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BHASKER & ANR.

v.

AYODHYA JEWELLERS

(Civil Appeal No. 3844 of 2023)

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MAY 10, 2023

[ABHAY S. OKA AND RAJESH BINDAL, JJ.]

- Code of Civil Procedure, 1908 – Or. XXI, rr. 92, 94, 95 – Limitation Act, 1963 – Art. 134 – What is the starting point of limitation for filing an application under Rule 95 of Order XXI of the Code of Civil Procedure, 1908 – Held: On a conjoint reading of sub-rule (1) of r. 92 and r. 94 of Order XXI of CPC, it is apparent that the order of confirmation of sale under sub-rule (1) of Rule 92 of Order XXI culminates into a grant of a sale certificate under Rule 94 of Order XXI – The date of sale to be incorporated in the sale certificate is the date of passing of the order of sale confirmation – The very fact that Rule 94 of Order XXI incorporates a requirement of issuing a sale certificate shows that the Legislature was of the view that mere order of confirmation of auction may not be sufficient – The certificate is ultimately the evidence of the fact that the auction in favour of the person to whom a certificate is issued, has been confirmed by the Executing Court – Prima facie, the only way of avoiding inconsistency between Rule 95 of Order XXI of CPC and Article 134 of the Limitation Act is to read into Article 134 that the starting point for making an application under Rule 95 of Order XXI of CPC is the date on which a certificate recording confirmation of auction sale is actually issued to the purchaser – The decision of the Co-ordinate Bench in the case of Pattam Khader Khan requires reconsideration by the larger Bench – In view of the Court, the larger Bench will have to decide the issue relating to the starting point of limitation for making an application under Rule 95 of Order XXI of CPC.*

G *AFCONS Infrastructure Limited and Anr. v. Cherian Varkey Construction Company Private Limited and Ors. (2010) 8 SCC 24 : [2010] 8 SCR 1053; Inco Europe Limited and Ors. v. First Choice Distribution (A Firm) and Ors. (2000) 2 ALL ER 109; Surjit Singh Kalra v.*

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Union of India and Anr. (1991) 2 SCC 87 : [1991] 1 SCR 364 – relied on. A

United Finance Corporation v. M.S.M. Haneefa (dead) thr. LRs. (2017) 3 SCC 123 : [2017] 1 SCR 583 – referred to.

Pattam Khader Khan v. Pattam Sardar Khan & Anr. (1996) 5 SCC 48 : [1996] 3 Suppl. SCR 320 – requires reconsideration. B

<u>Case Law Reference</u>			
[2017] 1 SCR 583	referred to	Para 3	C
[1996] 3 Suppl. SCR 320	requires reconsideration	Para 4	
[2010] 8 SCR 1053	relied on	Para 15	
[1991] 1 SCR 364	relied on	Para 17	D

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3844 of 2023.

Arising Out of Special Leave Petition (C) No. 3714 of 2018.

From the Judgment and Order dated 11.04.2017 of the High Court E of Kerala at Ernakulam in CRP No. 181 of 2016.

Sreegesh M. K., Ms. Neha Sharma, Mahesh Agarwal, Advs. for the Petitioners.

Arun K. Sinha, Sharad Agrawal, Rohan Goel, Rakesh Singh, Advs. for the Respondent. F

The Judgment of the Court was delivered by

ABHAY S. OKA, J.

1. Leave granted.

FACTUAL ASPECTS G

2. The issue which arises for consideration in this appeal is what is the starting point of limitation for filing an application under Rule 95 of Order XXI of the Code of Civil Procedure, 1908 (for short, ‘CPC’).

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- A 3. The property subject matter of this appeal held by the appellants was sold in execution of a decree passed against the appellants in a public auction. The respondent is the purchaser of the property. The order of confirmation of sale in accordance with sub-rule (1) of Rule 92 of Order XXI of CPC was passed on 16th July 2009. The sale certificate under Rule 94 of Order XXI of CPC was issued by the Executing Court to the respondent on 5th February 2010. On 27th July 2010, the respondent filed an application under Rule 95 of Order XXI of CPC before the Executing Court. The said application was allowed by the Executing Court. The appellants applied for a review of the said order. The prayer for review was dismissed by the Executing Court. The appellants
- B challenged the orders of the Executing Court by filing a Civil Revision Application before the High Court of Judicature at Kerala. By the judgment dated 11th April 2017, which is impugned in this appeal, the High Court dismissed the revision application by holding that the starting point of limitation for making an application under Rule 95 of Order XXI
- C was the date on which the sale certificate was issued by the Executing Court. The High Court relied upon the decision of this Court in the case of *United Finance Corporation v. M.S.M. Haneefa (dead) thr. LRs.*¹

