrary to the aforesaid view, expressed in the judgments referred to above; was referred to us.

3-5. It, thus, follows from the above that the practice prevailing in this Court before the decision of the Full Bench in Mahant Bikram Dass Chela Mahant Lachhman Dass Mahant, Amritsar v. The Financial Commr., Revenue, Punjab, Chandigarh, (1974) 76 Pun LR 451 = (AIR 1975 Punj and Har 1) (FB) in entertaining and even

admitting the Letters Patent Appeals without being accompanied by three sets of spare paper-books when the same were filed, and refiling the same with the said three sets of spare paper-books and complete in all respects beyond the expiry of the prescribed period of limitation, constitutes 'sufficient cause' for granting extension of the time prescribed for appeal, and I would record the answer to the question, referred to us, in the affirmative. The application would now go back to the Division Bench for final disposal. In the circumstances of the case, there would be no order as to costs.

R.S. Narula, C.J.

1. I agree entirely.

Prem Chand Jain, J.

1. I also agree.

[The application then came for final disposal before Division Bench consisting of Muni Lal Verma, J. and R. S. Narula, C. J., who delivered the final judgment on 28-2-1975].

Muni Lal Verma, J.

6. This Letters Patent Appeal as well as Letters Patent Appeal No. 557 of 1971 have arisen out of execution proceedings. The material facts of the case are as follows:--

Amar Nath and others (hereinafter called the decree-holder-appellants) filed a suit for partition of immovable property and rendition of accounts in the year 1946. During the pendency of the said lis, the disputes, on the agreement of parties, were referred to arbitration and award was thereafter made and filed on March 20, 1950. The respondents, who were defendants in the suit, filed objections under Section 30 of the Arbitration Act, 1940, for setting aside the award. The said objections were rejected and the award was made the rule of the Court and a decree for possession of certain immovable property and for Rs. 12,435/- was

granted on 9-4-1951 to the plaintiffs, who are included in the appellants, against the defendants, majority of whom are respondents. The appeal preferred by the said defendants under Section 39(1)(vi) of the Arbitration Act against the order of the trial Court refusing to set aside the award was dismissed by this Court on 17-9-1953.

7. In or about the year 1957, the decree holder-appellants made application under Sections 151 and 152, Civil P. C., to the trial Court for amendment of the decree. It was declined on 2-12-1957. Aggrieved by the said order, the decree-holder-appellants came to this Court in revision, which was accepted on 13-7-1961 and it was, directed that the decree be amended so as to entitle the decree-holder-appellants to recover Rupees 16,860/- in place of R. 12,435/-.

8. The appellants applied for execution of the amended decree on January 21, 1966. The respondents filed objections under Section 47, Civil P.C., raising the plea of bar of limitation, stating that 12 years had elapsed from the date of decree. The said objections were opposed by the appellants. So, the following issue was settled:

1. Whether the execution is barred by time?

9. The executing Court decided the said issue in the affirmative and dismissed the execution application as time-barred. So, the appellants appealed to this Court. The learned Single Judge came to the conclusion that the decree so far as it related to possession of immovable property was barred by time, having been filed beyond 12 years from the date of the decree and, as such, he affirmed the finding of the executing Court respecting that part of the decree. He, however, found that some of the decree-holder-appellants were minors and in view of the provisions contained in Sections 6 and 7 of the Limitation Act read with Order XXVB, Rule 6, Civil P. C. no valid discharge could be given on their behalf respecting the decree relating to the recovery of money. Therefore, he reversed the finding of the executing Court on the aforesaid issue so far as it related to the decree for recovery of money and held that the execution application with regard to recovery of the decretal amount was within time. In these premises, he allowed the appeal partly.

Aggrieved by 'the judgment of the learned Single Judge, both the parties have filed separate appeals under clause X of the Letters Patent. This Letters Patent Appeal is by the decree-holders against the judgment of the learned Single Judge, whereby execution of decree for possession of the land was held to be time-barred, and Letters Patent Appeal No. 557 of 1971 (hereinafter called the second L. P. A.) is by the judgment-debtors (appellants in that appeal) against the judgment of the learned Single Judge declaring execution application with regard to the money part of the decree being within time. Since both these appeals have arisen out of one case and involve common questions of fact and law, the same are being disposed of by one judgment.

