

**Sasi D. Vs. R.S. Devadas**

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**SooperKanoon Citation :** [sooperkanoon.com/725976](http://sooperkanoon.com/725976)

**Court :** Kerala

**Decided On :** Aug-13-2008

**Reported in :** AIR2009Ker9; 2008(3)KLJ92

**Judge :** M. Sasidharan Nambiar, J.

**Acts :** [Limitation Act, 1963](#) - Sections 2, 5, 12, 12(1) and 12(2) - Schedule - Articles 98 and 136; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 48(1) - Order 21, Rules 6A, 6A(2), 7, 11, 11(1), 58 and 63; [General Clauses Act, 1897](#) - Sections 9; Negotiable Instruments Act - Sections 138

**Appeal No. :** C.R.P. No. 951 of 2006

**Appellant :** Sasi D.

**Respondent :** R.S. Devadas

**Advocate for Def. :** D. Kishore, Adv.

**Advocate for Pet/Ap. :** R. Anil Kumar and; P. Bani, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**M. Sasidharan Nambiar, J.**

1. While computing the period of limitation for execution of the decree under Article 136 of Limitation Act, whether date of decree is to be excluded or the period of 12 years is to be computed inclusive of the date of decree. This is the question to be resolved in the revision petition.

2. Petitioner is the judgment debtor and respondent the decree holder in O.S. 856/1993 on the file of Principal Sub Court, Thiruvananthapuram. A decree for realisation of money was passed on 30.6.1994. E.P. No. 223/2006 for execution of the decree was filed on 30.6.2006. Case of the judgment debtor is that the period of limitation expired on 29.6.2006 and therefore the execution is barred by time. Case of the respondent decree holder is that as the date of the decree is to be excluded while computing the period and so the execution petition is within time. Executing court as per the impugned order found that date of the decree is to be excluded and if so, the execution petition filed on 30.6.2006 is on the last day of the period of limitation and therefore the execution petition is within time and not barred by time. Judgment debtor has filed the civil revision petition challenging that order.

3. Learned Counsel appearing for petitioner and respondent were heard.

4. Learned Counsel appearing for petitioner argued that under Article 136 of the Limitation Act period of limitation is 12 years and the period will start to run from the date on which the decree becomes enforceable and as the decree became enforceable on the date of pronouncement of the judgment itself, the period of limitation started to run on 30.6.1994. Learned Counsel argued that the period of limitation being 12 years and as per dictionary meaning of one year is twelve calendar months and the date commence from January and ends on 31st December and if so calculated the period of 12 years expired on 29.6.2006 and therefore the execution petition is barred by time. Learned Counsel relied on the decision of a learned single Judge of the Calcutta High Court in Sunderlal & Sons v. Yagendra Nath Singh : AIR1976 Cal471 where it was held that the period taken for getting certified copy of the decree for execution cannot be excluded. It was argued that so Section 12 of the Limitation Act does not apply to an execution petition. Learned Counsel submitted that the said decision was approved by the

Apex Court in *W.B. Essential Commodities Supply Corporation v. Swadesh Agro Farming & Storage Pvt. Ltd.* (1999) 8 SC 315) and as held by the Apex Court the decree is enforceable immediately on pronouncing the judgment and Rule 6A(2) of Order XXI of Code of Civil Procedure provides that for the purpose of execution of the decree the last paragraph of the judgment is sufficient and therefore period will start to run from the date of pronouncing the judgment and if so the period expired on the expiry of 12 years from that date and so finding of the executing court is not sustainable.

5. Learned Counsel appearing for respondent decree holder argued that though Section 5 of Limitation Act is not applicable to an execution petition, as expressly provided therein, Section 12(1) is not excluded and as provided under Sub-section (1) of Section 12, in computing the period of Limitation for any application the day from which such period is to be reckoned shall be excluded. Learned Counsel submitted that under Section 2(b) of the Limitation Act, an application includes a petition and therefore Sub-section (1) of Section 12 applies to an execution petition also and if so while computing the period of limitation the day on which the period of limitation start to run is to be excluded and if so the execution petition is within time.

6. Under Article 136 of Limitation Act (thereinafter referred to as the Act) the period of limitation for execution of any decree other than a decree granting a mandatory injunction or order of any civil court is 12 years. Time from which period begins to run is from the day when the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place. Article 136 substantially reproduces the provisions of Section 48(1) of Code of Civil Procedure 1908 which [Limitation Act, 1963](#) repeals.

7. A decree comes into existence as soon as the judgment is pronounced. Rule 7 of Order XXI of Code of Civil Procedure provides that the decree shall bear date, the day on which the judgment was pronounced and when the judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he

shall sign the decree. Therefore irrespective of the date on which the decree was drawn up, the date of the decree is the date of the judgment.