SUBMISSIONS OF THE PARTIES

- E 4. The learned counsel appearing for the appellants invited our attention to Article 134 of the Schedule to the Limitation Act, 1963 (for short, ‘the Limitation Act’). He pointed out that Article 134 is specifically applicable to an application made under Rule 95 of Order XXI of CPC. It provides one year for filing such an application from the date the sale becomes absolute. He submitted that in this case, the sale was confirmed on 16th July 2009, and the application was moved by the respondent after more than one year i.e. on 27th July 2010. He relied upon a decision of this Court in the case of *Pattam Khader Khan v. Pattam Sardar Khan & Anr*². He submitted that this Court has clearly held that the starting point of limitation for filing an application under Rule 95 of Order XXI of CPC is the date on which the auction sale is made absolute in accordance with sub-rule (1) of Rule 92 of Order XXI of CPC. He submitted that the High Court committed an error by relying upon the decision in the case of *United Finance Corporation*¹. In the said case, a revision application against the order rejecting the application for setting

¹(2017) 3 SCC 123

H ²(1996) 5 SCC 48

aside the sale was filed before the High Court in which, further proceedings were stayed. While computing the limitation, the period of stay was excluded and that is how this Court held that the application made in the said case was within limitation.

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5. The submission of the learned counsel appearing for the respondent in support of the impugned order is that the application made by the respondent will be governed by residuary Article 137 of the Limitation Act, which provides for a period of limitation of three years. He would, therefore, submit that in any case, the decision of this Court in the case of *United Finance Corporation*¹ has been rightly applied by the High Court.

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OUR VIEW

6. We have carefully considered the submissions. It is necessary to reproduce Rules 92, 94 and 95 of Order XXI of CPC, which read thus:

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“92. Sale when to become absolute or be set aside.-

(1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute.

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Provided that, where any property is sold in execution of decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the Court shall not confirm such sale until the final disposal of such claim or objection.

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(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within sixty days from the date of sale, or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the court, the Court shall make an order setting aside the sale: Provided that no order shall be made unless notice of the application has been given to all persons affected thereby:

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Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of

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- A thirty days, within which the deposit had to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act, 2002.
- (3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.
- B (4) Where a third party challenges the judgment-debtor's title by filing a suit against the auction-purchaser, the decree-holder and the judgment-debtor shall be necessary parties to the suit.
- (5) If the suit referred to in sub-rule (4) is decreed, the Court shall direct the decree holder to refund the money to the auction-purchaser, and where such an order is passed the execution proceeding in which the sale had been held shall, unless the Court otherwise directs, be revived at the stage at which the sale was ordered.”
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- D “**94. Certificate to purchaser.**- Where a sale of immoveable property has become absolute, **the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.**
- E **95. Delivery of property in occupancy of judgment -debtor.**- Where the immoveable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment debtor subsequently to the attachment of such property **and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.”**
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(emphasis added)

7. Article 134 of the Limitation Act, 1963 is also material, which reads thus:

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	Description of Application	Period of Limitation	Time from which period begins to run
134.	For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	One Year	When the sale becomes absolute

8. Article 134 provides that the starting point of limitation for making an application under Rule 95 of Order XXI is the date on which the sale is confirmed. Under Rule 92 of Order XXI, the Executing Court is required to pass an order making an order of confirmation of sale. Upon passing the said order, the sale becomes absolute. Rule 94 of Order XXI requires a sale certificate to be issued to the purchaser. However, the date of the certificate shall be the date on which the sale became absolute. Rule 95 of Order XXI of CPC, on its plain reading, incorporates two conditions, which are as under:

- i. The immovable property sold must be in occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under title created by the judgment-debtor, subsequent to the attachment of the property; and
- ii. A certificate in respect of the sale has been granted under Rule 94 of Order XXI of CPC.

