Mr. Abdul Latif
v.
The Divisional Superintendent Lahore Division, North-Western Railway

Bhandari, C.J.

The only inference that may reasonably be drawn from these provisions of law is that while the Legislature was anxious to confer a right of appeal against a direction made under section 15 of the Act of 1936, it did not wish to confer a similar right in respect of an order refusing to make a direction. Nor can such right be presumed on the ground only that it is somewhat unreasonable that while the Legislature had provided for an appeal where the claim was partially allowed by the Authority it had failed to provide for a remedy when the whole of the clai mwas refused. A right of appeal cannot be presumed on such vague surmisings and the Legislature cannot be presumed to have done something which the Courts consider it should have done. It has been held repeatedly that an appeal is a creature of the statute and that a right of appeal cannot be presumed unless it has been expressly conferred.

For these reasons, I have no hesitation in endorsing the view taken by the learned District Judge that no appeal lies from an order refusing to make a direction and that the appeal preferred in the present case could not be entertained. The petition will be dismissed but there will be no order as to costs.

HARNAM SINGH, J.—I concur in the order proposed by my learned brother. Harnam Singh, J.

B.R.T.

FULL BENCH

Before Bishan Narain Chopra and Gosain, JJ.

MELA RAM AND OTHERS,—*Petitioners*

versus

DHARAM CHAND AND AMRIT LAL,—*Respondents.*

Civil Revision No. 301/P-1953.

1957

Oct. 10th.

Code of Civil Procedure (Act V of 1908)—Section 144—Right to restitution under—When accrues—Whether enforceable by a miscellaneous application or by an application for

execution—Difference between the right to restitution and execution proceedings—Period of limitation for application for restitution—Indian Limitation Act (IX of 1908)—Whether Article 181 or 182 applies—Trial Court's decree varied by first appellate Court—Second appellate Court affirming the decree of the first appellate Court—Starting point of limitation for application for restitution—Whether the date of the decree of the first appellate Court or that of the second appellate Court—Principle of guidance for construction of the provisions of the Limitation Act.

Held, that the right to restitution accrues from the decree or order of the appellate Court reversing or varying the decree of the lower Court. This right is enforceable by a miscellaneous application and not by an application for execution of the decree of the appellate Court. The right to enforce a judgment by the process of execution is essentially different from the right to restitution under section 144 of the Court of Civil Procedure. If a decree of reversal is sought to be executed, then the successful party will get nothing, as according to its terms and tenor there is no mandate or direction to restore any property taken from him in execution of the trial Court's decree. Proceedings for restitution no doubt arise out of judgment of reversal, but proceedings under section 144 are independent proceedings raising new issues of fact which did not arise in the original suit.

Held, that an application for execution of a decree or order is a process provided by the Code of Civil Procedure to enforce a decree or order of a civil Court. In execution proceedings the executing Court derives its authority only and solely from the terms of the decree or order sought to be executed and it must conform to its terms. It must carry out the mandate and directions contained therin. To put it differently an executing Court can only execute a decree or order according to its tenor and cannot travel beyond its terms. The right to restitution, on the other hand, arises when one obtains money or property of others without authority of law. When a person unlawfully inflicts loss or injury to any person, then he is liable to make reparation to the injured person. In olden times this word "restitution" used to denote the return of a certain thing or condition but now its meaning has been extended to include not only the restitution of the thing itself but also compensation for loss

or injury caused to the party seeking restitution. This claim may arise in various ways, e.g., under a statute, under an implied contract or tort etc. This right is based on principles of natural justice. It is well established that when a decree is executed through Court against a person during the pendency of the appeal, then in the case of variation or reversal of the decree by the appellate Court, he is entitled to restitution of what he has been deprived by the enforcement of that decree. This right is inherent in Courts of law and it is this right that has been given statutory recognition by section 144 of the Code of Civil Procedure.

Held also, that the only safe guide in construing the provisions of the Limitation Act is to give strict grammatical meaning to the words used in the statute and in that process equities should not be imported. The scope of Article 182 is limited to execution applications and its scope cannot be extended by analogy to applications that are not, strictly speaking, for execution of a decree or order. An application under section 144 of the Code of Civil Procedure, not being an application for execution, Article 182 does not apply and because it is a miscellaneous application, the residuary Article 181 applies.

