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Court to review the finding of fact given by Mr. R. K. Vaish, or to scrutinise the appreciation of evidence made by him in his order dated the 19th of May, 1955. I have no jurisdiction to do so under Article 226 of the Constitution.

For all these reasons I am of the opinion that the applicant has made out a case for the issue of a writ of *certiorari* to quash the decision of Mr. R. K. Vaish, dated the 19th of May, 1955, and for the issue of a writ of mandamus that the Settlement Commissioner shall decide the proceedings started under section 5(1)(b) of the 1954 Act in accordance with law and I order accordingly. The applicant is entitled to his costs. Counsel's fee Rs. 150.

APPELLATE CIVIL

Before Kapur, J.

SIRI RAM,—*Appellant*

versus

JAGAN NATH AND OTHERS,—*Respondents*

Execution First Appeal No. 136 of 1953.

1956

Oct., 15th

Limitation Act (IX of 1908)—Article 182(5)—Application for execution made before preparation of the decree sheet and payment of stamp duty—Such application whether proper application under Article 182(5)—Application by Decree Holder for the determination of the amount of stamp duty payable—Such application whether amounts to a "step-in-aid" under Article 182(5)—Non-payment of stamp duty—Effect of—Indian Stamp Act —section 35:

Held, that:—

(1) an execution application can be made even though no decree sheet has been drawn up and

no stamp duty has been paid, the impediment because of section 35 of the Stamp Act is that such a decree cannot be executed.

(2) an application can be a step in aid even though no execution proceeding is pending.

(3) an application made to the Court for determination of the amount of stamp duty required and for engrossing the decree on a stamp paper is a step in aid of execution and would stop the running of time and give fresh period of limitation as from the date the application was made.

(4) the application made was in accordance with law and falls within the rule laid down by Sir Shadi Lal, C.J., in *Ghanayalal* v. *Nathuram.*

Ganesh Prasad v. *Mst. Makhna* (1), dissented from, *Avi Goundan* v. *Solai Goundan* (2), distinguished and dissented from, *Messrs Uttar Chand Kapur and Sons* v. *Messrs Sayad Hamid Ali and Sued Imtiaz Ali* (3), *Ghanaya Lal* v. *Punjab National Bank Ltd., Lahore* (4), *Ram Narayan Jagan Nath* v. *Radha Gobinda Dev Nath* (5), *Pravaadas* v. *Indirabai* (6), *Sheolal* v. *Ram Rao* (7), *Risal Singh* v. *Lal Singh* (8), *Ram Narain Kaul* v. *Maharai Narain Kaul* (9), relied on. *Golam Gaffar Mandal and others* v. *Golian Bibi and others* (10), *Pandivi Satyanandam* v. *Paramkusam Nammayya* (11), *Govind Prasad* v. *Pawankumar* (12), *Govind Krishna* v. *Malhar Narsingrao Nadgu* (13), *Kishori Mohan Pal* v. *Provash Chandra Mohdal* (14), *Mohammad Sadique Mian* v. *Mahabir Sao* (15), *Jagdeo Sao* v. *Basudeo Narain Singh* (16), *Dilbagh Rai and others* v. *Mt. Teka Devi* (17), considered.

(1) I.L.R. 1949 All. 49.
(2) I.L.R. 1945 Mad. 468.
(3) A.I.R. 1938 Lah. 326.
(4) A.I.R. 1928 Lah. 7.
(5) I.L.R. (1940) 2 Cal. 252.
(6) I.L.R. 1953 Nag. 734.
(7) I.L.R. 1947 Nag. 572.
(8) I.L.R. 1939 All. 728.
(9) I.L.R. 1940 Lah. 337.
(10) I.L.R. 25 Cal. 109.
(11) A.I.R. 1938 Mad. 307.
(12) A.I.R. 1943 P.C. 98.
(13) A.I.R. 1954 Bom. 410.
(14) A.I.R. 1924 Cal. 351.
(15) I.L.R. 21 Pat. 366.
(16) A.I.R. 1954 Pat. 92.
(17) A.I.R. 1932 Lah. 249.