Only if both conditions are fulfilled, the Executing Court, on the application of the purchaser, is empowered to pass an order of delivery of possession of putting the purchaser in possession of the auctioned property. Thus, on the one hand, Rule 95 of Order XXI mandates that an application for possession of the auctioned property can be made by the auction-purchaser only after a sale certificate in accordance with Rule 94 of Order XXI is issued. But on the other hand, the starting point for making an application under Rule 95 of Order XXI, in accordance with Article 134 of the Limitation Act, is the date on which the sale is made absolute in accordance with Rule 92 of Order XXI. It is the obligation of the Executing Court to issue the sale certificate as per Rule 94 of Order XXI of CPC. In practice, we often notice a substantial delay in issuing the sale certificate. In this case, the delay is of more than six months. In

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- A many cases, there is a procedural delay in issuing the sale certificate for which no fault can be attributed to the auction purchaser.

9. Paragraphs 11 and 12 of the decision of this Court in the case of *Pattam Khader Khan*² read thus:

- B “**11. Order 21 Rule 95** providing for the procedure for delivery of property in occupation of the judgment-debtor etc., requires an application being made by the purchaser for delivery of possession of property in respect of which a certificate has been granted under Rule 94 of Order 21. **There is nothing in Rule 95 to make it incumbent for the purchaser to file the certificate along with the application. On the sale becoming absolute, it is obligatory on the court though, to issue the certificate. That may, for any reason, get delayed. Whether there be failure to issue the certificate or delay of action on behalf of the court or the inaction of the purchaser in completing the legal requirements and formalities, are factors which have no bearing on the limitation prescribed for the application under Article 134.** The purchaser cannot seek to extend the limitation on the ground that the certificate has not been issued. **It is true though that order for delivery of possession cannot be passed unless sale certificate stands issued. It is manifest therefore that the issue of a sale certificate is not “sine qua non” of the application, since both these matters are with the same court. The starting point of limitation for the application being the date when the sale becomes absolute i.e. the date on which title passed, the evidence of title, in the form of sale certificate, due from the court, could always be supplied later to the court to satisfy the requirements of Order 21 Rule 95.** See in this regard *Babulal Nathoolal v. Annapurnabai* [AIR 1953 Nag 215 : ILR 1953 Nag 557], which is a pointer. It therefore becomes clear that the title of the court auction-purchaser becomes complete on the confirmation of the sale under Order 21 Rule 92, and by virtue of the thrust of Section 65 CPC, the property vests in the purchaser from the date of sale; the certificate of sale, by itself, not creating any title but merely evidence thereof. The sale certificate rather is a formal acknowledgement of a fact already accomplished, stating as to what stood sold. Such act of the court is pristinely a ministerial
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one and not judicial. It is in the nature of a formalisation of the A obvious.

12. Such being the state of law on the subject, we fail to see how the High Court could have come to the conclusion that even though the sale becomes absolute on confirmation under Order 21 Rule 92 CPC effectively passing title, the same can only be complete when evidenced by a sale certificate issued under Order 21 Rule 94, and that unless the sale certificate is issued, limitation cannot start for the purpose of an application under Order 21 Rule 95 CPC, vis-à-vis, Article 134 of the Limitation Act, 1963. **The High Court, in our view erred in holding that it is only from the date when a sale certificate is issued, that the limitation starts running.** Such view of the High Court would not only cause violence to the clear provisions of Article 134 of the Limitation Act but have the effect of unsettling the law already settled.”

(emphasis added) D

10. Paragraph 11 takes the view that there is nothing in Rule 95 of Order XXI which makes it incumbent for the purchaser to file a sale certificate along with the application. However, on a plain reading of Rule 95 of Order XXI, unless a certificate of sale is granted under Rule 94 of Order XXI, the auction-purchaser does not get a right to apply for delivery of possession by invoking Rule 95 of Order XXI. Therefore, the view expressed in paragraph 11, *prima facie*, may not be correct. The said view is not supported by the plain language of Rule 95 of Order XXI of CPC.

11. At this stage, we may note here the decision of this Court in the case of **United Finance Corporation¹**. In paragraph 11, the Bench expressed doubt about the correctness of what is held in paragraph 11 of **Pattam Khader Khan's case²**. Paragraph 11 of the decision in the case of **United Finance Corporation¹** reads thus:

“11. By careful reading of Order 21 Rule 95 CPC, the language of the provision is indicative that application for delivery of possession of property purchased in the court auction can be filed where “a certificate in respect thereof has been granted under Rule 94 of Order 21”. Having regard to the language of Order 21 Rule 95 CPC “a certificate in respect thereof has been granted in G

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- A Rule 94, the court shall, on the application of the purchaser, order delivery to be made..." we have our own doubts regarding the view taken by this Court in *Pattam Khader Khan case* [*Pattam Khader Khan v. Pattam Sardar Khan, (1996) 5 SCC 48*] that "...there is nothing in Rule 95 to make it incumbent for the purchaser to file the certificate along with the application" and "... that the issuance of sale certificate is not a sine qua non of the application ...". However, in the facts and circumstances of the present case, we are not inclined to refer the question to a larger Bench — whether issuance of sale certificate is a sine qua non or not for filing the application under Order 21 Rule 95CPC and the question is left open."