10. Both these appeals were filed on July 12, 1971, when this Court had reopened after long vacation. It is common case of the parties that the said date, i.e., 12-7-1971, was the last day of the period allowed by limitation for filing the appeals within time. This appeal was not accompanied by three typed copies of the paper-book as required by R. 3, Chapter 2-C, Volume V of the Rules and Orders of the High Court (hereinafter referred to as Rule 3) where it was filed. Therefore, it was returned by the Registry on July 17, 1971, with the direction to furnish three sets of paper-book within a week. The said three typed paper-books were supplied and the appeal was refiled on July 24, 1971, and it was admitted on September 24, 1971. It has been held in 76 Punj LR 451 = (AIR 1975 Punj 1 (FB), that the provisions contained in Rule 3 are imperative and when an appeal under Clause X of the Letters Patent is not accompanied by the required documents, including three typed paper-books, it would be regarded as no appeal.

Therefore, feeling that the appeal was incompetent when it was filed on July 12, 1971 inasmuch as there was non-compliance with the provisions of Rule 3 and it was barred by time when it was refiled on July 24, 1971 with the 3 copies of the documents, including the paper-book, as required by the said rule, the appellants moved application under Section 5 of the Limitation Act for condonation of delay. The ground taken for claiming condonation of delay was that it was due to wrong practice prevailing in this Court that the appeal had been filed on July 12, 1971, without 3 typed copies of the documents including the paper-book. The said application was opposed. Since the question as to whether the wrong practice

prevailing in this Court in entertaining Letters Patent Appeal without being accompanied by three sets of documents, including paper-books, constitutes sufficient cause under Section 5 of the Limitation Act for condoning the delay was of importance, it was referred for decision to the Full Bench in the following terms:--

'Whether the mere fact that according to the particular practice prevailing in the High Court before the decision of the Full Bench in the case of Mahant Bikram Das Chela Mahant Lachhman Dass Mahant, Amritsar, 76 Pun LR 451=(AIR 1975 Punj 1) (FB) (supra) Letters Patent Appeals were entertained by the office contrary to the requirements of Rule 3 of Chapter 2-C of Volume V of the Rules and Orders of the High Court without being accompanied by three sets of spare paper-books, and time was allowed to file the same, and on filing the copies even beyond the expiry of the period of limitation the appeals were entertained and admitted, does or does not in law constitute sufficient cause for condonation of delay in filing the Letters Patent Appeals which were filed before the judgment of the Full Bench.'

11. The Full Bench answered the said question in the affirmative. It was not denied, and we are also aware of the fact, that prior to the pronouncement of the Full Bench judgment in Mahant Bikram Dass's case 76 Pun LR 451 = (AIR 1975 Punj 1) (FB) Letters Patent Appeals were being filed and entertain-ed by the Registry of this Court without the same being accompanied by three sets of documents, including the spare paper-books. This practice was patently in contravention of the provisions of Rule 3 and was undoubtedly wrong, but it had been prevailing and could have the effect of misleading the litigants and the counsel in filing the Letters Patent Appeals without itthree sets of documents, referred to in Rule 3. Therefore, in view of the decision of the aforesaid question by the Full Bench, we find that it was due to a bona fide mistake committed on account of the wrong practice, referred to above, obtaining in this Court, that this Letters Patent Appeal was filed on July 12, 1971. without being accompanied by three copies of documents, rendering non-compliance of the provisions of Rule 3 and this constitutes 'sufficient cause' within the scope of Section 5 of the Limitation Act. Therefore, we allow Civil Miscellaneous Application No. 9152 of 1974 and condone the delay in presenting this appeal with three copies of the documents

referred to in Rule 3, on July 24, 1971.