8. The argument of the learned Counsel appearing for petitioner is that Rule 11 of Order XXI of the Code enables a decree holder to make an oral application at the time of passing of the decree, where a decree is for payment of money, for arrest of the judgment debtor and therefore the decree is enforceable on the date when the judgment is pronounced and therefore the period of limitation will start to run on the date of the decree and would expire on the last day of the 12th year from that date and if so as the decree was passed on 30-6-1994, period of limitation to prefer an execution petition ended on 29.6.2006 and the execution petition filed on 30-6-2006 is barred by time. Though learned Counsel relied on the decision of a learned single Judge of the Calcutta High Court in *Sunderlal and Sons v. Yagendra Nath Singh* : AIR1976 Cal471 which was later approved by the Apex Court in *W.B. Essential Commodities Supply Corporation Swadesh Agro Fanning & Storage Pvt. Ltd. : AIR 1999 SC3421* ), the question considered by the Calcutta High Court in *Sunderlal's case (supra)* was whether the period taken for getting the certified copy of the decree could be excluded as provided under Sub-section (2) of Section 12 of the Act, while computing the period of limitation. It was held that the period cannot be excluded as provided under Sub-section (2) of Section 12 and period of limitation is to be calculated from the date of the decree. Apex Court in *W.B. Essential Commodities Supply Corporation's case (supra)* elaborately considered the question whether Sub-section (2) of Section 12 is applicable, while computing the period of limitation for executing the decree. Holding that the decree immediately on the pronouncement of the judgment by making an oral application under Sub-rule (1) of Rule 11 of Order XXI and as provided under Rule 6A of Order XXI of Code of Civil Procedure by producing the last portion of the judgment, which has the effect of the decree, a decree could be executed, it was held that there is no nexus between the date of drawing up of decree by the court and filing of the execution petition and the period of limitation under Article 136 runs from the date of the decree and not from the date when the decree is actually drawn up and signed by the Judge. Their Lordships held:

19. Under the scheme of the Limitation Act, execution applications, like plaints have to be presented in the court within the time prescribed by the Limitation Act. A decree-holder does not have the benefit of exclusion of the time taken from obtaining the certified copy of the decree like the appellant who prefers an appeal, much less can he claim to deduct time taken by the court in drawing up and signing the decree. In this view of the matter, the High Courts of Patna and Calcutta in *Chandra Mouli Deva v. Kumar Binoya Nand Singh and Sunderlal & Sons v. Yagendra Nath Singh* have correctly laid down the law the opinion to the contra expressed by the High Court of Calcutta in *Ram Krishna Tarafdar v. Nema Krishna Tarafdar* is wrong. Section 5 of the Limitation Act has no application. Section 12(2) of the Limitation Act is also inapplicable to an execution petition. If the time is reckoned not from the date of the decree but from the date when it is prepared, it would amount to doing violence to the provisions of the Limitation Act as well as of Order 20 and Order 21 Rule 11 CPC which is clearly impermissible.

The decision does not lay down a principle that Sub-section (1) of Section 12 of the Act is not applicable to an execution petition. In fact that question was not considered in that decision.

9. Part III of Act 1963 deals with computation of period of limitation. Sub-section (1) of Section 12 provides for exclusion of the day on which the period is to be reckoned while computing the period. Sub-section (1) of Section 12 reads:

In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

Sub section (b) of Section 2 of the Act defines an application as includes a petition. Therefore Sub-section (1), though does not specifically provide section (1), though does not specifically provide that it applies to a petition, as application includes a petition, Sub-section (1) is applicable to a petition also. If so it will apply to an execution petition also. It is more because Section 5 of the Limitation Act specifically provide that the said provision does not apply to an application under any of the provisions of Order XXI of the Code of Civil Procedure. But Section 12(1) does not exclude the execution petitions.

10. Section 5 of the Act reads:

5. Execution of prescribed period in certain cases: Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Therefore when Section 5 specifically excludes its application to any application made under any of the provisions of Order XXI of Code of Civil Procedure, Sub-section (1) of Section 12 does not exclude it and expressly provides that in computing the period of limitation for any application the day from which such period is to be reckoned shall be excluded. The fact that Sub-section (2) of Section 12 of the Act is held to be not applicable does not mean that Sub-section (1) of Section 12 of the Act is not applicable.

11. Section 9 of the [General Clauses Act, 1897](#) provides for commencement and termination of time. Section 9 reads:

(1) In any (Central Act) or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days of any other period of time, to use the word 'from' and, for the purpose of including the last in a series of days or any other period of time, to use the word 'to'.