Execution First Appeal against the order of Shri R. S. Bindra, Sub-Judge, 1st Class, Ferozepur, dated the 26th of March, 1953, rejecting the objections subject to one exception, namely, that the decree holder cannot take out execution for realisation of his share out of Rs. 8,250 and further directing that the objector should pay one-half costs of these objections to the decree-holder, Siri Ram.

A. N. GROVER and HARDAYAL, for Appellant.

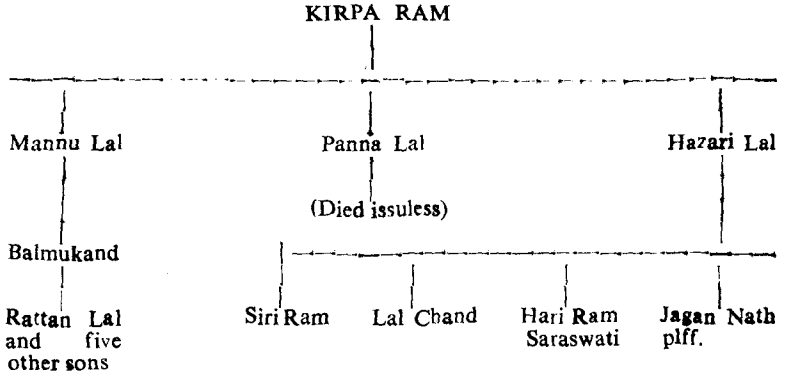
I. D. DUA, K. L. KAPUR and K. L. JAGGA, for Respondents.

JUDGMENT.

Kapur, J.

KAPUR, J. This is an appeal by a judgment-debtor against an order of Mr. R. S. Bindra, Sub-Judge, Ferozepore, dated the 26th of March, 1953, rejecting the objection filed by the judgment-debtor against the execution of the decree for partition in favour of the decree-holder.

The following pedigree-table will help in understanding the case :—



Jagan Nath son of Hazari Lal filed a suit for partition and rendition of accounts against the other co-sharers, descendants of Kirpa Ram, on the 11th of March, 1947. The matter was referred to the arbitration of one Prabh Dayal who gave his

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award on the 17th of February, 1949. On the 8th of April, 1949 the objections which had been filed against the award were dismissed and a judgment in accordance with the award was passed and a final decree was passed and it was ordered that the award shall form part of the decree with the modifications mentioned in that order. It was also ordered that the amount of the stamp-paper should be paid by Rattan Lal half, by Jagan Nath a quarter and by Siri Ram a quarter. Evidently no stamp-paper was put in. On the 8th of March, 1952, an application for execution was made to the District Judge and on the same day it was ordered to be disposed of by Mr. Ram Singh Bindra, Sub-Judge, and the parties were directed to appear before him on the 14th of March, 1952. On the same date the Ahlmad reported that a full scrutiny and report could not be made until the suit file was sent for and the Court ordered the file to be sent for for the 20th of March, 1952. This was in the presence of Mr. Kishan Lal Advocate for the decree-holder. On the 19th of March, 1952, the Ahlmad made a report :—

> "It appears from the file that the Stamp-paper has not been filed and therefore the decree-sheet could not be prepared."

On the 20th of March, 1952, it was ordered that as the decree-sheet had not been prepared the case be adjourned to the 15th April.

It was not contested that an application was made by Jagan Nath for the determination of the amount payable by him as stamp-duty in order to get a decree prepared. This is dated the 8th March. On the 18th of March, 1952, Jagan Nath made another application saying that he had applied to the Court to determine the amount payable by him as stamp-duty and that after inspection of the record had discovered that the amount

payable was Rs. 1,775 and therefore he was paying that amount in the form of stamp-paper and there is a note on this application saying "five sheets of non-judicial stamp-paper of the value of Rs. 1,775 are attached herewith" and I find that five sheets of stamp-paper were purchased on the 18th but the dispute before me is as to when these five sheets of stamp-paper were filed in Court.