12. Mul Raj, who was one of the judgment-debtor-respondents, died on October 11, 1971, leaving behind two sons, viz., Prem Nath and Surinder Kumar, seven daughters and a widow. No application for impleading them as his legal representatives had been moved within 90 days after his death. Therefore, the appellants made application (Civil Misc. No. 1134 of 1972) for setting aside the abatement of appeal on the ground that they had come to know about his (Mul Raj's) death some time after December 14, 1971. They also moved application (Civil Misc. No. 1135 of 1972) for impleading the aforesaid legal representatives of Mul Raj. Both these applications were opposed by the respondents. The appellants further made application (Civil Misc. No. 9142 of 1974) stating that the two sons of Mul Raj had already been impleaded as respondents in the appeal and they might be treated as his legal representatives. That application had been allowed subject to all just exceptions on November 6, 1974. It is worthy of note that Prem Nath and Surinder Kumar, who was shown as Mohinder Kumar, were already on the record in the array of respondents at Nos. 5 and 6. That means that two of the legal representatives of Mul Raj were already on record though in the capacity of judgment-debtors themselves when Mul Raj died. Therefore, we feel that no question of abatement of appeal arises when the said two sons of Mul Raj were already on record as respondents.

It is now well settled that when one or two more legal representatives of the deceased respondent are impleaded within time or are already on record, they would be sufficient to represent his estate and non-impleading of his other legal representatives would not entail the abatement of the appeal. Therefore, when the appeal did not abate, the necessity of making Civil Misc. No. 1134 of 1972 for setting aside the abatement does not arise. It is in these premises that we find that the said application (No. 1134 of 1972) is redundant and the same is disposed of accordingly. As the appeal has never abated, we allow Civil Misc. No. 1135 of 1972 and direct that the legal representatives of Mul Raj, excepting Prem Nath and Surinder Kumar alias Mohinder Kumar, who are already on record and have been treated as legal representatives of Mul Raj, be and are impleaded as his legal representatives and they are being represented by Shri H. L. Sarin,

Advocate. In view of the aforesaid circumstances, the objection of Shri H. L. Sarin, that the appeal had abated on account of the non-impleading of all the legal representatives of Mul Raj is without merit and is overruled.

13. The principal contention raised by Mr Ram Lal Aggarwal, learned counsel for the appellants, was that the period of limitation began to run from July 13, 1961, when the decree was amended and, therefore, the execution application, which was presented on January 21, 1966, was within time. In order to appreciate the said contention and to decide the point of limitation, which is the main controversy between the parties, it is necessary to set out the following dates:--

The award was made rule of the Court and decree was recorded by the trial Court in consequence thereof on ... April 9, 1951.

The appeal was preferred against the order refusing to set aside the award and the said appeal was dismissed on ... September 17, 1953.

Application made by the decree-holder-appellants under Sections 151 and 152, Civil P. C. (hereinafter called the Code) was declined by the trial Court on ... December 2, 1957.

Revision against the order passed by the trial Court declining the amendment of the decree was allowed and it was directed that the decree be amended so as to entitle the decree-holders to recover Rs. 16,860/- in place of Rs. 12, 435/- on ... July 13, 1961.

Execution application was filed on ... January 21, 1966.

14. Sub-section (1) of Section 48 of the Code, which governed the case and has now been repealed by Section 28 of the Limitation Act (No. 36 of 1963), hereinafter called the new Act, which came into force on January 1, 1964, reads as under:--

'48. (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years

from-

(a) the date of the decree sought to be executed, or,

(b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.'

15. Admittedly, the said section fixed the outside period after which execution of a decree could not be granted and it applied to all decrees of any kind, except a decree granting an injunction. The expression 'the date of the decree' in Clause (a) of Sub-section (1) of Section 48 means the date of the decree which it is directed to bear under Order XX, Rule 7 of the Code, that is the date when the judgment is pronounced. Therefore, the date of the decree in the instant case is April 9, 1951 when the award was made the rule of the Court and the decree was recorded in consequence thereof by the trial Court. No appeal had been filed in this Court against the said decree. The appeal that was filed in this Court and had been dismissed on September 17, 1953, was against the order (and not against the decree) refusing to set aside the award, under Section 39(1)(vi) of the Arbitration Act. On the said state of things, it cannot be maintained that the decree, which was recorded by the trial Court as a consequence of its making the award the rule of the Court, was the subject of the appeal before this Court or that it (the decree) was confirmed by this Court when it dismissed the aforesaid appeal. In that view of the matter, it would not be correct to say that the decree passed by the trial Court had merged in any decree passed by this Court.

