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Mahajan, J.

Before parting with this matter, I may mention that the Supreme Court in *Bishan Paul* v. *Mothu Ram* (6), agreed generally with the observations of Tek Chand J. in *Roshan Lal Goswami's* case. It must, therefore, be held that *Roshan Lal Goswami's* case is correctly decided and so also *Attar Lal's case and* that there is no conflict between the two. The questions referred do not arise and, therefore, need not be answered.

In this view of the matter, as observed by Narula J. in his referring order that if there is no conflict between the two decisions, the appeal has to be allowed in view of the judgment in *Roshan Lal Goswami's case,* I allow the appeal and set aside the decision of the Senior Subordinate Judge and restore that of the trial Court. The parties are left to bear their own costs throughout.

Falshaw, C.J.
Narula, J.

D. FALSHAW, C.J.—I agree.

R. S. NARULA, J.—So do I.

B.R.T.

FULL BENCH

Before Inder Dev Dua, Shamsher Bahadur and R. S. Narual, JJ.

MST. SANTI AND ANOTHER,—*Appellants*

versus

PRITAM SINGH,—*Respondent*

Civil Revision No. 602 of 1963.

1966

March 21st

Limitation Act (IX of 1908)—Schedule I Art. 182(2)—*Dismissal of application for leave to appeal in* forma pauperis *accompanied by a memorandum of appeal—Whether gives a fresh start of limitation under clause* 2 *of the third column of Article* 182.

Held, that for the purposes of clause 2 of the third column of Article 182 of the Indian Limitation Act, 1908, all that has to be seen is whether there has been an appeal and not whether there was a valid appeal. If a memorandum of appeal were to be treated as an appeal only when it is properly stamped and duly registered, it would superimpose a consideration which is beyond what is actually required by Article 182(2) of the Limitation Act. The decree-holder can, therefore, take advantage of a fresh start of limitation under clause 2 of the third column of Article 182 of the Indian Limitation Act, 1908, from the date when the application of the judgment-debtor for leave to appeal in *forma pauperis* accompanied by a memorandum of appeal is dismissed. The order declaring the judgment-debtor to be a person of sufficient means and allowing him time to pay the court fee keeps the appeal alive till it is dismissed for failure to pay the

(6) A.I.R. 1965 S.C. 1994.

court fee. It cannot, therefore, be said that the appeal was *non est factum* on the date when the order dismissing the application was passed.

Case referred by the Hon'ble Mr. Justice Shamsher Bahadur on 2nd December, 1964 to a Full Bench for decision of the important questions of law involved in the case. The case was finally decided by the Full Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua, the Hon'ble Mr. Justice Shamsher Bahadur and the Hon'ble Mr. Justice R. S. Narula, on 21st March, 1966.

Petition under section 44 of Act IX of 1919, and section 115 of the Code of Civil Procedure, for revision of the order of Shri Pritam Singh Sekhon, Senior Sub-Judge, with enhanced appellate powers, Sangrur, dated 25th April, 1963, affirming an appeal, the order of the Sub-Judge, 1st Class, Sangrur, dated 23rd November, 1962, granting the objection petition and dismissing the execution application and leaving the parties to bear their own costs.

S. P. GOYAL, ADVOCATE, for the Petitioners.

N. S. KEER, WITH D. S. KEER, ADVOCATES, for the Respondents.

ORDER OF THE FULL BENCH

Shamsher Bahadur, J.

The question which has to be answered in this reference briefly is whether a dismissed application for leave to appeal in *forma* pauperis accompanied by memorandum of appeal has to be treated as an appeal to obtain the advantage of a fresh start of limitation under clause 2 of the third column of Article 182 of the Indian Limitation Act, 1908? The material portion of this Article is in these terms:—

Description of application.	Period of limitation.	Time from which period begins to run.
182. For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908.	Three years;	1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the Appellate Court.

The point has arisen in this revision petition involving a small amount of Rs. 583-4 for which Harnam Singh obtained a decree from the Court of the Subordinate Judge, Sangrur, on 31st of March, 1959, against the respondent Pritam Singh. The judgement-debtor filed application

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No. 21 on 29th of April, 1959, for permission to appeal in *forma pauperis*. The application was accompanied by a memorandum of appeal. The application was opposed by the decree-holder Harnam Singh and the learned District Judge of Sangrur in his order of 12th of August, 1959, returned a finding in favour of the decree-holder on the question of pauperism of the judgement-debtor and dismissed the application for leave to appeal in *forma pauperis*. The operative portion of the order is in these words:—

> "The application of Pritam Singh is accordingly dismissed. It may be registered as a regular appeal if Pritam Singh pays the court fees on the memorandum of appeal on or before 22nd August, 1959, otherwise the record shall be consigned to the record room after due compliance. No order as to costs is made on this application in the peculiar circumstances of this case."