Held further, that there is no material difference between the expression "the right to apply accrued" and the expression, "the cause of action arises", and if anything, the former is more emphatic. Therefore, the crucial date is the first date of the accrual of the right to apply. The right to apply accrues on the date when for the first time a decision is given which entitles a party to apply for restitution. The party who has succeeded in the first appellate Court is entitled to apply for restitution on the date of that decision. The fact that an appeal has been filed against the decision of the appellate Court, does not affect the date on which this right to apply for restitution has accrued. A claim of restitution cannot be said to arise when the decision of the appellate Court has been confirmed by the final Court of appeal. The mere fact that the party entitled to claim restitution omits to enforce his claim upon the accrual of the right will not keep the limitation suspended. The decree of the final appellate Court does not, under the Limitation Act or under any other law, give a fresh right of restitution but merely affirms the right which had already accrued and such affirmation does not start afresh the period of limitation for enforcing the right of restitution.

Case law discussed.

Case referred by Hon'ble Mr. Justice Gurnam Singh on 8th July, 1956, to a Full Bench.

Civil Revision under section 115, Civil Procedure Code, against the judgment of S. Dalip Singh, District Judge, Patiala, dated the 4th November, 1953, affirming that of Sh. Joginder Singh, Sub-Judge, II Class, Rajpura, dated the 3rd October, 1953, whereby he held the petitioner's applications for a refund of Rs. 500 within time.

KIDAR NATH TEWARI, for Appellants.

PURAN CHAND and J. K. SHARMA, for Respondent.

Order of Reference.

Gurnam Singh, J. GURNAM SINGH, J.—On 22nd April, 2003, Dharam Chand and another respondents obtained a pre-emption decree in their favour. They were required to pay Rs. 1,400. This money was deposited by the respondents. On appeal to the District Judge the amount was reduced to Rs. 900 by his order, dated 29th March, 2006. The vendees petitioners filed a second appeal to the High Court. This appeal was dismissed on 28th November, 1951. The High Court by its order affirmed the decree of the District Judge, dated 29th March, 2006, On 11th September, 1952/27th May, 2009, the respondents made an application for restitution, under section 144, C.P.C., of Rs. 500 paid in excess to the vendees. The application was allowed. The vendees appealed against that order. The District Judge dismissed the appeal. The vendees have come up in revision to this Court.

The sole point for determination is whether on the facts of this case Article 181 or 182 of Limitation Act applies. The argument addressed by the learned counsel for the petitioners is that Article 181 applies. Section 144 gives right for restitution as soon as a decree is varied or reversed. According to the contention of the learned counsel,

time begins to run as soon as the right accrues for restitution. In such a case the application for restitution at once lies. It is not necessary for the person entitled to restitution to wait for the result of an appeal. The limitation, therefore, begins to run from the date when the right to apply first accrues especially when there is no order of stay or injunction given in the final appeal. The learned counsel's contention is supported by several authorities. *In Managing Committee Sunder Singh Malha Singh Rajput High School, Indaura* v. *Sundar Singh Malha Singh Sanatam Dharam Rajput High School Trust, Indaura,* (1), it was held:—

> "An application for restitution under S. 144, Civil P.C., is not an application for execution within the meaning of Article 182 because (1) "execution" signifies in law the obtaining of actual possession of anything acquired by judgment of law, In making an application for restitution, the applicant does not seek to enforce any judgment of law directly. Though the relief flows from a judgment of law it cannot be said to have been acquired by that judgment itself; (2) the proceedings contemplated under S. 144, Civil P. C., are altogether of a preliminary nature. Unless the application for restitution is allowed and an executable order under S. 144 is made the modes of execution provided for in O. 21, R. 11 (2) (j) are not open to the applicant. The application for restitution thus is one to obtain an executable order and cannot, therefore, be called

(1) A.I.R. 1944 Lah. 190 (F.B.)

Mela Ram and others
v.
Dharam Chand and Amrit Lal

Gurnam Singh, J.

an application for execution in itself; (3) while under S. 47, Civil P. C., an application for execution is to be made to the Court executing the decree an application under S. 144, Civil P. C., can be made only to the Court of the First instance; (4) both in S. 47, Civil P. C., and S. 144, Civil P. C. separate provisions is made barring regular suits. If an application under S. 144, Civil P. C., was, in the view of the Legislature, an application for execution it would not have been necessary to repeat that bar in S. 144, Civil P. C."