As a matter of fact, as indicated above, this Court did not confirm or pass any decree. It has simply dismissed the appeal which had been preferred against the order refusing to set aside the award. In these premises, it is not permissible to urge that time would run from September 17, 1953 when the appeal, referred to above, was dismissed by this Court, for the obvious reason that while dismissing that appeal this Court neither passed any decree nor confirmed the decree passed by the trial Court. Clause (b) of Sub-section (1) of Section 48 of the Code would not apply because the amendment of the decree, ordered by this Court on revision

against the order of the trial Court declining to amend the decree on the application moved by the decree-holder-appellants under Sections 151 and 152 of the Code, did not direct any payment of money or the delivery of any property to be made at a certain date or at recurring periods. Therefore, the question of time of limitation running from the date of default in making the payment or, delivery of the property on a certain date or at the recurring period fixed by the decree did not arise.

There is a distinction between amendment of a decree on an appeal or revision preferred against a decree passed by the trial Court and the amendment of the decree directed on an application moved under Sections 151 and 152 of the Code. When a decree is altered, modified or amended on appeal or revision against the decree itself, the decree of the trial Court merges in the decree of the Appellate Court and the decree of the Appellate Court merges in the decree passed by the revisional Court. Therefore, there can be no manner of doubt that in such a case the date of decree, whether the original decree is confirmed, modified or amended in appeal or revision, is the date of the Appellate or revisional Court. But there are series of judgments reported in *Faqir Chand v. Kundan Singh*, AIR 1932 All 351; *Ganesh Das v. Vishan Das*, AIR 1935 Lah 292, *Mt. Dulhin v. Harihar Gir*, AIR 1939 Pat 607; *Rama-chandra Rao v. Parasuramayya*, AIR 1940 Mad 127; *Shvam Sunder Prasad v. Ramdas Singh*, AIR 1946 Pat 392; *Ganeshmal Pasmal v. Nandlal Tulsiram*, AIR 1954 Bom 104 and *Krishna Pillai Narayana Pillai v. Neelakanta Pillai Velayudhan Pillai*, AIR 1957 Trav-Co 293, wherein it has been observed that period of 12 years under Section 48 of the Code is final and cannot be extended by way of amendment of the decree, whether that amendment is made before or after the expiry of the said period of 12 years, and the date of decree within the meaning of Section 48 of the Code is always the date of original decree and not the date of amended decree.

It may be noted that under Clause 4 of Article 182 of the Limitation Act (No. 9 of 1908), the period of limitation where the decree had been amended was 3 years from the date of amendment but the said Article was expressly limited to applications for executions not provided by Section 48 of the Code. The said Article 182 of the old Act clearly left the provisions of Section 48 of the Code

untouched and, therefore, there could not be execution of a decree governed by Section 48 of the Code when 12 years had passed from the date of the decree, amendment or no amendment. It has been further observed, in Ganesh Das's case (supra), that; the mere direction by the Appellate Court to the 'subordinate Court to amend the decree so as to include certain item will not confer on that order the status of an Appellate Court's decree and the time under Section 48 of the Code will run only from the date of the original decree and not from the date of the High Court's order directing amendment.

In view of the aforesaid judicial pronouncement by the High Courts, it is difficult to maintain that 'the order passed by this Court on July 13, 1961, in the revision, which had been preferred against the order of the trial Court declining to amend the decree, has the status of a decree much less that the period of 12 years, as provided in Section 48 of the Code, can run from the said date, i.e., July 13, 1961, or from any other date when the trial Court had amended the decree. The position of law is, therefore, clear and admits of no doubt whatsoever that the terminus a quo in the case in hand, according to Section 48 of the Code, was April 9, 1951, when the decree had been passed by the trial Court and in no case it can be maintained that the period of 12 years, as provided by Section 48 of the Code, could run from any other date, that is, from September 17, 1953, when the appeal carried to this Court against the order refusing to set aside the award, had been dismissed, or from July 13, 1961, when the revision preferred against the order of the trial Court, declining to amend the decree under Sections 151 and 152 of the Code, had been dismissed (sic--accepted). The said period of 12 years expired on April 9, 1963, and as the execution application was filed on January 21, 1966, that is, about 3 years after the expiry of the period of 12 years provided by Section 48 of the Code, it is clearly barred by time.