The court-fee was never paid by the judgment-debtor. Harnam Singh decree-holder died on 11th of May, 1962, and his widow Mst. Santi, on the same day applied for execution of the decree of 31st of March, 1959. Being of the view that there was no appeal from the decree, the executing Court reached the conclusion that time began to run from the date of the decree and three years having expired, the execution application was dismissed as barred by time. This order of the executing Court passed on 23rd of November, 1962, was affirmed in appeal by the Senior Subordinate Judge, Sangrur, on 25th of April, 1963. The revision petition instituted in the High Court came for disposal before me on 2nd of December, 1964, when in view of the variance in judicial authority I referred the case for decision by a Full Bench.

If the order of the District Judge passed on 12th of August, 1959, is a final order in an appeal, the application for execution filed by the petitioner-decree-holder would clearly be in time. If, however, that is not so, the date of the decree would be the starting point of limitation and in that case the decision of the Courts below will have to be upheld. It has been contended by the learned counsel for the decree-holder that there being no definition of 'appeal' in the Code of Civil Procedure, its

concept cannot be confined within narrow limits and the judgment-debtor himself having taken steps to file an appeal the decree-holder should not be denied the advantage of computing the period of limitation from the time when the final order was passed by the District Judge, Sangrur, on 12th of August, 1959. We have derived guidance from a decision of their Lordships of the Privy Council in *Nagendranath De* v. *Sureschandra De* (1). The question in that case also related to the starting point of limitation under article 182(2), Schedule I, of the Indian Limitation Act of 1908. Sir Dinshah Mulla, delivering the judgment of the Board, said thus:—

> ".....There is no definition of appeal in the Code of Civil Procedure, but their Lordships have no doubt that any application by a party to an appellate court, asking it to set aside or revise a decision of a subordinate court, is an appeal within the ordinary acceptation of the term, and that it is no less an appeal because it is irregular or incompetent....."

In discussing the contention that an appeal in order to save limitation must be one in which the whole decree was imperilled, it was thus observed:—

> "Their Lordships think that nothing would be gained by discussing these varying authorities in detail. They think that the question must be decided upon the plain words of the Article : "where there has been an appeal", time is to run from the date of the decree of the appellate court. There is, in their Lordships' opinion, no warrant for reading into the words quoted any qualification either as to the character of the appeal or as to the parties to it; the words mean just what they say. 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 words is, their Lordships think, the only safe guide. It is at least an intelligible

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

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rule that, so long as there is any question *subjudice* 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. Nor, in such a case as this, is the judgment-debtor prejudiced. But whether there be or be not a theoratical justification for the provision in question, their Lordships think that the words of the Article are plain, and that there having been in the present case an appeal..... time only ran against the appellants from the 24th August, 1922, the date of the appellate court's decree."

All that has to be seen, therefore, is whether there has been an appeal, not whether there was a valid appeal. It is true that if the court-fee had been paid, the judgment-debtor in the instant case would have been entitled to have his appeal registered. But in their Lordships' view matters regarding the irregularity or incompetence of an appeal are not germane to the question about there having been an appeal. Some of the decisions to which I would advert have attached importance to the questions of admission or registration of appeals. Clause 7 of Chapter 14-B of Volume I of the Rules and Order of this Court may be mentioned in this connection. It says:—

"7. The memorandum of appeal, when bearing the proper Court fees, must be admitted, if presented in the prescribed form and within the prescribed time, unless it is rejected or returned for amendment under Order XLI, Rule 3, of the Code. When an apeal has been admitted, it will be endorsed with the date of presentation, and the date fixed for hearing, and will be registered by the proper officer of the Court."

If a memorandum of appeal were to be treated as an appeal only when it is properly stamped and duly registered, it would superimpose a consideration which is beyond what is actually required by Article 182(2) of the Limitation Act. The filing of the application for permission to appeal in *forma pauperis* by the judgment-debtor respondent had made the question *sub judice* again between the parties.