(emphasis added)

- D However, considering the facts of the case before it, this Court observed that it was not inclined to refer the question to a larger Bench.
- D Therefore, a Co-ordinate Bench has already expressed a *prima facie* view that what is held in paragraph 11 of *Pattam Khader Khan's case*², may require reconsideration by a larger Bench.

- E 12. We have already noted the twin conditions which should be fulfilled as a condition precedent for enabling the Executing Court to pass an order of delivery of possession in favour of the auction-purchaser. One of the two conditions is that the auction-purchaser who applies under Rule 95 of Order XXI of CPC for delivery of possession, must possess a sale certificate issued under Rule 94 of Order XXI of CPC. Once there is a confirmation of an auction sale in accordance with sub-rule (1) of Rule 92 of Order XXI of CPC, the Executing Court, in the absence of the prohibitory order of a superior Court, is under an obligation to issue a sale certificate to the auction-purchaser in accordance with Rule 94 of Order XXI of CPC. However, the law does not provide for a specific time limit within which, a certificate under Rule 94 of Order XXI of CPC should be issued. In a given case, there can be a long procedural delay in issuing the sale certificate for which the auction purchaser cannot be blamed. In the present case, the delay is of more than six months. With greatest respect to the decision of this Court in the case of *Pattam Khader Khan*², *prima facie*, we are unable to agree with the view that an application under Rule 95 of Order XXI can be

H ³(2010) 8 SCC 24

made even before the certificate of sale is granted to the auction-purchaser in accordance with Rule 94 of Order XXI of CPC. A

13. Therefore, in our *prima facie* view, the order of confirmation of sale under sub-rule (1) of Rule 92 of Order XXI of CPC does not give a cause of action to the auction-purchaser to apply for possession by invoking Rule 95 of Order XXI of CPC. He cannot make such an application unless the Executing Court issues a sale certificate. Though CPC does not permit an application under Rule 95 of Order XXI to be filed before the sale certificate is issued, Article 134 of the Limitation Act proceeds on the footing that cause of action becomes available to the auction-purchaser to apply for possession on the basis of the order of confirmation of sale made under sub-rule (1) of Rule 92 of Order XXI of CPC. B

14. Therefore, there is an apparent inconsistency between the provisions of Rule 95 of Order XXI of CPC and Article 134 of the Limitation Act. The question is whether the rule of purposive interpretation can be used to set right the inconsistency or anomaly. We may note here that even if the delay is on the part of the Executing Court in the issue of the sale certificate, the delay in filing an application under Rule 95 of Order XXI cannot be condoned as Section 5 of the Limitation Act is not applicable to the applications filed under Order XXI. C

15. In paragraphs 20 and 21 of the decision of this Court in the case of *AFCONS Infrastructure Limited and Anr. v. Cherian Varkey Construction Company Private Limited and Ors.*³, the issue of purposive interpretation has been discussed in detail. The said two paragraphs read thus: D

“**20.** The principles of statutory interpretation are well settled. Where the words of the statute are clear and unambiguous, the provision should be given its plain and normal meaning, without adding or rejecting any words. Departure from the literal rule, by making structural changes or substituting words in a clear statutory provision, under the guise of interpretation will pose a great risk as the changes may not be what the legislature intended or desired. Legislative wisdom cannot be replaced by the Judge’s views. As observed by this Court in a somewhat different context: F

“**6.** ... When a procedure is prescribed by the legislature, it is not for the court to substitute a different one according to its G

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- A notion of justice. When the legislature has spoken, the judges cannot afford to be wiser.”
 (See *Shri Mandir Sita Ramji v. Lt. Governor of Delhi* [(1975) 4 SCC 298], SCC p. 301, para 6.)
- 21. There is however an exception to this general rule.** Where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words or grammatical construction thereof would lead to confusion, absurdity, repugnancy with other provisions, the courts may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right the situation, by adding or omitting or substituting the words in the statute. When faced with an apparently defective provision in a statute, courts prefer to assume that the draftsman had committed a mistake rather than concluding that the legislature has deliberately introduced an absurd or irrational statutory provision. Departure from the literal rule of plain and straight reading can however be only in exceptional cases, where the anomalies make the literal compliance with a provision impossible, or absurd or so impractical as to defeat the very object of the provision. We may also mention purposive interpretation to avoid absurdity and irrationality is more readily and easily employed in relation to procedural provisions than with reference to substantive provisions.”

