

## Vidyadhar vs Ramzan And Anr. on 15 February, 1951

**Equivalent citations:** AIR1952ALL715, AIR 1952 ALLAHABAD 715

**Author:** V. Bhargava

**Bench:** V. Bhargava

### JUDGMENT

Malik, C.J.

1. On August 31, 1938, a money decree was passed in favour of the applicant Vidyadhar against the opposite-parties Ramzan and Bhujang. Within the period for execution of decree, the decree-holder applied for execution. On February 12, 1942, however, the papers were consigned to the record room and thus terminated the first application for execution. On August 1, 1945, the decree-holder filed a second application for execution and in this application it was mentioned that on January 25, 1943, the judgment-debtors had paid a sum of Rs. 11/- and on February 2, 1944, another sum of Rs. 7/-. At the end of the application there was a note that the period of limitation was saved under Section 20, Indian Limitation Act. by these two payments.

2. After the decree-holder had applied for execution, he evidently realized that it would be necessary for him to certify payments under Order 21, Rule 2, C. P. C., before the executing Court could take any notice of these payments. On September 25, 1945, he, therefore, applied certifying the payments and as the judgment-debtor did not admit the payments, he offered to lead oral and documentary evidence to prove the same. The lower Court, however, refused to take any evidence and refused to allow the payments to be certified. It gave as its reason that the application dated September 25, 1945, having been made after the period for execution of the decree had expired, if the payments were not taken into consideration, the Court could not allow certification of the payments. The result, therefore, was that the application of September 25, 1945, as also the application for execution dated August 1, 1945, were both dismissed. The decree-holder has come up to this Court in revision under Section 25, Small Cause Court Act.

3. The case was referred to a Full Bench by reason of an apparent conflict between the Avadh Chief Court in 'MT. FATIMUNNISSA v. ASGHAR HUSAIN', 3 Luck 170 (FB) and the Allahabad High Court in 'JOTI PRASAD v. SRI CHAND', 51 All 237 (FB).

4. We find however, that after these cases were decided, there was a decision of the Judicial Committee of the Privy Council which exactly covers the point referred to us. The decision of the Judicial Committee is reported in 'SHRI PROKASH SINGH v. ALLAHABAD BANK LTD.', 56 Ind App 30 (PC) and makes it clear that "Certification to the Court under Order 21, Rule 2(1) by a

decree-holder of a payment made to him out of Court even if made in the form of an application, is not an application within Article 181, Limitation Act so as to be barred unless it takes place within three years of the payment certified, nor is there any article which limits the time. Further, certification under Rule 2(1) can take place when execution of the decree is barred but for the payment certified."

The decision, therefore, makes it abundantly clear that there is no provision in the Limitation Act for certification by a decree-holder and that the decree-holder can certify such payment even after the period of limitation even if the execution of the decree is barred but for such payment. The reason for the decision is obvious. Order 21, Rule 2, C. P. C. does not provide for an application by the decree-holder nor does it provide for issue of notice when the decree-holder certifies payment.

5. The relevant portion of Order 21, Rule 2 is as follows:

"(1) Where any money payable under a decree..... is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree....."

(2) The judgment-debtor also may inform the Court of such payment or adjustment and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified....."

6. Article 174, Limitation Act prescribes a period of ninety days from the date of payment for filing an application for the issue of notice under Order 21, Rule 2, C. P. C. As no application for issue of notice is required when a decree-holder certifies payment, Article 174 obviously does not apply to a certification by the decree-holder. The only other article in which reliance is placed is Article 181. Limitation Act but that article prescribes for applications for which no period of limitation is provided. As we have already pointed out, Order 21, Rule 2, C. P. C. does not require any application to be filed by the decree-holder nor is the Court required to issue any notice or inquire into the validity or correctness of the certificate.

7. As we have already said, the lower Court did not allow the decree-holder to lead any evidence and we, therefore, do not know whether the alleged payment was in the handwriting of or in a writing signed by, the person making the payment or his duly authorized agent as required by Section 20, Indian Limitation Act. If the payments can be relied upon to extend the period of limitation under Section 20 of the Act, then only can the decree-holder claim that he has a fresh period of three years from the dates of such payments for his application for execution of the decree. Article 182 does not provide for a fresh period of limitation for an application for execution from the date of payment. The only provision of law on which the decree-holder can, therefore, rely is Section 20, Indian Limitation Act. As the facts have not been investigated by the trial Court, it is necessary to send the case back to that Court for decision according to law.

8. We, therefore, allow the revision, set aside the order passed by the lower Court and send the case back to that Court for decision according to law. Costs to abide the result.