As observed by Sir Dinshah Mulla in the passage cited aforesaid, no consideration apart from the plain and strict grammatical meaning of the words "there has been an appeal" should be taken into reckoning. There is a Single Bench judgment of Wadsworth, J., which supports directly the contention raised on behalf of the decree-holder. In *Kanthimathi Ammal* v. *Ganesa Iyer*, I.L.R. 59 Madras 805, a petition for leave to appeal in *forma pauperis* had been rejected. In an apeal filed from this order a preliminary objection was taken that no appeal lay. In overruling this preliminary objection, Wadsworth, J., said at page 806 thus:—

> "It seems to me that this objection must fail. Although in terms the learned District Judge's order is merely a rejection of the application to appeal in *forma pauperis* it is in fact a rejection of the appeal itself and following the line of decisions of this Court, *Ayyanna* v. *Nagabhooshanam* (2), *Zamindar of Tuni* v. *Bennayya* (3), and *Saminatha Ayyar* v. *Venkatasubba Ayyar* (4), I must hold that the rejection of an appeal for a preliminary defect is a decree within the definition in section 2 of the Civil Procedure Code."

On basis of the proposition laid down in Chitaley's Code of Civil Procedure, Volume I (1963 edition) at page 76 it is common ground that "an order dismissing an appeal for deficient court-fee must be treated on the same footing as the rejection thereof". Where rejection of an application for leave to appeal in *forma pauperis* is a decree or a final order, it is covered by the language employed in clause 2 of Article 182 of the Limitation Act under the third column, and as pointed out by Biswas, J., in *Sudhansu Bhusan Pandey* v. *Majho Bibi* (5), it is immaterial whether it has been admitted or registered as a decree. It was held by the learned Judge in that case that an order dismissing an appeal as being time-barred before it has been admitted or registered is a decree. Reference may also be made to

(2) I.L.R. (1892)16 Mad. 285.
(3) I.L.R.(1898)22 Mad. 155.
(4) I.L.R. (1903)27 Mad. 21.
(5) A.I.R. 1937 Cal. 732.

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a Single Bench judgment of Meredith, J., in *Gajadhar Bhagat and others* v. *Moti Chand Bhagat* (6), where it was held that the rejection of a memorandum of appeal as being out of time does amount to a decree and is appealable. In the instant case, if the judgment-debtor had intentionally prolonged the proceedings under Order 44 of the Code of Civil Procedure with the ultimate object of having the application dismissed, he could not thereby jeopardise the right of the decree-holder to take out execution proceedings. The decree-holder was called upon to show cause why the judgment-debtor should not be allowed to appeal in *forma pauperis*. If the enquiry could have been delayed, does it mean that the decree-holder's right to apply for execution would have become extinct, if somehow it had taken three years for the application to be dismissed ?

The Privy Council decision in *Nagendranath De* v. *Sureshchandra De* (1), was applied by a Division Bench of Patkar and Barlee, JJ., of the Bombay High Court in *Nagappa Bandappa* v. *Gurushantappa Shankrappa* (7). Patkar, J. observed that :—

> "The words of Article 182, clause 2, must be understood in their plain meaning and the question in each case is whether there has been an appeal, and if that is the case, time must run from the date of the decree of the appellate Court if the decision of the appellate Court is not interlocutory, but final. The word 'final' is by way of antithesis to the word 'interlocutory'."

Plainly, the order in the present case was final in so far as the judgment-debtor was declared to be a person of sufficient means and his appeal had to be registered after payment of court-fee. It has to be emphasised that the appeal which was to be so registered was kept alive and was only to be dismissed when the court-fee was not paid. It could not be said, therefore, that the appeal was *non est factum* on 12th of August, 1959. A Full Bench decision of the Allahabad High Court in *Mt. Shahzadi Begam* v. *Alakh Nath* (8), was cited at the bar, but this has hardly any relevance to the case in point. It is true that Chief

(6) A.I.R. 1941 Patna 108.
(7) I.L.R. 57 Bom. 388.
(8) A.I.R. 1935 All. 620 (2).

Justice Sulaiman said in the last paragraph of the judgment that where an application for leave to appeal in *forma pauperis* is rejected the memorandum of appeal accompanying also fails being a mere appendix to the main application. But this was not the point which was referred to the Full Bench and the observation was made in passing. Besides, the decision of the Privy Council in *Nagendranath De* v. *Sureshchandra De* (1), does not seem to have been considered.