The same view was taken in *Kishan Singh and others* v. *Mst. Harnam Kaur* (1), *Hari Mohan Dalal and another* v. *Parmeshwar Shau and others* (2), *Gangadhar Ramnath Agarwala* v. *Ram Prasad Sokharam Satnami* (3). From the respondents' side also several authorities are cited which express directly the opposite view. In *Nanhu Prasad Singh* v. *Nandan Missar and others* (4), it was held :—

> "An application for restitution and for mesne profits is an application in execution and is, therefore, governed by Article 182 and not by Article 181."

This judgment places reliance on a Privy Council authority reported as *Prag Narain* v. *Kamakhia Singh and others* (5). A similar view is taken by the other High Courts in the following authorities :—

Chandika Singh and others v. *Bithal Das and another* (6), *Ganpat Gatlu and others*

(1) A.I.R. 1946 Lah. 416
(2) A.I.R. 1928 Cal. 646
(3) A.I.R. 1947 Nag. 239
(4) A.I.R. 1934 Pat. 246
(5) I.L.R. 31 All. 551
(6) A.I.R. 1931 Oudh. 51

v. *Navnitlal Ram Chhoddas, etc.* (1), *Krishnamachari* v. *Chengalraya Naidu* (2), *Kochu Varud and another* v. *Mariayan* (3), *A.M.K.C.T. Mathu Karappan Chetyar and others* v. *Annamalai Chettyar and others* (4).

It is, therefore, clear that there is a sharp conflict of opinion between the various High Courts on the applicability of the Article in applications for restitution. The Lahore view followed by other authorities mentioned above held the view that Article 181 applies whereas according to the opposite view Article 182 applies. Counsel agrees that there is no authority or precedent of this Court on the point. In my opinion it is necessary that the question of limitation involved in the case be determined by a larger Bench. The case be laid before the Hon'ble the Chief Justice for constituting the Bench. As the opposite views are expressed by Full Bench of different High Courts, if considered necessary, the Hon'ble the Chief Justice may constitute a Full Bench.

Judgment of Full Bench.

BISHAN NARAIN, J.—This reference raises a question of limitation. The facts relevant for the determination of this question are not in dispute. Dharam Chand and his brother sued to pre-empt a sale made in favour of Rama Nand and obtained a pre-emption decree on payment of Rs. 1,400. The pre-emptors deposited this amount and it was withdrawn by the vendee. The pre-emptors ap-

Bishan Narain, J.

(1) A.I.R. 1940 Bom. 30
(2) A.I.R. 1940 Mad. 281
(3) A.I.R. 1952 Travancore Cochin 40
(4) A.I.R. 1933 Rang. 180

Mela Ram and others
v.
Dharam Chand and Amrit Lal

Bishan Narain, J.

pealed and the District Judge, Patiala, by his judgment, dated the 11th of June, 1949, varied the trial Court's decree and reduced the amount payable by the pre-emptors by Rs. 500 to Rs. 900. The vendee appealed to the High Court, but it was dismissed on the 28th of November, 1951. The pre-emptors thereafter filed an application under section 144, Civil Procedure Code, claiming refund of Rs. 500 against the sons of Rama Nand who had died in the meanwhile. This application was made on the 11th of September, 1952. The vendee's sons contested the petition on the ground of limitation and contended that an application for restitution is governed by Article 181 of the Limitation Act and that the limitation started from the 11th of June, 1949, the date of the judgment and decree of the District Judge, Patiala. This contention was rejected by Subordinate Judge, Rajpura, as well as by the District Judge. In revision petition Gurnam Singh, J. (the then Judge of the Pepsu High Court and now a Judge of this Court) noticed conflict in various High Courts on this question and referred it to a larger Bench. It has now come to us under the orders of the Hon'ble the Chief Justice.

This question of limitation is divisible in two parts—(1) whether an application under section 144, Civil Procedure Code, is covered by Article 181 or Article 182 of the Indian Limitation Act, and (2) if Article 181 applies, then whether limitation starts from the date of the decree of the District Judge who varied the decree of the trial Court or from the date on which the second appeal was dismissed by the High Court.

In the present case the pre-emptors' case is that an application under section 144, Civil Procedure Code, is an application for execution and is governed by Article 182 of the Limitation Act.

It is common ground between the parties that if Article 182 is not applicable, then the residuary Article 181 applies to such an application.

