Calcutta High Court
Atarmoni Dasi vs Bepin Behari Dhur And Ors. on 18 July, 1928
Equivalent citations: 115 Ind Cas 83
Author: Costello
Bench: Costello
JUDGMENT Costello, J.

1. This is an application made by Kali Charan Dhur, one of the defendants in this administration suit The decree directed the plaintiffs and the defendants Nobin Chandra Dhur and Susila Sundari Dasi to pay to the applicant Rs. 2,590-0-3 With interest thereon from he date of the decree until realisation. The application is for the execution of that decree under the provisions of Order XXI, Rule 11 of the Civil Procedure Code and is in the tabular form required by that rule. In column 10 the applicant states:

I, the applicant pray that the said sum of Rs. 2,590-5-3 with interest thereon at 6 per cent. per annum from the date of the decree till realisation and the costs of taking out this execution be realised by attachment and sale of the right, title and interest of the judgment-debtors to and in the immoveable properties specified at the date of the application and paid to him.

2. The tabular statement was duly filed before the Master under Ch. VI, Rule 12 of the Rules of the Court and as the decree was more than a year old the matter fell to be dealt with under the provisions of Order XXI, Rule 22 and the Master endorsed the tabular statement in this way.

Let usual notice issue under Order XXI, Rule 22(a) of the Code of Civil Procedure.

3. The notice was duly issued and was dated the 8th May, 1928. It is to be observed that the decree was made on the 8th May, 1916, and the notice was dated the 8th May, 1928, that is to say, exactly twelve years after the date of the decree. Under Section 12(1) of the Limitation Act, in computing the period of limitation, the day from which such period is to be reckoned is excluded. If, therefore, it can be said that the filing of the tabular statement was itself "an application" then the application was made just within the period of limitation prescribed by Article 183 of the First Schedule to the Limitation Act.

4. Section 3 of the Limitation Act is the first section in "Part II" of the Act which "Part" bears the heading "Limitation of Suits, Appeals and Applications" so that there are three species of matters which are dealt with in the Limitation Act and the Schedule to that Act. Section 3 reads as follows:

Subject to the provisions contained in Sections 4 to 25 every suit instituted, appeal preferred, and application made after the period of limitation prescribed therefor by the First Schedule shall be dismissed.

5. Upon looking at Article 183 we find that that is one of the Articles in the Division of the Schedule which deals with "Applications" and the heading of the first column is "Description of application", that of the second column "Period of limitation", and that of the third column "Time from which the

period begins to run". Reading Article 183 in conjunction with Section 3 the provisions of the Statute relating to limitation of the kind applicable to the present instance may be stated to be as follows:

6. Subject to the provisions contained in Sections 4 to 25 every application to enforce a judgment, decree or order of any Court established by Royal Charter made after the period of 12 years shall be dismissed.

7. Therefore, it is quite obvious that what has to be considered is whether or not the "application" in the present matter was or was not made after the period of 12 years from the date of the decree.