The application for execution as well as the application made on the 8th and the subsequent application made on the 18th of March, 1952 for the determination of the amount of stamp-duty were heard together on several dates. On the 20th of March 1952 the order in the suit file is that "notice should issue to the judgment-debtor for the 15th of April, 1952, to state if he has any objection to the drawing up of the decree-sheet" and the order in the execution file is that "no question of execution arises as the decree-sheet has not yet been prepared." The hearing of the applications went on being adjourned and on the 2nd of July, 1952, the order is that the drawing up of the decree-sheet had been ordered and the case should be heard on the 19th of July 1952. On the suit file the order of the same date is—

> "The decree-holder has filed his stamp-paper. The Ahlmad should after scrutiny draw up the decree-sheet and should then send the papers to the record room."

All these orders are in Urdu and I am giving their translation. On the 19th of July the proceedings in the suit file show that a search was made for the sheets of stamp-paper but they could not be located. On the same day the Court ordered that the case should be heard on the 26th of July, 1952. On

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that day the Reader made a report that the amount of the stamp-duty had been scrutinised, the decree-holder had filed stamp-paper of the value of Rs. 1,775 but that was the value of the biggest share in the partition suit, the correct stamp-duty being Rs. 1,180 and Rs. 595 seem to have been paid in excess. Thereupon Mr. Kishan Lal, Advocate for the decree-holder, made a statement that the stamp-duty should have been Rs. 1,180 and by a mistake Rs. 595 had been paid in excess, that according to law the excess could not be refunded and therefore the Court should retain stamp-paper of the value of Rs. 1,200 and return the rest. Accordingly the Court ordered the return of stamp-paper of the value of Rs. 575. According to the orders on the record it appears that the decree-sheet was not prepared before the 10th of October, 1952.

On the 14th of August, 1952, Mr. Hardayal, Advocate for the judgment-debtor, filed certain objections pleading that (1) the application for execution was barred by time because when the application was made there was no decree-sheet prepared on a stamp-paper and therefore the application could not be looked at and whatever proceedings had been taken were without jurisdiction, (2) the application for execution should have been filed in the Court of Mr. Ram Singh Bindra and as it was filed in the Court of the District Judge it shoold be dismissed and (3) there was no decree for payment of money and all that is said in the award about Rs. 1,125 is that the decree-holder is entitled to it and he should therefore bring a separate suit in regard to it. There were certain other objections also. The Court framed the following issues :—

1. Whether the decree has not been drawn on sufficient stamp-paper? If so, what is its effect ?

2. Whether the execution application is time-barred and whether the same is not maintainable on account of objection taken in para 6 of the objection-petition ?

3. Whether the execution application could not be presented to the District Judge and if so, what is its effect ?

4. Whether in terms of the decree the sums of Rs. 1,125 and ¼th of Rs. 8,250 are recoverable by the decree-holder from Siri Ram ?

5 Whether the decree required compulsory registration ?

It held that the decree had been drawn up on adequate stamp-paper, that the application for execution was not barred by time, that the application for execution had been properly filed and that in regard to the sum of Rs. 1,125 the decree was mandatory and therefore the judgment-debtor was bound to pay and in regard to Rs. 8,250 it was merely a declaratory decree and therefore no execution could be taken in regard to this sum. The plea in regard to compulsory registration was given up. The Court dismissed the objections of the judgment-debtor and ordered the application to proceed and the judgment-debtor has come up in appeal to this Court.

Two main questions have been raised before me : (1) that as the decree-sheet had not been prepared on account of want of stamp-duty, no application for execution could be made on the 8th of March, 1952 and (2) that the application made on the 8th of March, 1952 asking for the determination of the amount of stamp-duty payable by the

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decree-holder was not a step in aid within the meaning of Article 182(5) of the Indian Limitation Act, and another question was raised under this very head that the stamp-duty was not paid up to the 2nd of July, 1952, which was more than three years after the judgment had been passed and when the decree was ordered to be prepared the period of limitation had already expired.