16. Confronted with the formidable difficulty of saving the execution application from the bar of limitation on account of its having been made long after the expiry of the period of 12 years prescribed by Section 48 of the Code, Mr. Ram Lal Aggarwal, learned counsel for the appellants, relying on Article 136 of the new Act contended that the decree which was passed by the trial Court was not enforceable at once, because it provided that the appellants could apply for

execution of the decree on payment of court-fee on Rs. 12,435/- and, as such, the time began to run from the date when they (the appellants) had deposited the court-fee on the aforesaid amount. The said contention is, in our opinion, not well-founded. Clause (a) of Section 31 of the new Act reads thus:--

'31. Nothing in this Act shall,--(a) enable any suit, appeal or application to be instituted, preferred or made, for which the period of limitation prescribed by the Indian Limitation Act, 1908, expired before the commencement of this Act.'

17. The new Act, as pointed out above, came into force on January 1, 1964. The execution application, as discussed in the preceding para, had become barred by time on April 10, 1963, since the period of 12 years prescribed by Section 48 of the Code expired on April 9, 1963, i.e., long before the new Act came into force. Therefore, no help can be invoked from Article 136 of the new Act as it would be inapplicable because of the provisions contained in Clause (a) of Section 31, reproduced above. Similar view was taken in *Kumar Taranand v. Thakur Chandra Bhusan Prasad*, AIR 1968 Pat 458. In the view which we have taken that no benefit of the provisions contained in Article 136 of the new Act can be sought by the appellants since the maximum period of 12 years provided by Section 48 of the Code for taking out execution of the decree had expired long before the new Act came into force it is unnecessary to pronounce any opinion on the point raised by Mr. Ram Lal Aggarwal. But even assuming for the sake of argument - though not conceding -- that Article 136 of the new Act could apply, it cannot be maintained that the decree recorded by the trial Court was not enforceable on the date of the decree simply because it (the decree) had directed the appellants to pay court-fee on Rs. 12,435/-before applying for its execution.

The words 'where the decree or order becomes enforceable' occurring in Article 136 of the new Act did not find mention in Article 182 of the old Act or in Section 48 of the Code. Relying on *Rameshwar Singh v. Homeswar Singh*, AIR 1921 PC 31 and *Babu Ram v. Gopal Sahai*, AIR 1938 All 539, Mr. Ram Lal Aggarwal had been of the view that the decree became enforceable when the appellants paid the court-fee. We are unable to subscribe to that view. In our opinion, a decree can only be said to be not enforceable when it is incapable of execution on the date

when it is passed, on account of the very terms of the decree. There must be something inherent in the decree which does not make it enforceable immediately when it is passed and postpones its execution to some contingency which is to happen in future and which is beyond the control of the decree-holder. There is a long line of cases reported in *Ram Narain v. Maharaj Narain*, AIR 1940 Lah 337; *Laxman Minaji v. Narayan Appaya*, AIR 1961 Mys 172; *Devi Kant Mishra v. Kant Pathak*, AIR 1972 Pat 429, *Lala Baijnath Prosad v. Nursingdas Guzrati*, AIR 1958 Cal 1; *China Venkatappa v. Peda Venkatappa*, AIR 1943 Mad 650 and *Appa Rao v. Veeraju*, AIR 1962 Andh Pra 385, wherein it has been ruled that limitation for execution of decree commences from the date of the decree and neither nonpayment of court-fee nor non-supply of stamp paper for the purpose of drawing up of the decree can arrest the running of limitation.