The question that requires determination is whether a claim for restitution is to be enforced by a miscellaneous application or by an application for execution. Now, the first column of Article 182 makes this Article applicable to all applications "for the execution of a decree or order * * * *". An application for execution of a decree or order is a process provided by the statute, i.e., the Civil Procedure Code, to enforce a decree or order of a civil Court. In execution proceedings the executing Court derives its authority only and solely from the terms of the decree or order sought to be executed and it must conform to its terms. It must carry out the mandate and directions contained therein. To put it differently an executing Court can only execute a decree or order according to its tenor and cannot travel beyond its terms. The right to restitution, on the other hand, arises when one obtains money or property of others without authority of law. When a person unlawfully inflicts loss or injury to any person, then he is liable to make reparation to the injured person. In olden times this word "restitution" used to denote the return of a certain thing or condition but now its meaning has been extended to include not only the restitution of the thing itself but also compensation for loss or injury caused to the party seeking restitution. This claim may arise in various ways, e.g., under a statute, under an implied contract or tort, etc. This right is based on principles of natural justice. It is well established that when a decree is executed through Court against a person during the pendency of the appeal, then in the case of variation or reversal of

Mela Ram and others v. Dharam Chand and Amrit Lal

Bishan Narain, J.

the decree by the appellate Court, he is entitled to restitution of what he has been deprived by the enforcement of that decree. This right is inherent in Courts of law and it is this right that has been given statutory recognition by section 144 of the Code of Civil Procedure. The right of restitution by section 144, Civil Procedure Code, is only one species of the same genus. That is one aspect of the right to get restitution. Ordinarily a right to restitution is to be enforced by a suit. In the Civil Procedure Code of 1859 there was no provision corresponding to the present section 144. The question regarding right of restitution arising out of reversal of the trial Court's judgment was discussed by the Privy Council in *Shama Purshad Roy Chowdery and others* v. *Huroo Purshad Roy Chowdery and another* (1), and it was observed :—

> "If it (the decree) has been so reversed or superseded, the money recovered under it ought certainly to be refunded, and, as their Lordships conceive, is recoverable either by summary process, or by a new suit or action."

The legislature has chosen to adopt the first alternative mentioned by their Lordships of the Privy Council, and section 144, Civil Procedure Code, lays down that this right must be enforced by means of an application to the Court of first instance and not by a suit. It is, therefore, clear that the right to enforce a judgment by the process of execution is essentially different from the right to restitution under section 144, Civil Procedure Code. If a decree of reversal is sought to be executed, then the successful party will get nothing, as according

(1) 10 Moore's Ind. App. cases 203

to its terms and tenor there is no mandate or direction to restore any property taken from him in execution of the trial Court's decree. The basic principles on which these two rights are based are different. It is, therefore, not possible to hold that the appplication for restitution under section 144, Civil Procedure Code, is an application for execution of a decree or order and it must be held to be a miscellaneous application. I should not be understood to say that a claim for restitution can never be enforced by an application for execution. I believe in olden times in England it was usual for the appellate Court in a judgment of reversal to direct in the judgment that the successful party be restored to all things which he had lost on account of the enforcement of the judgment under appeal. When such a direction is issued or, in other words, a decree to that effect is given by the appellate Court, then obviously the claim for restitution in that case would be effected by execution of the appellate decree.

It was then argued that the right to restitution under section 144, Civil Procedure Code, arises out of the judgment and decree of variation or reversal by the appellate Court. This is a right to get back what was delivered to the other party in execution of the decree of the trial Court and that this can be done only by enforcing or executing the decree or order of the appellate Court. This argument found favour with Macleod C. J. in *Sayed Hamidalli Walad Kadamalli and others* v. *Ahmedalli valad Mhibuballi and others* (1). It is true that the right to restitution accrues from the decree or order of the appellate Court. It is also true that this right is to be enforced by an application and not by a suit, but it does not

(1) I.L.R. 45 Bom. 1137

Mela Ram and others v. Dharam Chand and Amrit Lal

Bishan Narain, J.

follow, with great respect to that eminent Judge, that an application to enforce this right must necessarily be held to be an application for execution. Proceedings for restitution no doubt arise out of a judgment of reversal, but proceedings under section 144 are independent proceedings raising new issues of fact which did not arise in the original suit. In the present case this right to claim restitution is not the right derived from any express mandate or direction incorparted in the appellate Court's decree of reversal but from the right given by section 144, Civil Procedure Code. It follows, therefore, that the nature of an application under section 144, Civil Procedure Code, must be determined by looking at that section and other provisions of that Code.