According to Order 20, rule 7, Civil Procedure Code, the decree has to bear the same date as the judgment. The judgment in this case was passed on the 8th of April, 1949 and the decree must therefore bear the same date and the limitation would start from that date and any application for execution would be barred if it is made under Article 182 of the Indian Limitation Act. Both parties are agreed that no decree-sheet had been prepared. The question arises whether an application for execution made before the decree-sheet is prepared is a proper application under Article 182(5) of the Limitation Act.

Applications for execution are dealt with in the Civil Procedure Code in Order 21. Rule 10 provides for the application to be made to the Court which passed the decree and rule 11(1) deals with oral applications for execution and rule 11(2) with written applications. The latter lays down what the contents of an applicaion for execution should be, under rule 11(2)(c) the date of the decree has to be mentioned and it has been held that "date of the decree" means date on which the judgment was pronounced (see *Golam Gaffar Mandal and others* v. *Goljan Bibi and others*, (1), and Mulla's Civil Procedure Code page 768). Rule 11 does not seem to make it a condition precedent for the application for execution to be made that there should

(1)I.L.R. 25 Cal. 109

be in existence a decree-sheet because otherwise no oral application for execution could be made immediately after the passing of the decree though sub-rule (1) applies only to decrees for money. But it is submitted that it is not possible to file an application for execution of a decree passed in a partition suit before the payment of the stamp-duty because the decree-sheet will not even be admissible in evidence. There is no doubt the judgment of Dalip Singh, J., in *Dilbagh Rai and others* v. *Mt. Teka Devi* (1), which may lend support to this view. In that case in a partition suit, the final decree was not stamped with judicial stamp. The Court under a mistake thought that the decree was properly stamped and allowed execution. It was held that notwithstanding the proviso to section 36, the decree, not being drawn up on a stamp-paper, could not be deemed to be a decree at all and therefore there was nothing for the executing Court to act upon. But in a later judgment of the Lahore High Court, Mr. Justice Dalip Singh himself expressed a different opinion. (See *Gopi Mal* v. *Vidya Wanti and others* (2), where it was held that in a partition suit an unstamped decree-sheet is a decree but not a decree that can be acted upon until proper stamp is supplied, but the decree can be validated by the addition of the proper stamp and therefore it could not be said that the decree was merely a waste paper which could not be validated by addition of the stamp-duty. At page 321 Din Mohammad, J., was of the opinion that even if the decree remains unstamped, it cannot be said that it is no decree at all in any sense of the term.

The Allahabad High Court in *Ganesh Prasad* v. *Mst. Makhna* (3), held that the supply of the

(1) A.I.R. 1932 Lah. 249.
(2) I.L.R. 1942 Lah. 307 (F.B.).
(3) I.L.R. 1949 All. 49, 55.

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requisite stamp-duty validates the decree as from the date of the decree and that the validity of the execution proceedings taken prior to the supply of the requisite stamp-duty could not be questioned. In the Patna High Court also this matter was agitated in *Jagdeo Sao* v. *Basudeo Narain Singh,* (1), where it was held that it is competent for a Court to order delivery of possession in execution even if the decree is subsequently drawn up and signed. The right of the decree-holder to execute the decree arises as from the date of the decree and moreover it is not obligatory on the decree-holder to file a copy of the decree along with the application unless the Court so required. The order for delivery of possession in a case where a decree is not drawn up is not without jurisdiction.

In the present case even after the order of the Court dated the 2nd of July, 1952, the office could not trace the stamp-paper and a search had to be made. The objection of counsel for the appellant that there is no endorsement showing the date of filing of the stamp-paper is without force on two grounds : (1) that even the date which, counsel submits, it was filed on was not given on it and (2) the report of the 19th of July is that the court-fee could not be found in spite of search. This supports the submission of the counsel for the decree-holder that the stamp-paper was filed on the date on which it purports to have been filed. Besides, it is difficult to believe that the stamp-paper was purchased but was not filed.