Yeshwant Deorao v. Walchand Ramchand, AIR 1951 SC 16, concludes the matter. It has been held therein that where a decree provides that the decree-holder should pay the deficit court-fee on the decretal amount before its execution the decree is not a conditional one in the sense that some extraneous event is to happen on the fulfilment of which alone it can be executed, the payment of court-fees on the amount found due is entirely in the power of the decree-holder and there is nothing to prevent him from paying it then and there, and, thus, it is a decree capable of execution from the very date it is passed. The judgment rendered in *Rameshwar Singh's case* (supra) was in a different context and we do not propose to advert to its facts, or to be guided by the judgment in *Babu Ram's case* (supra), for the obvious reason that the point in issue, as indicated above, stands settled by the Supreme Court in *Yeshwant Deorao's case* (supra).

There was no hitch or hindrance for the appellants to pay the court-fee directed by the decree immediately after passing of the same and then to execute it. Therefore, in our opinion, the decree must be deemed to be enforceable on April 9, 1951 when it was recorded by the trial Court and, as such, the provisions of Article 136 of the new Act can render no assistance. It may also be stated that we have not been referred to any material on the record to show as to when court-fee, as directed by the trial Court, had been deposited by the appellants. So, from whatever angle the case may be viewed, the conclusion is inevitable that the

execution application filed on January 21, 1966, was barred, by time and the finding of the learned Single Judge on that point is unassailable and neither of the contentions advanced by Mr. Aggarwal has any merit and this appeal is without substance and must fail.

18. The second L. P. A. when filed within time on July 12, 1971, was not accompanied by two spare sets of the paper-book. So, the same was also returned by the Deputy Registrar to the counsel of the judgment-debtor-appellants on July 17, 1971, to be refiled within a week along with the required two spare sets of the paper-book. It was refiled on October 22, 1971, along with the required two other sets of paper-book stating that the delay in refiling was due to want of instructions from the appellants. The appeal was admitted on November 18, 1971. For the reasons recorded in para 5 above, we find that it was due to bona fide mistake on account of the wrong practice prevailing in this Court that the second L. P. A. was filed on July 12, 1971, without being accompanied by two sets of paper-book. The maximum extension of time for refiling the second appeal, which was incomplete on July 12, 1971, that could be granted by the Deputy Registrar, was 40 days. Since the second L. P. A. had been refiled beyond 40 days from July 12, 1971, the Deputy Registrar had no jurisdiction to excuse the delay and should have put up the case before the Bench for condonation of the delay in refiling the same.

It is common knowledge that there had been a wrong practice in this Court in refiling the appeals beyond 40 days from the date of its return and the same were being entertained. Therefore, we have again an impression that the appellants, and their learned counsel Shri H. L. Sarin in the second L. P. A., had been misled by the said wrong practice in failing to refile the second appeal within 40 days after July 17, 1971 when it was returned by the Deputy Registrar. So, in the peculiar circumstances of this case, especially when we have condoned the delay on the part of the decree-holder-appellants in filing L. P. A. No. 397 of 1971, we are of the opinion that there is sufficient cause for condoning the delay, on account of wrong practice prevailing in this Court, in filing the second L. P. A., complete in form, on October 22, 1971, and we condone the same, and also allow application No. 176 of 1975.

19. It is clear from the certified copy of the decree that it had been recorded by the trial Court in favour of eight decree-holders, namely, Amar Nath, Dev Raj Hans Raj, Hari Krishan, Piare Lal, Om Parkash, Vijay Kumar and Krishan Kishore. Out of them, Amar Nath, Dev Raj, Hans Raj, and Hari Krishan were major at the time when the suit was instituted and when the decree was recorded. It appears that Piare Lal, Om Parkash, Vijay Kumar and Krishan Kishore were minor at the time of institution of the suit. Moti Sagar judgment-debtor-appellant swore an affidavit to the effect that Piare Lal was born on October 12, 1928, and he became major on October 13, 1946, and Om Parkash was born on April 4, 1934 and he became major on April 5, 1952, and Vijay Kumar was born on March 27, 1934 and he became major on March 28, 1952, and that Krishan Kishore had died issueless on May 28, 1952. The dates of birth of the aforesaid three respondents as well as the death of Krishan Kishore were admitted by Amar Nath respondent in his affidavit. He (Amar Nath) swore in his affidavit that Jaswant Rai was born in the year 1952, and he stated the dates of birth of the following respondents in his affidavit as under:--

Arun Kumar ... July 1, 1952.