Lastly, it was urged that it has been held by the Privy Council in *Prag Narain* v. *Kamakhia Singh and others* (1), that an application for restitution is an application for execution and that the subsequent amendment in 1908 of the old section 583 does not affect the position. This argument was accepted by a Division Bench of the Madras HighCourt in *Somasundaram Pillai and another* v. *Chokkalingam Pillai* (2), Section 583 of the 1882, Civil Procedure Code, has been considerably modified in the 1908 Act. The old section 583 specifically provided for enforcement of a claim for restitution on reversal of a decree by execution of the appellate decree. There is no such provision in the present section. Certain other modifications in the 1908 Act also lead to the conclusion that the proceedings claiming restitution under section 144, Civil Procedure Code, are to be enforced by means of a miscellaneous application and that its nature is not the same as that of an execution application.

(1) I.L.R. 31 All. 551 (P.C.)
(2) I.L.R. 40 Mad. 780

Since the enactment of section 144, Civil Procedure Code, there has been sharp conflict in the various High Courts on this question, but it is not necessary to discuss the various authorities in detail. The Punjab High Court has consistently taken the view that an application under section 144 is governed by Article 181 of the Limitation Act. The earliest case is *Ram Singh and Ram Chand* v. *Sham Parshad* (1). This question ultimately came up before a Full Bench of three Judges. In a detailed and elaborate judgment the view accepted in *Ram Singh and Ram Chand* v. *Sham Parshad* (1), was affirmed (*vide Managing Committee Sundar Singh Malha Singh Rajput High School, Indaura, through Ch. Ram Singh* v. *Sundar Singh Malha Singh, Sanatan Dharam Rajput High School Trust, Indaura, Trustees. Ch. Dhayan Singh and others* (2), In the Allahabad High Court also the same view has prevailed and Sulaiman, C.J., in *Parmeshwar Singh and others* v. *Sital Din Dube and others* (3), has given exhaustive reasons for coming to this conclusion. The conclusion of the Calcutta High Court in *Hari Mohan Dalal* v. *Parmeshwar Shau* (4) (Special Bench of three Judges) is also the same. The Nagpur High Court in *Khaja Allawali* v. *Kesharimal Ram Lal and others* (5), has also come to the same conclusion. It is not necessary to cover all these grounds over again and to repeat the arguments that found favour with Sir Sulaiman which were reiterated by this Court. It is sufficient to say that I am with great respect in full agreement with the arguments and conclusion of these eminent Judges.

In the Patna High Court there has been no uniformity of decisions. A Full Bench of three

(1) 67 P.R. 1918
(2) A.I.R. 1944 Lah. 190
(3) I.L.R. 57 All. 26 (F.B.)
(4) I.L.R. 56 Cal. 61
(5) A.I.R. 1947 Nag. 239

Mela Ram and others
v.
Dharam Chand and Amrit Lal

Bishan Narain, J.

Judges in *Balmakund Marwari* v. *Basanta Kumari Dasi* (1), by a majority decision held that Article 181 applied while a Full Bench of five Judges in *Pathak Bhaunath Singh* v. *Thakur Kedar Nath Singh* (2), again by a majority judgment accepted the contrary view. I have already noticed the view taken by the Bombay and Madras High Courts which is in conflict with the decisions of the Punjab, Allahabad, Calcutta, and Nagpur High Courts. It may be that an application for restitution on reversal of judgment is very similar to an application for execution, but that is I think no reason to make Article 182 of the Limitation Act applicable to such applications. It is well settled that the only safe guide in construing the provisions of the Limitation Act is to give strict grammatical meaning to the words used in the statute and in that process equities should not be imported. The scope of Article 182 is limited to execution applications and its scope cannot be extended by analogy to applications that are not strictly speaking for execution of a decree or order. I am in entire agreement with great respect with the observations made by Fazl Ali, J., in Bahunath Singh's case (2) :—

> "On reading these judgments along with those decisions wherein the opposite view has been propounded the conclusion which I have arrived at in my mind is that if I were asked—what should be the law ? I would perhaps say that Article 182 should apply to an application under section 144, but if the question which I have to answer is—what is the present law on the subject ? I would feel constrained to say that under the provisions of law as they stand, Article

(1) I.L.R. 3 Pat. 371
(2) I.L.R. 13 Pat. 411

181 of the Limitation Act is the only Article which is applicable to an application under section 144, Civil Procedure Code."