Section 33 of the Civil Procedure Code provides—

> "The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow."

(1) A.I.R. 1954 Pat. 92.

It was therefore the duty of the Court to draw up the decree after the judgment had been pronounced. It may be that due to section 11 of the Court-fees Act the decree could not be executed until the court-fee had been paid or under the Stamp Act the document could not be effective for purposes of taking proceedings but in either case there was no reason why the decree-sheet should not have been prepared and if the Court had done its duty much of the controversy which has arisen would have been avoided. The word "decree" is defined in section 2(2) to mean a determination of the rights of parties with regard to all or any of the matters in controversy in the suit and it may be preliminary or it may be final but in either case the Court cannot shirk its duty of drawing up the decree and is not concerned whether such a decree will be executable or not.

Mr. Indar Dev Dua also submitted that time could not begin to run till the decree had been drawn up and he relied upon the judgment of the Allahabad High Court in *Ganesh Prasad* v. *Mst. Makhana* (1), but with great respect I am unable to accept this view because the *terminus a quo* according to Article 182 is the date of the decree which under Order 20, rule 7, is the date of the judgment. See also *Golam Gaffar Mandal and others* v. *Goljan Bibi and others* (2). In my view therefore an application made within three years of the date of passing of the decree, which would be the date of the judgment, would stop the running of time as against the judgment-debtor.

The second question which arises for determination is whether the application made by the decree-holder on the 8th of March, 1952, asking

(1) I.L.R. 1949 All. 49.
(2) I.L.R. 25 Cal. 109.

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for the determination of the amount of stamp-duty payable by him is a step in aid within Article 182(5) of the Limitation Act which provides—

> "Where the application next hereinafter mentioned has been made, the date of the final order passed on an application made in accordance with law to the proper Court for execution or to take some step in aid of execution of the decree or order."

According to a Full Bench judgment of the Lahore High Court, *Ghanaya Lal* v. *Nathu Ram,* (1) in order that an application should be in accordance with law, two conditions are necessary to be satisfied, (1) there must be an application in accordance with law asking the proper Court to take a step, and (2) the step required to be taken by the Court must be in aid of execution. In the present case the application was made to the Court executing the decree and it was in accordance with law. It is not necessary that the proposed step should actually be taken or that even an order should be passed by the Court on the application. As was pointed out by Sir Shadi Lal, C. J., at page 157, "as soon as an application of the above description is made, the period of limitation will run from the date of presentation of the application."

It was contended that the application of the 8th of March, 1952, could not be an application as a step in aid because there was no execution application pending at the time, but the preponderance of authority is in favour of the view that an application can be a step in aid even though there is no execution application pending. This is the view of practically every High Court in India. Dalip Singh, J. in *Messrs. Uttar Chand Kapur and Sons*

(1) I.L.R. 12 Lah. 153.

. *Messrs : Sayad Hamid Ali and Syed Imtiaz Ali* (1), held that there can be a step in aid of execution without an application for execution having ever been made at all and that the mere fact that court-fee had not been paid on a decree granted does not prevent the decree-holder from making an application for execution. A learned Single Judge of the same Court in an earlier case, *Ghanaya Lal* v. *Punjab National Bank Ltd., Lahore* (2), took this view. The words in clause (5) of Article 182 "where the application next hereinafter mentioned has been made" were held to apply both to an application for execution and to an application to take some step in aid of execution. and as both the applications are mentioned independently of each other in the clause, each one of them is sufficient to save limitation.

