

**Korah Thomas Vs. John Mathew**

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**SooperKanoon Citation :** [sooperkanoon.com/718668](http://sooperkanoon.com/718668)

**Court :** Kerala

**Decided On :** Oct-23-1974

**Reported in :** AIR1975Ker140

**Judge :** G. Balagangadharan Nair, J.

**Acts :** [Limitation Act, 1963](#) - Sections 18, 19 and 31 - Schedule - Article 136

**Appeal No. :** S.A. No. 390 of 1973

**Appellant :** Korah Thomas

**Respondent :** John Mathew

**Advocate for Def. :** C.K. Sivasankara Panicker,; D. Narayanan Poti and; P.C.

**Advocate for Pet/Ap. :** C.S. Ananthakrishna Iyer, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**G. Balagangadharan Nair, J.**

1. The only question in this appeal by the judgment-debtor is whether the execution is barred by limitation.

2. The decree which is for money is dated 31-11-1107 (14-7-1932). There were a few execution petitions which were all within time, The last but one of such petitions was dated 16-10-1119 and this happened to be dismissed on account of a stay obtained by the appellant from D. R. P. 30 of 1119 which he had filed. The next execution petition was on 2-10-1120 and this was dismissed on 23-12-1950 owing to an order of stay obtained by the appellant from C. R. P. 1257 of 3121. This C. R. P. was ultimately disposed of on 26-3-1959. In the meanwhile, on 13-1-5959 the appellant filed an application for relief under Act 31 of 1958 (the Agriculturists Debt Relief Act) and he also made deposits, of which the last deposit was on 20-6-1963. (The application was ultimately dismissed by the High Court.) On 12-6-1963 the appellant executed a sale deed Ext. P-1 in favour of a third party directing him to pay off this decree debt. The present execution petition to which objection was taken by the appellant on the ground of limitation was filed on, 22-3-1966.

3. In order to establish that the execution was alive on 22-3-1966, the decree-holder-respondent pleaded the orders of stay from D. R. P. 30 of 1119 and C. R. P. 1257 of 1121, the acknowledgment of liability made by the appellant in the application under Act 31 of 1958 on 13-1-1959, the payments made by him under this application from 13-1-1959 to 20-6-1963 and the acknowledgment of liability contained in the sale deed Ext. P-1 dated 12-6-1963. There is no dispute and the position is also clear that the execution was alive by virtue of these orders of stay, acknowledgments and part payments when the Limitation Act of 1963 came into force on 1-1-1964, The appellant contends that unlike the Limitation Act of 1908, the 1963 Act does not recognise application for execution as an application in respect of a right within Section 18 dealing with acknowledgments nor the money payable under a decree as a debt within Section 19 dealing with the effect of payment, on account of a debt- According to counsel, the acknowledgments and part payments are ineffectual under the 1963 Act, which governs the period of limitation, and they are of no avail now to the respondent, despite their validity under the 1908 Act. Counsel agreed that when the 1963 Act came into force on 1-1-1964 the execution was alive owing to the orders of stay, acknowledgments and part payments. The question is did the execution become barred with the commencement of the 1963 Act, The only direct decision on this question brought

to my notice is Subodh Chandra v. Kanai Lal, AIR 1968 Cal 280, which discusses among others Lala Soni Ram v. Kanhiya Lal, (1913) ILR 35 All 227 (PC), relied on by the appellant to show that the acknowledgment that would extend limitation should be an acknowledgment that is valid under the law that is in force on the date of suit or application for execution. In AIR 1968 Cal 280 the decree was dated 11-4-1951 and the controversial execution petition was filed on 19-6-1964, 12 years after and under the 1963 Act. The decree-holder relied upon an acknowledgment and part payments before the 1963 Act, to save limitation. After noting that these were ineffective to extend the period of limitation under the 1963 Act, it was stated that the decree-holder's only escape route lay in establishing that the 1963 Act was not so far retrospective as to be confiscatory in nature even in respect of existing rights. The learned Judges discussed the relevant provisions and case law and laid down four propositions and they put the case before them under the fourth proposition. That proposition reads thus:

'If, however, a suit, appeal or application would be time-barred on the date when the new Limitation Act came into operation, if the fresh start of the period of limitation under Section 19 or 20 of the old Limitation Act of 1908 be ignored, then, in cases where the new Limitation Act does not prescribe a shorter period of limitation the new Act does not interfere with fresh start of limitation under Sections 19 and 20 of the Limitation Act of 1908. Such suits, appeals or applications may be filed within the period prescribed by the new Act, calculating nevertheless, the starting of limitation from the date when a fresh period of limitation started under Section 19 or 20 of the Limitation Act of 1908.

The instant case is one which falls within the fourth proposition mentioned above. But for a fresh start of limitation, by reason of acknowledgment and part-payments made in 1962, the adjusted decree of 1951 would have become time-barred for execution, in the year 1963 and could not be executed, by reason of the provisions of Section 31 of the new Limitation Act. The new Limitation Act does not effect confiscation of the right of execution in such circumstances.'

4. With respect, this is the correct approach and lays down the correct law. The present case falls squarely within that proposition and the execution is therefore

within time. This decision was followed by the same High Court in Punjab National Bank v. Hind Textiles Ltd., AIR 1969 Cal 390. As against these cases counsel for the appellant besides quoting ILR 35 All 227 relied upon Sumermal v. Birdhichand, AIR 1958 Raj 318. The real question that fell to be decided in AIR 1958 Raj 318 was the effect of the 'savingclauses' in a series of Limitation Acts that were successively in force in that State in relation to two suits. It dealt with a different situation and is clearly distinguishable, if as the appellant maintained it takes a view different from AIR 1968 Cal 280 and AIR 1969 Cal 390, I prefer, with respect, to follow the latter decisions. The conclusion of the court below based on AIR 1968 Cal 280, is right and has to be upheld.

5. The respondent raised an alternate contention that the application filed by the appellant under Act 31 of 1958 was ultimately dismissed only on 29-7-1965, after the commencement of the 1963 Act and as the execution was effectively suspended from 13-1-1959 till that date, there could not be any possible limitation. In support of this contention he relied upon Velayudhan Pillai v. Hariharaputhra Pillai, 1968 Ker LR 36. In the view which I have taken that the execution is not even otherwise barred it is unnecessary to discuss this question.

6. The judgment of the Lower Appellate Court is confirmed and this appeal is dismissed with costs.