In any case, this view has consistently prevailed in the neighbouring Courts of the Allahabad and Punjab High Courts, and there is no reason for not making it applicable to the erstwhile Pepsu area and territory. For all these reasons, I am of the opinion that an application under section 144, Civil Procedure Code, is not an application for execution within Article 182 of the Limitation Act but that it is a miscellaneous application. In this view of the matter such an application is governed by the residuary Article 181 of the Limitation Act.

This brings me to the second point. The vendee's contention is that the limitation started on the 11th of June, 1949, when the District Judge varied the judgment of the trial Court, while the pre-emptor's case is that it started on the 28th of April, 1951, when the High Court dismissed the appeal and thereby finally reversed the judgment of the trial Court.

The third column of Article 181 lays down that limitation shall begin to run from the date "when the right to apply accrues". Giving these words the ordinary and natural meaning, it is clear that this right of applying for restitution accrued to the pre-emptor on the date that the District Judge varied the decree of the trial Court and reduced the pre-emption money by Rs. 500. The general principle is well established that once limitation has commenced to run it will continue to do so unless it is stopped by any express statutory provision. This principle has been given statutory recognition in section 9 of the Limitation Act

Mela Ram and others v. Dharam Chand and Amrit Lal

Bishan Narain, J.

which lays down that "where once time has begun to run, no subsequent disability or inability to sue stops it". These disabilities are laid down in sections 4 to 25 of the Limitation Act. This principle is also recognised in *Lasa Din* v. *Mst. Gulab Kanwar* (1), in which judgment the Privy Council has observed—

> "If in the Indian cases the question were : 'When did the mortgagee's cause of action arise ?' i.e., when did he first become entitled to sue for the relief claimed by his suit—their Lordships think
>
> * * * *"

There is no material difference between the expression 'the right to apply accrued' and the expression 'the cause of action arises', and if anything, the former is more emphatic. Therefore, the crucial date is the first date of the accrual of the right to apply. It has been consistently held in the Lahore, Allahabad and Calcutta High Courts that the right to apply accrues on the date when for the first time a decision is given which entitles a party to apply for restitution :—*vide Punjab National Bank, Limited, Delhi* v. *Firm Nanhe Mal Janki Das* (2), *Parmeshwar Singh and others* v. *Sital Din Dube* (3), and *Hari Mohan Dalal* v. *Parmeshwar Shau* (4). This problem, I may mention does not arise in Courts which have held that an application for restitution is an application for execution as under Article 182(2) an order of the appellate Court gives fresh start of limitation.

A contention has been raised that even if it be held that limitation starts from the date of the decree or order of the first appellate Court, a new

(1) I.L.R. Luck. 422
(2) A.I.R. 1939 Lah. 73
(3) I.L.R. 57 All. 26 F.B.
(4) I.L.R. 56 Cal. 61 (F.B.)

and fresh limitation starts from the date of the order passed by the second appellate Court as the decision of the first appellate Court merges in that of the second appellate Court. The argument is that the decree of the first appellate Court merges in that of the second appellate Court, and, therefore, the right of restitution also accrues afresh from the date of the decree or order of the second appellate Court. In support of this argument reliance has been placed on the observation of Sulaiman, C.J., in *Parmeshwar Singh and others* v. *Sital Din Dube* (1). This observation runs—

> "It seems to me that it is open to a successful party to apply for restitution after it has been definitely settled by the highest Court of appeal that the first Court's decree was wrong".

My attention has also been drawn to the passing observation of Fazl Ali, J., in in *Pathak Bhaunath Singh* v. *Thakur Kedar Nath Singh* (2), wherein he expressed hesitation in holding that although the decree of the first appellate Court merged in that of the second appellate Court, the period of limitation did not start from the date of the latter decision. The learned Judge, however, did not finally decide the point as it was not necessary to do so in view of the fact that the majority view of the Patna High Court expressed in that judgment was that an application for restitution under section 144, Civil Procedure Code, was governed by Article 182 of the Indian Limitation Act.