The Calcutta Court in *Ram Narayan Jagan Nath* v. *Radha Gobinda Dev Nath* (3), took the same view. The Nagpur Court in *Prayagdas* v. *Indirabai* (4), held that for an application to be a step in aid of execution it is not necessary for an application for execution to be pending and the same view was taken by Hidayatullah, J., in *Sheolal* v. *Ramrao*, (5). The view of Allahabad High Court on this point is the same (see *Risal Singh* v. *Lal Singh* (6), and so also of Madras High Court in *Avi Goundan* v. *Solai Goundan* (7). The cases which took contrary view were overruled in this judgment. The Patna High Court in *Mohammad Sadique Mian* v. *Mahabir Sao* (8), has taken a contrary view in a case where an application was made in a suit for accounts for the determination

(1) A.I.R. 1938 Lah. 326.
(2) A.I.R. 1928 Lah. 7.
(3) I.L.R. (1940) 2 Cal. 252.
(4) I.L.R. 1953 Nag. 734.
(5) I.L.R. 1947. Nag. 572.
(6) I.L.R. 1939 All. 728
(7) I.L.R. 1945 Mad. 468 (F.B.).
(8) I.L.R. 21 Pat. 366.

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of the amount of the deficit court-fee and an order was made that a final decree be drawn up after the deficit court-fee had been paid. The Court was of the opinion that the decree was not conditional and that nothing had to be determined in this case because the amount which was decreed had already been determined and all that was necessary was to pay the deficit in court-fee. But in the present case the amount of stamp-duty payable by the decree-holder had to be determined and as a matter of fact right up to the 26th of July, 1952, it was not clear as to what would be the amount payable by the decree-holder and although the decree-holder had paid Rs. 1,775, stamp-paper of the value of Rs. 575 had to be returned to him.

The preponderance of opinion therefore is that an application can be a step in aid within the meaning of Article 182(5) even though it is made when no execution proceeding is pending. One can conceive of cases where no execution is possible, as in the present case, because a decree had not been drawn up on a stamp-paper and if the existence of a pending application for execution was a prerequisite of an application being a step in aid, then a clever and litigious judgment-debtor would in all cases be able to defeat the decree-holder by prolonging the very drawing up of a decree for a period of more than three years.

The question then arises whether an application made for the purpose of drawing up a decree and for determining the amount of stamp-duty required is a step in aid or not. Bhide, J., in *Ram Narain Kaul* v. *Maharaj Narain Kaul* (1), held an application for the preparation of a formal decree-sheet on a stamp-paper supplied by the decree-holder to be a step in aid of execution for the purposes of Article 182 of the Limitation Act. The

(1) A.I.R. 1940 Lah. 337.

test laid down by the learned Judge was whether such an application would aid execution. In the present case no effective decree could be drawn up unless the stamp-duty was paid and stamp-paper filed in Court and no stamp-paper could be filed unless it was determined as to the amount which was payable by the decree-holder. The object of making the application for the determination of the amount and subsequently the filing of the non-judicial stamp-paper was getting a proper and effective decree-sheet drawn up which could be executed and would not be hit by section 35 of the Stamp Act or section 11 of the Court-fees Act, as the case may be. In a Madras case *Inturi China Venkatappa* v. *Inturi Peda Venkatappa,* (1), a contrary view seems to have been taken. In that case a decree was passed on the 14th of July, 1937 and application for execution was made on the 3rd of March, 1938 which was returned the following day with the remark that stamp-duty should be paid within seven days. The same application was again filed on the 20th of September, 1940, but it was not accompanied with the necessary stamp-paper, but there was a prayer for the delay to be excused which was rejected on the 27th of September, 1940. On the 6th of November, 1940, the necessary stamp-duty was paid and it was held that the date of the decree was the date on which the judgment was pronounced and limitation runs from that date and that an execution application returned for furnishing the proper stamp-paper has no legal existence until it is represented and if the representation is after the period of limitation, it does not acquire the status of a petition calling for an order unless the delay is excused. It was also held that in the case of a partition decree an application made before furnishing the stamp-paper required or an application to excuse

(1) A.I.R. 1943 Mad. 650.

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delay in furnishing the requisite stamp-paper is not a step in aid of execution within the meaning of Article 182(5). It is doubtful if this would be good law in view of the Full Bench decision in *Avi Goundan* v. *Solai Goundan* (1). The learned Judges in *Venkatappa's case* (2), seem to have been of the opinion that there could be no step in aid of the execution until the stamp-duty was paid and that was after the period of limitation had expired. This case, in my opinion, is distinguishable on facts apart from the decision of the Full Bench judgment which I have referred to above.

