APPELLATE CIVIL

*Before A. N. Grover, J.*

PEAREY LAL AND ANOTHER,—*Appellants.*

*versus*

KRISHAN SARUP AND ANOTHER,—*Respondents.*

**Second Appeal From Order No. 1-D of 1959.**

1963

March, 29th.

*Limitation Act (IX of 1908)—Ss. 9 and 15(1) and Article 182—Decree for eviction from shop passed—Decree-holder and his property declared evacuee and later restored—Period between such declaration and restoration—Whether can be excluded for the purposes of limitation under Article 182—Execution of a decree for eviction—Whether directed against the property—Administration of Evacuee Property Act (XXXI of 1950)—S. 17—Exemption under—Whether applicable to decree for eviction.*

*Held*, that the Administration of Evacuee Property Act does not contain any express provision by which all execution processes are stayed. As soon as a decree-holder is declared evacuee and his property vests in custodian, he is not disabled from executing the decree. Under these circumstances, there is no injunction or order within the meaning of section 15(1) of Indian Limitation Act by virtue of which the institution of the execution application is stayed. Before the decree-holder's property was declared as evacuee property, time had already begun to run for the purposes of Article 182 of the Indian Limitation Act and, as provided by section 9 of the Act, no subsequent disability or inability to sue could stop it. Section 9 is applicable to execution proceedings and even if it is not, deduction can be allowed from the prescribed period of limitation only under some provision of the Act itself. There is no provision in the Act to that effect except section 15(1) which is not applicable to exemption provided under section 17 of the Administration of Evacuee Property Act. That exemption does not apply to a decree for eviction and the execution which is taken out of a decree by eviction or possession is not directed to the property but to the individual. Hence the period between the declaration of the property as evacuee property and its subsequent restoration to the

decree-holder, cannot be excluded for the purposes of limitation under Article 182 of the Indian Limitation Act.

*Second Appeal from the order of Shri Radha Kishan Baweja, Senior Sub-Judge, Delhi, with Enhanced Appellate Powers, dated the 27th October, 1958, confirming that of Shri J. M. Tandon, Sub-Judge 1st Class, Delhi, dated the 9th April, 1958, dismissing the appeal with costs.*

R. S. NARULA, and S. D. SEHGAL, ADVOCATES, for the Appellant.

V. D. MAHAJAN, ADVOCATE, for the Respondent.

JUDGMENT

GROVER, J.—In order to decide the points arising in this appeal, the facts may be stated. Grover, J.

A shop bearing No. 3755 in the main bazar, Subzi Mandi, Delhi, belonged to Chaman Rafiq Begum. On 1st October, 1947, she obtained a decree for eviction against Pearey Lal and Cheda Mal, her tenants, Janki Parshad, the son of Pearey Lal, being said to be a sub-tenant. On 19th April, 1949, the property of the Begum was declared evacuee property. Janki Parshad, son of Pearey Lal made payments to the Custodian of rent obtaining receipts in his name. Before 1956, the shop in question was restored to the Begum. On 4th January, 1956, she made an application for execution of the decree for eviction, dated 1st October, 1947. On 12th January, 1956, she sold this property along with some other property to Krishan Sarup by means of a deed of sale, Exhibit D.H. 2. She also assigned the benefit of the decree to the vendee. On 24th March, 1956, the execution application filed on 4th January, 1956, by the Begum was dismissed as unsatisfied. On 9th May, 1957, an execution application was filed by Krishan Sarup who is respondent No. 1 in the present appeal. The only substantial objection that was raised related to the bar of limitation.

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The objection petition was dismised on 9th April, 1958. The appeal was also dismissed on 27th October, 1958. Then the present appeal was filed in this Court.

The main question is one of limitation. One of the other subsidiary questions that has been raised is that a new tenancy has come into existence under the proviso to sub-section (3) of section 16 of the Administration of Evacuee Property Act, 1950 (to be referred to as the Act) in favour of Janki Parshad and, therefore, the decree sought to be executed was no longer capable of execution. This objection was not raised in the objection petition, nor was it put into issue, although certain evidence was led in connection with it. The trial Court decided it against the objectors but in the grounds of appeal before the lower appellate Court, no ground was directed against that part of the order of the trial Court, nor has any such ground been raised in the present memorandum of appeal before me. I, therefore, decline to allow this question to be raised at the stage of second appeal.