Now, under section 9 of the Limitation Act, once limitation has started to run, no subsequent disability or inability can stop it. The party who

(1) I.L.R. 57 All. 26 (F.B.)
(2) I.L.R. 13 Pat. 411

Mela Ram and others
v.
Dharam Chand and Amrit Lal

Bishan Narain, J.

has succeeded in the first appellate Court is entitled to apply for restitution on the date of that decision. The fact that an appeal has been filed against the decision of the appellate Court, does not to my mind affect the date on which this right to apply for restitution has accrued. It is well settled that an appeal does not operate as a stay of proceedings under a decree appealed from (Order XLI, rule 5, Civil Prcedure Code). The mere filing of an appeal does not suspend the operation of a decree and is no bar to proceedings being taken thereon except so far as the appellate Court orders otherwise. Proceedings for restitution cannot be stayed under Order XLI, rule 5, Civil Procedure Code, in an appeal against a decree which has reversed the trial Court's decree as such proceedings cannot be considered to be "proceedings under the decree" within that provision of the law. It follows, therefore, that the filing of an appeal does not stop running of limitation which had in the present case started on the date of the decision of the first appellate Court on the 11th of June, 1949. Article 181 lays down only one point of time from whch limitation starts and no other. Once limitation starts running and there is no subsequent disability or inability, then there is no other point of time from which a fresh limitation can start. It is true that the decree or order of the second appellate Court or of the first Court of appeal finally decides the rights of the parties, but it does not follow that *ex necessitate* limitation should start from that date even if the provisions of the limitation Act are in conflict with such a conclusion. Article 182 lays down various points of time from which limitation starts and Article 182 (2) says that it will start from the date of the final decree or order of the appellate Court when there has been an appeal, but this provision is not found in Article 181. After all a claim for restitution cannot be

said to arise when the decision of the appellate Court has been confirmed by the final Court of appeal. The mere fact that the party entitled to claim restitution omits to enforce his claim upon the accrual of that right will not keep the limitation suspended. The decree of the final appellate Court does not under the limitation Act or under any other law give a fresh right of restitution but merely affirms the right which had already accrued [*Chanda Singh and others* v. *Bishan Singh* (1)]. This is the view that has been taken by the Lahore, Allahabad and Calcutta High Courts in cases already referred to in the earlier part of this judgment. I am for these reasons of the opinion that the affirmation of the decree by the second or final Court of appeal does not start afresh the period of limitation for enforcing the right of restitution.

Finally, it was contended on behalf of the pre-emptors that the observations of the Privy Council in *Nagendranath De* v. *Sureshchandra De* (2), indicate that the limitation should be held to start a fresh on the decision of the final Court of appeal. In that case their Lordships were discussing the provisions contained in Article 182(2). They held that under that Article limitation starts to run a fresh from the date of the final decree or order of the appellate Court. In the course of discussion their Lordships observed—

> "The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions, equitable considerations are out of place, and the strict grammatical meaning of the

(1) A.I.R. 1924 Lah. 167

(2) I.L.R. 60 Cal. 1

Mela Ram and others
v.
Dharam Chand and Amrit Lal

Bishan Narain, J.

word is, their Lordships think, the only safe guide. It is at least an intelligible rule that, so long there is any question *sub judice* between any of the parties, those affected shall not be compelled to pursue the so often thorny path of execution, which if the final result is against them, may lead to no advantage."

In this decision their Lordships made it clear that the Limitation Act must be construed strictly according to the language used in the Article. They then proceeded to observe that this provision in Article 182(2) is just and proper. It cannot be said that by these observations their Lordships of the Privy Council laid down that in all cases limitation should start from the date of decision of the final Court of appeal. If this be so, then it is impossible to hold that Article 181 contemplates start of limitation from two points of time when it is expressly limited to the date from which the right to apply accrues.

From the above discussion it follows that in the present case the limitation started from the 11th of June, 1949, and did not start from any other date. That being so, the application under section 144, Civil Procedure Code, made in this case on the 11th of September, 1952, is barred by time.

Gurnam Singh, J., had referred only the question of limitation to a larger Bench and the whole case has not been referred to us. Having expressed my view on the question of limitation involved the case must now go back to the Hon'ble Judge for its decision.

Chopra, J. CHOPRA, J.—I entirely agree.

Gosain, J. GOSAIN, J.—I agree.

B.R.T.