Mr. Grover then relied on another judgment of Madras High Court in *Pandivi Satyanandam* v. *Paramkusam Nammayya* (3), in which it was held that in a partition suit no decree can be executed unless it is engrossed on a proper non-judicial stamp-paper. But that does not decide the question whether a man can make an application for execution in order to save limitation under Article 182 because all that the law requires is that there should be an application in accordance with law, not that a relief must be obtainable thereon. The Privy Council in *Govind Prasad* v. *Pawankumar* (4), held that under Article 182(5) an applicatoin to be effective must be one made in accordance with law, i.e., in accordance with the law relating to execution of the decrees and it cannot be said that in the present case the execution was not in accordance with law, i.e., not in accordance with Order 21, rules 10 and 11, of the Code of Civil Procedure.

The Bombay High Court in *Govind Krishna* v. *Malhar Narsingrao Nadgu* (5), held that the

(1) I.L.R. 1945 Mad. 468.
(2) A.I.R. 1943 Mad. 650.
(3) A.I.R. 1938 Mad. 307.
(4) A.I.R. 1943 P.C. 98.
(5) A.I.R. 1954 Bom. 410.

question whether an application is in accordance with law or not must inevitably depend on the facts and circumstances in each case and the mere fact that the relief is not obtainable is not sufficient to hold it to be not in accordance with law. In that case the decree provided that the decree-holder could not execute the decree as a personal decree until he had exhausted other remedies provided in the decree itself, but the decree-holder did execute against the person of the judgment-debtor and it was held that although the execution was premature according to the terms of the decree, the application was nevertheless one in accordance with law within the meaning of Article 182 (5). It is not necessary at this stage to refer to the Calcutta case, *Kishori Mohan Pal* v. *Provash Chandra Mohdal* (1), where it was held that the limitation in a case of a partition decree runs from the date the judgment was pronounced even though no formal decree was drawn up because no proper stamp had been supplied to the Court. This was followed in *Venkatappa's case* (2), which I have dealt with above.

Another point raised by Mr. Grover was that the Court below was in error in holding that paragraph 14 of the award was executable. He submitted that that was only declaratory. I am unable to agree with this and in my opinion the learned executing Court has rightly held it to be executable.

I would therefore hold that—

(1) on the evidence which has been produced the amount of the stamp-duty was paid on the date it purports to have been paid, i.e. the 18th of March, 1952;

(1) A.I.R. 1924 Cal. 351
(2) A.I.R. 1943 Mad. 650

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(2) an execution application can be made even though no decree-sheet has been drawn up and no stamp-duty has been paid; the impediment because of section 35 of the Stamp Act is that such a decree cannot be executed;

(3) an application can be a step in aid even though no execution proceeding is pending;

(4) an application made to the Court for determination of the amount of stamp-paper is a step in aid of execution and would stop the running of time and give a fresh period of limitation as from the date the application was made;

(5) even if I were to come to the conclusion that no application for execution could be made before the decree was engrossed on a stamp-paper, the application made on the 8th of March 1952 was a step in aid and would stop the running of time; and

(6) the application made was in accordance with law and falls within the rule laid down by Sir Shadi Lal, C. J., in *Ghanaya Lal* v. *Nathu Ram* (1).

I would therefore dismiss this appeal with costs.

REVISIONAL CIVIL

Before Bhandari, C. J.

KARTAR SINGH,—*Petitioner*

versus

MEHR SINGH, ETC.,—*Respondents*

Civil Revision No. 364-D of 1953.

1956

Oct., 19th

Arbitration Act (X of 1940)—Section 34—Requirements of—Suit when can be stayed.

On the 24th March, 1944, five persons entered into partnership and the deed of partnership contained an arbitration clause according to which all differences arising among

(1) I.L.R. 12 Lah. 153, 156