It has further been argued that the rejection of an application for leave to appeal in *forma pauperis* is in substance a rejection of an appeal for being unstamped. It is a dismissal of the appeal all the same, and though a condition was attached by the District Judge, Sangrur, that the appeal would be registerable if the full court-fee was paid within a certain time, there cannot be any escape from the conclusion that in default of payment of the court-fee the appeal stood dismissed. Such was the view of Biswas, J. in *Abdul Majid Mridha* v. *Amina Khatun* (9), where in discussing the effect of an order of dismissal for default it was observed that "an order dismissing a suit or appeal for non-payment of additional court-fee is not an 'order of dismissal for default' within Section 2(2) (b) Civil Procedure Code, but is a decision on question of court-fee involving the dismissal of the suit or appeal under the Court-fees Act and is appealable as a decree as being an adjudication which conclusively determines the rights of the parties with regard to a matter in controversy between them". In the opinion of Biswas, J. it is wholly immaterial that the appeal is directed not against the adjudication itself on the question of court-fee but against the consequent order of dismissal. A similar view was enunicated by a Division Bench of Brodhurst and Tyrrell, JJ. in *Rup Singh* v. *Mukhraj Singh* (10). In that case an appeal from the decree of 8th of July, 1879, was rejected by the High Court on 11th of June, 1880, in consequence of the failure of the appellants to pay additional court-fees declared by the Court to be leviable. On 23rd of December, 1882, an application was filed by the decree-holder for execution of the decree. It was held that the order of 11th June, 1880, rejecting the appeal on the ground of deficient payment of court-fee was equivalent

(9) A.I.R. 1942 Cal. 539.

(10) I.L.R. 7 All. 887.

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to a decree and, therefore, the application being made not more than three years from the date of that order, was not barred by limitation. It can hardly be disputed that the case of an appeal dismissed in consequence of failure to pay additional court-fee is indistinguishable from that of dismissal for non-payment of stamp fee. Reference may be made to a Division Bench judgment of Fazl Ali and Rowl and JJ. in *Krishna Kant Prasad* v. *Radhey Singh* (11), where it was held that in an appeal preferred on insufficient court-fee and duly admitted but subsequently rejected after notice to the parties and after hearnig them, time would run from the date of the order of the appellate Court. Such being the position in law, the effect of dismissal of an application for leave to appeal in *forma pauperis* is nothing but the disposal of an appeal against the appellant for non-payment of court-fee.

Another argument in favour of the decree-holder's contention is that the order of the District Judge, Sangrur, passed on 12th of August, 1959, was the final order which terminated the appeal and time must, therefore, start to run from that date, even though there was no adjudication on merits in the appeal and technically there was no valid appeal on the register. In a Full Bench decision of the Allahabad High Court in *Rabia Bibi* v. *Mohammadi Bibi* (12), it was observed by Chief Justice Desai, delivering the judgment of the Court at page 516 thus :—

> "No decree was passed in the appeal because it ended in an order of dismissal for want of prosecution passed on 3rd November, 1952. That was the last or final order passed in the appeal. It is immaterial that it was not passed on merits; Article 182 contains no words to qualify the phrase "the final decree or order of the appellate Court". All that it required is that an order of the appellate Court is its final order and not that it is an order on merits. There is absolutely no warrant for importing the word 'judicial' into the consideration and for laying down that the final order of the appellate Court must be a judicial order".

(11) A.I.R. 1938 Patna 79.
(12) A.I.R. 1960 All. 515.

In sum and substance, according to the order passed by the District Judge on 12th of August, 1959, the memorandum of appeal would have been treated as an appeal if the court-fee had been paid on or before 22nd of August, 1959, and on failure of the payment of the court-fee the appeal stood dismissed on that date. Truly speaking it was an order passed by the Court on its judicial side. In a Privy Council case of *Abdulla Asghar Ali* v. *Ganesh Das Vig* (13), Sir George Lowndes said that "when an order is judicially made by an appellate Court which has the effect of finally disposing of an appeal, such an order gives a new starting point for the period of limitation prescribed by Article 182(2). It cannot possibly be argued that the order of the District Judge of 12th of August, 1959, was not a judicial order or that it was passed by the Court on its administrative side.