So far as the question of limitation is concerned, the lower appellate Court found that the property in question had been released or restored by the Custodian to the Begum on 2nd February, 1955, and not on 30th April, 1952 as was the case of the objectors. Mr. Narula has sought to assail this finding principally on the ground that the lower appellate Court looked at a certified copy of the order of the Deputy Custodian without properly admitting it by way of additional evidence and giving an opportunity to the objectors to rebut the same. Even if that error was made by the Court below, I do not find any adequate reason for interfering with that finding. Reference has been made in the order under appeal to the proceedings in the Custodian Department where the final order was made on 2nd February, 1955, by the

Deputy Custodian. The concurrent finding of the Courts below must be accepted that the date of restoration of the property to the owner was 2nd February, 1955.

If the property remained vested in the Custodian during 19th April, 1949 to 2nd February, 1955, the question is whether that time could be deducted for the purposes of determining the period of limitation. According to the lower appellate Court, nothing could be done by the decree-holder during the aforesaid period and the cause of action remained suspended. It has consequently been held that the execution application, dated 4th January, 1956, was within time as three years had not expired from 1st October, 1947 excluding the period from 19th April, 1949 to 2nd February, 1955, while computing the period prescribed in article 182 of the Limitation Act. It has been contended before me that the application, dated 4th January, 1956, could not be regarded as a step-in-aid in the matter of execution as it has not been shown that that application was in accordance with law. No such point was raised before the Courts below and it cannot be allowed to be taken up at this stage.

A more serious question, however, is whether the period from 19th April, 1949 to 2nd February, 1955, could be excluded under the provisions of the Limitation Act. Section 3 provides that subject to the provisions contained in sections 4 to 25, every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first Schedule shall be dismissed, although limitation has not been set up as a defence. Section 9 says that where once time had begun to run no subsequent disability or inability to sue stops it. Section 15(1) is to the effect that in computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which

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has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded. As the property in question was declared evacuee property under the provisions of the Act, it is necessary to examine some of its provisions. Section 4(1) of the Act lays down that the provisions of the Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 7 relates to notification of evacuee property, section 8, to vesting of evacuee property in Custodian, section 10, to powers and duties of the Custodian generally and section 17, to exemption of evacuee property from processes of Court, etc. This section is in the following terms:—

"17. (1) Save as otherwise expressly provided in this Act, no evacuee property which has vested or is deemed to have vested in the Custodian under the provisions of this Act shall, so long as it remains so vested, be liable to be proceeded against in any manner whatsoever in execution of any decree or order of any court or other authority, and any attachment or injunction or order for the appointment of a receiver in respect of any such property subsisting on the commencement of the Administration of Evacuee Property (Amendment) Act, 1951, shall cease to have effect on such commencement and shall be deemed to be void.

(2) Where, after the 1st day of March, 1947, any evacuee property which has vested in the Custodian or is deemed to have

vested in the Custodian under the provisions of this Act has been sold in execution of any decree or order of any court or other authority, the sale shall be set aside if an application in that behalf has been made by the Custodian to such court or authority on or before the 17th day of October, 1950."

It is not disputed that as soon as the property was declared evacuee it vested in the Custodian until it was released or restored in favour of the Begum. It is contended by Mr. Narula that section 17 creates an exemption only with regard to the property being proceeded against in any manner in execution of a decree or otherwise and a decree for eviction would not be covered by the aforesaid provision. Reliance has been placed on *Sheikh Mohd. Din* v. *Thakar Singh* (1), in which it has been observed at page 430 that the object of evacuee property law is not to give protection to the judgment-debtor; its object is the preservation and administration of evacuee property, and this is so, irrespective of the fact whether the property is under mortgage or not. The evacuee legislation is directed to the property and not to the individual. Mr. Narula's contention is that a decree for eviction which is similar to a decree for possession is not directed against the property but against the individual who is in its occupation or possession. Order XXI, rule 35 of the Code of Civil Procedure provides that where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refused to vacate the property. Form No. 11 in Appendix E (Code of Civil Procedure) relates to the warrant to the bailiff to give possession of land

(1) A.I.R. 1952 Punj. 428.

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etc., under Order XXI, rule 35). According to that form, the Court directs the bailiff thus:—

> "Whereas the under-mentioned property in the occupancy of has been decreed to the plaintiff in this suit; you are hereby directed to put the said in possession of the same, and you are hereby authorised to remove any person bound by the decree who may refuse to vacate the same."

Thus the execution which is taken out of a decree for eviction or possession is not directed to the property but to the individual and from the observations contained in the Bench decision relating to section 17 of the Act it is clear that the exemption provided by that section would not apply to a decree for eviction.