8. It was argued by Mr. Chatterjee on the authority of the cases of Monohar Das v. Futteh Chand 30 C. 979 : 7 C.W.N. 793 and Amulya Ratan Banerji v. Banku Behari Chatterji that it is not sufficient merely that an application should be made but that some order should be made by the Court. In my view these decisions do not go so far as to lay down the proposition that the Article requires the making of an order in execution in order that the rights of the decree-holder should be preserved, except no doubt in cases where a question arises as to whether or not there has been a revivor within the meaning of the third column of Article 183. To my mind in order to preserve the rights of the decree-holder it is only necessary that he should make an "application" within the prescribed period of 12 years. On any other view of the matter the result would be to cut down the period of limitation actually prescribed by the Statute, e g, if the making of an application means the actual hearing of a motion by the Court, it follows that the actual period of limitation has been cut down by the length of time required for notice of that motion. There is a decision of the Bombay High Court [Kanemar Venkapaiya v. Nazerally Tyabally 86 Ind. Cas. 440 : 47 B. 764: 25 Bom. L.R. 484 : A.L.R. 1924 Bom. 36] that where an "application" is to be made to the Court within the period of limitation prescribed by any Act, it is deemed to be made for the purposes of limitation when the notice of motion is first filed in the proper office of the Court. In my opinion that is the right view of the matter, although I am aware that there are other decisions of this Court which suggest the contrary There is also a decision of the Madras High Court which goes even further in that it is to the effect that an application to the Registrar of the Court is an application within Article 183 even though the affidavits supporting the application are filed subsequently. The Bombay decision was in the main based upon the well-known decision of Mr. Justice Denman; In re Gallop and Central Queensland Meat Export Co (1890) 25 Q.B.D. 230 : 59 L.J.Q.B. 460 : 62 L.T. 834:38 W.R. 621. The effect of Mr. Justice Denman's judgment in that case [reported as In re Gallop and Central Queensland Meat Export Co. (1890) 25 Q.B.D. 230 : 59 L.J.Q.B. 460 : 62 L.T. 834:38 W.R. 621] is that if a notice of motion is given before the last day of any limited time then the application is within the time prescribed. That means that wherever there is a limitation of time prescribed within which one party has to move the Court in any matter in order to preserve his rights, he has safeguarded his position if in fact he gives notice of his motion within the time prescribed, and it is not necessary that such motion should actually be heard by the Court or even have appeared on the list of matters to be heard by the Court within the prescribed period. I respectfully agree entirely with the decision of Mr. Justice Danman and with the decisions reported as Kanemar Venkapaiya v. Nazerally Tyabally 86 Ind. Cas. 440 : 47 B. 764: 25 Bom. L.R. 484 : A.L.R. 1924 Bom. 36 and Kuttayan Chetti v. Ellappa Chetti (5) to which I have already referred. Nevertheless having regard to the decisions of the

Calcutta High Court and in particular to the decision of a Bench of this Court consisting of Sir Comer-Petheram, C.J. and Norris and Pigot, JJ., in the case of Kheter Mohun Sing v. Kassy Nath Sett (6) were I called upon to do so I should feel myself bound to hold that the mere giving of a notice of motion is not of itself sufficient to preserve the rights of the person giving such notice unless at any rate the notice nominated a return day which fell within the period of limitation. I do venture, however, with all due deference to express the opinion that that decision may not be quite in accordance with the law in England on analogous points. But in any event that decision has, I think, no real bearing on the facts of the present case, and none of the decisions to which I have been referred actually cover the point which I have here to decide and for this reason in my view all that I have now to decide is whether or not Kali Charan Dhur made an application to enforce his decree within 12 years from the date of the decree. I have no doubt that the lodging or filing of the tabular statement was in itself the making of an application to this Court in the person of the Master who is the officer of this Court designated to deal with matters of this character. In column 10 of the tabular statement the decree-holder in terms says: "I the applicant pray" and so on. To my mind it is scarcely arguable otherwise than that the tabular statement is in fact a petition to this Court for the setting in motion of the necessary machinery for the execution of the decree. That tabular statement on the face of it being within time, the Master gave directions for notice to be given to the other side to show cause why the decree should not be executed. Therefore without attempting to come to any definite decision as to whether, for example, the giving of a notice of motion would be sufficient irrespective of the hearing of the motion to safe guard the rights of the person giving such notice of motion, I decide that the filing of a tabular statement in accordance which Order XXI, Rule 11 is an application to the Court within the meaning of Article 183 of the Limitation Act read in conjunction with Section 3 of that Act. That being so I hold that this application is made within time and must accordingly be dealt with on its merits.

9. I am supported in the view that I take in this matter by two unreported decisions of Mr. Justice Pearson one in Suit No. 610 of 1915 Sashi Moni Dasee v. Dhira Moni Dasee and the other is an insolvency case In re Chaitan Das Sarana.