(emphasis added)

16. As a normal rule, while interpreting the statute, the Court will not add words or omit words or substitute words. However, there is a well-recognized exception to this rule which is found in a decision of the House of Lords in the case of *Inco Europe Limited & Ors. v. First Choice Distribution (A Firm) & Ors.*⁴, wherein the Court held thus:
- “The court must be able to correct obvious drafting errors. In suitable cases, in discharging its interpretative function the court will add words, or omit words or substitute words.** Some notable instances are given in Professor Sir Rupert Cross’s admirable opuscule, Statutory Interpretation, 3rd ed.(1995), pp.93-105. He comments at p.103:

H ⁴(2000) 2 ALL ER 109

“In omitting or inserting words the judge is not really engaged in a hypothetical reconstruction of the intentions of the drafter or the legislature, but is simply making as much sense as he can of the text of the statutory provision read in its appropriate context and within the limits of the judicial role.”

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This power is confined to plain cases of drafting mistakes. The courts are ever mindful that their constitutional role in this field is interpretative. They must abstain from any course which might have the appearance of judicial legislation. A statute is expressed in language approved and enacted by the legislature. So, the courts exercise considerable caution before adding or omitting or substituting words. **Before interpreting a statute in this way the court must be abundantly sure of three matters:** (1) the intended purpose of the statute or provision in question; (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed. **The third of these conditions is of crucial importance.** Otherwise any attempt to determine the meaning of the enactment would cross the boundary between construction and legislation.”

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(emphasis added)

17. The principle laid down in the said decision was reiterated by this Court in the case of *Surjit Singh Kalra v. Union of India & Anr*⁵. In paragraph 19, this Court held thus:

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“**19.** True it is not permissible to read words in a statute which are not there, but “where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words” (Craies Statute Law, 7th edn., p. 109). Similar are the observations in *Hameedia Hardware Stores v. B. Mohan Lal Sowcar* [(1988) 2 SCC 513, 524-25] where it was observed that the court construing a provision should not easily read into it words

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⁵(1991) 2 SCC 87

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- A which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See: Sirajul Haq Khan v. Sunni Central Board of Waqf [1959 SCR 1287, 1299 : AIR 1959 SC 198].”)
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18. Coming back to the relevant provisions of Order XXI of CPC, on a conjoint reading of sub-rule (1) of Rule 92 and Rule 94 of Order XXI of CPC, it is apparent that the order of confirmation of sale under sub-rule (1) of Rule 92 of Order XXI culminates into a grant of a sale certificate under Rule 94 of Order XXI. The date of sale to be incorporated in the sale certificate is the date of passing of the order of sale confirmation. The very fact that Rule 94 of Order XXI incorporates a requirement of issuing a sale certificate shows that the Legislature was of the view that mere order of confirmation of auction may not be sufficient. The certificate is ultimately the evidence of the fact that the auction in favour of the person to whom a certificate is issued, has been confirmed by the Executing Court.

19. *Prima facie*, it appears to us that the only way of avoiding inconsistency between Rule 95 of Order XXI of CPC and Article 134 of the Limitation Act is to read into Article 134 that the starting point for making an application under Rule 95 of Order XXI of CPC is the date on which a certificate recording confirmation of auction sale is actually issued to the purchaser. Such interpretation will satisfy the three tests laid down in the case of *Inco Europe Limited & Ors.*⁴ Therefore, in our considered view, the decision of the Co-ordinate Bench in the case of *Pattam Khader Khan*² and especially, what is held in paragraph 11, requires reconsideration by the larger Bench. In our considered view, the larger Bench will have to decide the issue relating to the starting point of limitation for making an application under Rule 95 of Order XXI of CPC. We direct the Registrar (J-I) to place this appeal along with a copy of this order before the Hon’ble Chief Justice of India to enable him to take appropriate decision on the administrative side.