The lower appellate Court relied on *Mt. Umrao Bibi* v. *Ram Kisen* (2), and *Jatendra Chandra Bandopadhyay* v. *Rebateemohan Das* (3). The citation of the Lahore case is apparently wrong and the learned counsel for the respondents has not been able to give the correct citation. In *Jatendra Chandra Bandopadhyay* v. *Rebateemohan Das* (3), one Rajchandra was the owner of certain properties. He executed a will by which he bequeathed his properties to his grandsons, Rajendra and Jogendra. Rajchandra died leaving Girish as his only son. Girish mortgaged the properties later on the basis of which the mortgagees obtained a mortgage decree against Girish in 1917. In 1924, Chandrakala, the wife of Girish, who had been appointed executrix by the will of Rajchandra, obtained probate in common form. On 2nd January, 1925, she instituted a suit for a declaration that the mortgaged properties were not liable to be sold on the allegation that the mortgagor had no title to the property as it had vested in her by virtue of the will. During the

(2) A.I.R. 1932 Lah. 281.
(3) A.I.R. 1935 Cal. 333.

pendency of the suit the mortgaged properties were sold in 1926. The suit filed by Chandrakala was decreed in 1928. In 1931, the auction-purchaser applied for delivery of possession. The judgment-debtors took the objection that the application was barred by limitation. It was observed that assuming that the words "to sue" in section 9 of the Limitation Act included application for delivery of possession, the section contemplated cases where the cause of action continued to exist. It could not apply to cases, where the cause of action was cancelled by reason of subsequent events. If the auction-purchaser applied for delivery of possession during the period between 1928 and 1931, they would have been successfully met with the plea that they had no right to get possession in view of the decree passed in 1928. According to Mr. Narula, the facts of the Calcutta case were quite different. He has relied on *Nawab Khan* v. *Fateh Mohammad* (4), which according to him is more in point because in the present case what had really happened was that the property in dispute vested in the Custodian of Evacuee Property in April, 1949, and remained so vested till 5th February, 1955. In the Lahore case it was observed that where a decree had been passed before the order of adjudication of a person as insolvent, the time for its execution would begin to run which could not be suspended by a subsequent disability. It was, however, pointed out that the aforesaid disability could have been removed by the decree-holder himself applying to the Insolvency Court for permission to sue and no such permission was asked for before 13th January, 1937. In *Guntur Akkayya* v. *Pathuri Appayya* (5), it was held that section 15 did not apply where a person had been adjudicated insolvent as the order of adjudication did not affect the absolute stay of execution. The cases arising out of insolvency proceed mainly on the ground that the order of adjudication does not

(4) A.I.R. 1939 Lah. 270.
(5) A.I.R. 1947 Mad. 238.

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affect an absolute stay of execution and that execution can proceed subject to permission of the Court. As stated in Chitaley's Limitation Act (3rd Edition), Volume I, page 524, the words "stayed by an injunction or order" have reference to an order of a Court and not to a disability to sue or to apply arising from the other causes. It follows that even assuming that the pendency of insolvency proceedings against a person will prevent any suit or application from being filed against him, such prevention will be not by reason of the order of the Court but under the law. Section 15 will not, therefore, apply to such cases. It may be noted that a creditor can proceed against the insolvent notwithstanding the insolvency proceedings, provided he gets the leave of the Court. It is only when the leave is refused that he is prevented from so proceeding against the insolvent. It may be mentioned that such refusal has been treated as an order granting an injunction or stay within the meaning of section 15 but according to the learned authors, that view is not correct. In *Deutzche Asiatesche Bank* v. *Hira Lall Burdhan* (6), it has been held that section 9 covers the case of an alien enemy who is debarred from suing in consequence of a declaration of war and the general rule is that once limitation has begun to run, a subsequent disability to sue will not avail to stop it in the absence of express statutory provision. Section 15 of the Limitation Act, according to Woodrofe, J., clearly refers to orders of Civil Courts and not to the condition of things under which an alien enemy is prevented from suing owing to a declaration of war.