On behalf of the respondent judgment-debtor reliance is placed on a Full Bench judgment of the Travancore-Cochin High Court in *Travancore Cochin State* v. *P. John Mathew* (14). The reasoning of this decision is embodied in the head-note which is to this effect :—

> "There is no provision in the Code to the effect that when permission to appeal as a pauper is refused the memorandum of appeal should be rejected. The Court may, as in the case of an application for permission to sue as a pauper, instead of rejecting the application, direct the applicant to pay the requisite court-fee within a time to be fixed by the Court and if the direction is complied with, the memorandum of appeal filed along with the application will be numbered and registered as an appeal.
>
> But that does not mean that there is already an appeal and that the Court merely allows it to proceed in the ordinary manner. The memorandum of appeal becomes an appeal by reason of the order of the Court although for purposes of limitation the appeal will be deemed to have been filed on the date of the presentation of the

(13) A.I.R. 1933 P.C. 68.
(14) A.I.R. 1955 Tran. Coch. 209.

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application. The mere presentation of a memorandum of appeal along with the application does not amount to filing an appeal and so long as the memorandum of appeal is not numbered or registered, it cannot be said that there has been an appeal in the case within the meaning of Article 182(2)."

It woud be readily observed that the basis of the decision of the Travancore-Cochin Court is that a memorandum of appeal before being treated as an appeal under Article 182(2) must be numbered and registered. When the memorandum of appeal falls through where the application for leave to appeal in *forma pauperis* is rejected, there is consequently no registration and there cannot be said to be an appeal. Though the decision of the Privy Council was cited, the decision of the Full Bench appears to run counter to the enunciation of law therein by Sir Dinshah Mulla. Reference to *Nagendranath's case* is to be found in paragraphs 27, 35 and 46 of the Full Bench judgment of the Travancore-Cochin High Court. In paragraph 27 there is a citation of the passage which has been quoted aforesaid. In paragraph 35 reference is made to *Bayya Reddi* v. *T. S. Gopala Rao* (15), where Madhavan Nair J. in holding that "the memorandum of appeal having been rejected as being out of time, it could not be said that there has been an appeal" distinguished the Privy Council decision on the ground that the appeal in that case had been admitted whereas in the case before him the appeal had not been admitted. With great respect, I do not think that the Privy Council case could be distinguished on that ground. The proposition of law has been firmly laid by the Privy Council that even where there was an incompetent or irregular appeal, it is an appeal all the same as contemplated in Article 182(2) and this view has naturally to be treated as the correct position in law. Madhavan Nair, J. further observed in his judgment that "if the contention of the decree-holder were to prevail any decree-holder who has allowed his decree to be barred by limitation may circumvent the rule by filing an appeal and getting it rejected for not satisfactorily explaining the delay. . ." I have attempted to show that a judgment-debtor may likewise if he chooses to prolong the proceed-

(15) A.I.R. 1934 Mad. 303.

ings in *forma pauperis* affect and in extreme cases destroy the right of the decree-holder altogether in taking out execution. The legal position laid down in the Privy Council judgment is not to be denigrated by extreme illustrations. The language of Article 182(2) is plain and should be plainly construed. The last passage in the Full Bench decision is paragraph 46 where it is cited with approval that even if the appeal is rejected on the ground that it was incompetent for non-payment of court-fee, it should be taken that there has been an appeal for purposes of Article 182(2). In fact, the Full Bench has expressed its agreement with the Privy Council on this question. If the incompetency or non-payment of court-fee are not valid considerations, then the questions of registration and admission of memorandum of appeal before it could be treated as an appeal for purposes of Article 182(2) can hardly arise.

The respondent seeks support from another Full Bench decision of the Allahabad High Court in *Hari Har Prasad Singh* v. *Beni Chand* (16). In this case, the question for the Full Bench was :—

> "Whether a memorandum of appeal, which is found to be defective for want of proper court-fee and is, therefore, not admitted in view of section 4, Court-fees Act, and it is ultimately rejected on that ground, can be treated as an appeal when the Court has refused to admit or register it as an appeal."

The answer by the Full Bench was returned in the negative and great emphasis was laid on registration of appeals. In that case a memorandum of appeal was "rejected" on the ground that it was insufficiently stamped. In this case also the Privy Council decision in *Nagendranath De's* case was discussed, though the answer of the Full Bench is hardly in consonance with the basic principle of law laid down by Sir Dinshah Mulla.