Anil Kumar ... April 10, 1957.

Rajinder Kumar ... February 2, 1951.

Satish Kumar ... January 1, 1955.

20. It is, thus, clear that out of the eight decree-holders, Piare Lal, Om Parkash, Vijay Kumar & Krishan Kishore were minor. Krishan Kishore had died on May 28, 1952. Piare Lal had become major during the pendency of the suit while Om Parkash and Vijay Kumar had become major in the year 1952, i.e., within one year after passing the decree. Arun Kumar, Anil Kuwar, Satish Kumar, Rajinder Kumar and Jaswant Rai were not born when the suit was instituted. They were not plaintiffs in the suit and they were not decree-holders in favour of whom the decree had been recorded by the trial Court. Even Arun Kumar, Anil Kumar, Satish Kumar and Jaswant Rai were born after the passing of the decree. All of them were, for the first time, impleaded as petitioners in Civil Revision No. 120 of 1958, which

had been filed on March 3, 1958 against the order of the trial Court declining the application moved for amendment of the decree under Ss. 151 and 152 of the Code. In these circumstances, it cannot be maintained that Arun Kumar, Anil Kumar, Rajinder Kumar, Satish Kumar and Jaswant Rai were or could be treated as decree-holders. Therefore, their minority on January 21, 1966, when the execution application was filed or thereafter, can be of no avail to the decree-bolder-respondents and cannot save the decree even so far as it relates to the recovery of money from the bar of limitation, for the obvious reason that in such a case Section 6 or 7 of the Limitation Act or Rule 6 of the Order XXXII of the Code would not be attracted.

21. It appears that the facts, that Arun Kumar, Anil Kumar, Rajinder Kumar, Satish Kumar and Jaswant Rai were neither plaintiff in the suit nor the decree had been passed by the trial Court in their favour and Krishan Kishore had died on May 28, 1952, and Piare Lal decree-holder was major at the date of the decree since he had attained majority during the pendency of the suit, and the other two minor decree-holders, viz., Om Parkash and Vijay Kumar, had become major on April 5, 1952 and March 28, 1952, respectively, i. e., before the execution application had been filed, had not been disclosed before the learned Single Judge and the same had also escaped his notice. It is for this reason that the learned Single Judge concluded that execution of the decree, so far as it related to the recovery of money, was not barred by time because the said Arun Kumar, Anil Kumar, Rajinder Kumar, Satish Kumar and Jaswant Rai were minors.

So, on the state of affairs when Arun Kumar, Anil Kumar, Rajinder Kumar, Satish Kumar and Jaswant Rai were not the decree-holders and Piare Lal respondent had become major when the decree was passed and Krishan Kishore had died in 1952 while Om Parkash and Vijay Kumar minors, decree-holders had become major in the year 1952, we are in agreement with Shri H. L. Sarin, learned counsel for the appellants in the second L. P. A., that the decree relating to recovery of money was also barred by time having been filed beyond the period of 12 years prescribed by Section 48 of the Code, and the conclusion of the learned Single Judge that the said part of the decree was within time, having proceeded on misconception of facts, cannot be upheld. In that view of the matter, the second L.

P. A. succeeds.

22. Limitation is a matter of statute and unless the decree-holders could bring their case under any definite provision of the Limitation Act, equitable consideration that they are being deprived of the fruits of the decree cannot be allowed to prevail and the utmost which may be said is that they are unlucky to suffer the disadvantage, but the default in that respect lies on them as they had not been diligent in taking out execution of the decree within the time prescribed by Section 48 of the Code.

23. For the foregoing reasons, we dismiss L. P. A. No. 397 of 1971, but we allow L. P. A. No. 557 of 1971 and set aside the judgment of the learned Single Judge impugned therein and restore the order of the trial Court whereby the whole of the decree was held to be barred by time. In the peculiar circumstances of the case, we leave the parties to bear their own costs throughout.

R.S. Narula, C.J.

I agree.