(2) This section applies also to all (Central Acts) made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Therefore when the Act 1963 provides that the time would start to run from the date on which the decree becomes enforceable, Section 9 of the General Clauses Act provides that it shall be sufficient for the purpose of excluding the first series of days or any other period of time in any Central Act or Regulation made after the commencement of the [General Clauses Act, 1897](#) to use the word 'from' and for the purpose of excluding as the series of days to use the word 'to'. Apex Court in *Tarun Prasad Chatterjee v. Dinanath Sharma* : (2000)8SCC649 interpreting

Section 9 of the General Clauses Act held that while computing the period of limitation for filing an Election Petition the first day is to be excluded. Their Lordship held:

12. Section 9 says that in any Central Act or regulation made after the commencement of the [General Clauses Act, 1897](#), it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any period of time, to use the word 'to'. The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word 'from' is used indicating the beginning, the opening day is to be excluded and if the last day is to be excluded and if the last day is to be included the word 'to' is to be used. In order to excluded the first day of the period, the crucial thing to be noted is whether the period of limitation is delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. For instance, if a policy of insurance has to be good for one day from 1st January, it might be valid only for a few hours after its execution and the party or the beneficiary in the insurance policy would not get reasonable time to lay claim, unless 1st January is excluded from the period of computation.

12. Apex Court in *Saketh India Ltd. v. India Securities Ltd.* : 1999 CriLJ1822 applied Sub-section (1) of Section 12 of the Act and Section 9 of the General Clauses Act while computing the period for filing a complaint under Section 138 of Negotiable Instruments Act and held:

7. The aforesaid principle of excluding the day from which the period is to be reckoned is incorporated in Section 12 (1) and (2) of the [Limitation Act, 1963](#). Section 12(1) specifically provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. Similar provision is made in Sub-section (2) for appeal, revision or review. The same principle is also incorporated in Section 9 of the [General Clauses Act, 1897](#) which, inter alia, provides that in any Central Act made after the commencement of the General Clauses Act, it shall be sufficient the first in a series of days or any other period of time, to use the word 'from' and for the

purpose of including the last in a series of days or any other period of time, to use the word 'to'.

8. Hence, there is no reason for not adopting the rule enunciated in the aforesaid case which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act. Ordinarily in computing the time, the rule observed is to exclude the first day and to include the last. Applying the said rule, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer expires.

13. While computing the period of limitation for execution of the decree as provided under Article 136 of the Act, the date on which the decree was passed has to be excluded, in view of Section 9 of General Clauses Act and Sub-section (1) of Section 12 of the Act. That view is supported by the decision of a learned single Judge the Bombay High Court in Vijay Dattatraya Navale v. Shivappa Hanumanthappa Nagure : AIR1994 Bom186 . It was held:

12(1). In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. The word 'application' is defined under Section 2(b) as 'application' includes a petition therefore execution petition can fall as far as Section 12(1) is concerned and benefit of the provisions can be given. However, this is not so when we have to consider Section 12(2).

A learned single Judge of the Allahabad High Court in Shyama Devi v. Ramjas Rolling Mills : AIR1979 All16 has also taken the very same view. It was held:

7. A contention was weakly raised in the present case that the suit had not been filed within a period of one year. The District Judge decided the objection under Order XXI Rule 58 by his judgment dated 3rd January, 1976. The suit under Order XXI, Rule 63 CPC was filed on the 3rd January, 1977. It was urged that it was filed one day beyond time. I cannot agree Section 12(1) of the Limitation Act makes it clear that in computing the period of limitation for any suit the day from which such period is to be reckoned shall be excluded. Thus, the 3rd January, 1976 is to be

excluded. The limitation for filing a suit under Rule 63 of Order XXI is one year as provided by Article 98 of the Limitation Act. The limitation runs from the date of the final order. In the present case the order of District Judge is 3rd January 1976 which day has to be excluded.

14. Learned Counsel appearing for respondent relied on the decision of the Apex Court in *Deep Chand v. Mohanlal* : [2000]2SCR890 and argued that unless it is really established that the application for execution of the decree was beyond the period of limitation, executing court should not find ways to dismiss the application as barred by time and where language of the decree is capable of two interpretations, one which assists the decree-holder to have the fruits of the decree should be preferred.

15. As the period of limitation provided under Article 136 is 12 years and the period of limitation is to be computed as provided under Sub-section (1) of Section 12 of Limitation Act and that too in accordance with the provisions of Section 9 of General Clauses Act, though the time from which the period of limitation would begin to run is the date on which the decree becomes enforceable, the date of the decree is to be excluded and 12 years period is to be calculated from the next day onwards. If that be so, execution petition filed on 30-6-2006 is within the period of limitation.

Civil Revision Petition is dismissed.

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