The last decision to which reference need be made is a Division Bench authority of the Calcutta High Court of

(16) A.I.R. 1951 All. 79.

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Chief Justice Derbyshire and B. K. Mukherjea, J. in *Maharaja Bahadur Sir Prodyot Coomar Tagore* v. *Mathura Kanta Das* (17). It is true that in the first head-note it is observed that :—

> "Where a memorandum of appeal though presented to the Appellate Court is neither registered nor numbered as an appeal on account of deficit court-fee and on non-payment of the requisite court-fees within the time allowed the memorandum of appeal is rejected, this order has not the effect of a decree and it does not deal judicially with the appeal at all which has not yet come into existence. It amounts merely to this that the appellant has not complied with the conditions under which alone he is competent to file an appeal and therefore the position is exactly the same as if no appeal has been filed."

The learned Judge, delivering the judgment of the Court (B. Mukherjea, J.) said in the later portion of the judgment while discussing the Privy Council case of *Nagendranath De* that it may be that for purposes of Article 182 an appeal may not be a proper or a competent appeal. But once it is entertained and heard by the Appellate Court, the mere fact that the final order dismisses the appeal on the ground that it is incompetent in law is none-the-less an order which finally disposes of the appeal. This conclusion of the Bench clearly stamps the order of the District Judge passed on 12th of August, 1959, not only as final but judicial. All-in-all, we are inclined to the view that the order passed by the District Judge, Sangrur, on 12th of August, 1959, when looked in its proper perspective, directing dismissal of the appeal on failure of the contingency to pay full court-fee must be regarded in the circumstances as an order from when limitation should start to run. It appears to us that this would be in consonance with the construction which is to be placed on the words "where there has been an appeal" employed in Article 182(2) of the First Schedule of the Indian Limitation Act, 1908. It may be mentioned in passing that under the Limitation Act (Act No. 36 of 1963),

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(17) A.I.R. 1938 Cal. 533.

which was enacted on 5th of October, 1963, the relevant article is 136 which is to this effect :—

Description of application	*Period of Limitation*	*Time from which period begins to run*
136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years.	Where the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the 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. Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation."

The objects and reasons for the substitution of old Article 182 by the new Article 136 are stated to be :—

> "Existing Article 182 has been a fruitful source of litigation and therefore the proposed Article 135 (now Article 136) in lieu thereof, provides that the maximum period of limitation for the execution of a decree or order of any civil Court shall

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be 12 years from the date when the decree or order became enforceable. . .".

The words "where there has been an appeal" on which emphasis was laid by their Lordships of the Privy Council are no longer of any importance and the matter which has to be answered in this reference has become more or less of academic importance. Clause (2) of Article 182 of the old Act provided that if there was an appeal, limitation for execution ran from the date of the final decree or order of the appellate Court or the withdrawal of the appeal. The present article does not contain any similar provision but simply provides that time will run from the date when the decree or order becomes enforceable. So, under the present article, the question, in case of an appeal, will be when the decree or order "becomes enforceable". Our conclusion is that the directions given in the order of 12th of August, 1959 make it a final order in the circumstances and limitation should start to run from that date.

This revision petition is accordingly allowed. The case would now go back to the executing Court for proceeding with the application of the decree-holder on merits. We make no order as to costs of this petition.

Dua, J. INDER DEV DUA, J.—I agree.

Narula, J. R. S. NARULA, J.— I also agree.

B. R. T.

FULL BENCH

Before D. Falshaw, C.J., Daya Krishan Mahajan and R. S. Narula, JJ.

KHAN CHAND,—*Petitioner*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No. 26 of 1965

1966

March 24th.

East Punjab Moveable Property (Requisitioning) Act (XV of 1947)—Whether unconstitutional being violative of Art. 14 of the Constitution.

Held, that the East Punjab Moveable Property (Requisitioning) Act, 1947, became void on January 26, 1950, by operation of Article 13(1) of the Constitution as the main and basic sections of the Act are inconsistent with the provisions of Article 14 of the Constitution and the said main sections of the Act are not serverable from the remaining provisions of the Statute in question which remaining sections are merely of ancillary character and cannot stand without the unconstitutional sections.

Held, that section 2 of the East Punjab Moveable Property (Requisitioning) Act, 1947, is unconstitutional as being violative of the