In Rustomji's Law of Limitation (6th Edition) it is stated at page 175 that section 15 is not confined to cases of direct stay or injunction, but also applies to orders which indirectly, but very proximately and effectually, cause a stay. In order to determine whether execution has been stayed, the substance (and not

(6) A.I.R. 1919 Cal. 706.

the mere form) of the order must be looked at. In other words, the Court must ascertain whether the execution of the decree has in effect been stayed. In *Raj Kumar Chhotey Narain Singh* v. *Kedar Nath Singh* (7), it has been held that, where pending an appeal from a preliminary decree for foreclosure, as Receiver is appointed to take possession of the mortgaged properties with a direction to pay interest, so long as the order appointing the Receiver stands, the defendants are entitled to pay off the decretal amount and that consequently the order of appointment operates as a stay of the plaintiff's right to apply for a final decree or for possession and that, therefore, the period between the making of the order and the date on which the bar is removed must be excluded in computing the period of limitation for an application for a final decree for foreclosure and for possession. In *Meer Bismilla Meer Jangu Musalman* v. *Jagannath Binjraj Marwadi* (8), Grille, C.J., and Sen, J., expressed the view that an order of an executing Court granting time to a judgment-debtor to pay the decretal amount by a certain date operates as an order for stay within section 15(1) and this period can be excluded from computation of 12 years' limitation under section 48 of the Code of Civil Procedure. In *Radhey Shyam* v. *Syed Ibne Hasan* (9), a promissory-note had been executed by the defendant who applied under section 4 of the U.P. Encumbered Estates Act and an order was made under section 6 transferring the application to the Special Judge. The plaintiff filed a written statement of his claim on the basis of the promissory-note before the Special Judge, but it was rejected. The application of the applicant was also rejected. Later on, when a suit was filed on the basis of the pronote, a question arose whether it was barred by limitation. It was contended that by virtue of the order passed under section 6 of the Encumbered

(7) I.L.R. 1 Pat. 435.
(8) A.I.R. 1947 Nag. 101.
(9) A.I.R. 1947 Oudh. 157.

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Estates Act, no suit could be filed during the pendency of those proceedings because the Courts could not have taken cognizance thereof. Walford, J., applied the provisions of section 15(1) on the ground that an order made under section 6 of the Encumbered Estates Act had the effect of staying all suits in Civil Courts against the defendant. It was observed—

> "It is, therefore, clear that notwithstanding the fact that the plaintiff did not pursue his claim in a Court which had no jurisdiction to finally adjudicate upon the claim by virtue of the order under section 6, Encumbered Estates Act, the plaintiff was prevented from seeking his remedy in an ordinary Court and the period during which that order continued must be excluded in computing the period of limitation."

In *Hulas Singh* v. *Data Ram* (10), Iqbal Ahmad, C.J., delivering the judgment of the Bench observed as follows:—

> "A mass of case law has clustered round section 15. It has been held in a series of cases that section 15 applies only to those cases in which the institution of a suit has been directly or indirectly stayed by an order of a Court and does not apply to cases where the institution of a suit or other proceedings is forbidden by a statute: *vide Ramaswami Pillai* v. *Govindasami Naicher* (11) and *Singaravelu Mudaliar* v. *Chokkalinga Mudaliar* (12). It has, however, been laid in *Sidhraj Bhojraj* v. *Alli Haji* (13), that there need not be a direct order by a Court

(10) A.I.R. 1943 All. 291.
(11) I.L.R. 42 Mad. 319.
(12) I.L.R. 46 Mad. 325.
(13) I.L.R. 47 Bom. 244.

staying the institution of a suit and it is enough if such an order is implied. In other words, section 15 is applicable to cases in which either as a direct or as an indirect consequence of an order of a Court a plaintiff is debarred from instituting a suit. Before the amendment introduced by Act 11 of 1939, the institution of a suit by a creditor, after the Collector had passed an order under section 6, Encumbered Estates Act, was absolutely barred by clause (b) of section 7. It follows that after an order by the Collector under section 6, no creditor could, during the pendency of proceedings under the Encumbered Estates Act, institute a suit for the recovery of the debt due to him from the landlord. The direct consequence of an order under section 6, was, therefore, to bar the institution of a suit by a creditor. It is, therefore, correct to say that the Collector's order in the present case was tantamount to an order staying the institution of a suit by the plaintiffs. In this view of the matter the order of the Collector under section 6 attracts the provision of section 15, Limitation Act, and the period intervening between the date of that order and the conclusion of the proceedings under the Encumbered Estates Act, must, therefore, be excluded in the computation of the period of limitation for a suit by a creditor. The conclusion arrived at by us is in conformity with the decision in *Mathura Prasad Singh* v. *Jageshwar Prasad Singh* (14), and *Mahabir Prasad Narayan Deo* v. *Bhupal Singh* (15), though the reasons given by the learned Judges of

(14) I.L.R. 5 Pat. 404.
(15) I.L.R. 9 Pat. 385.

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the Patna High Court are not identical with the reasons that we have given in support of our decision."

It is noteworthy that section 6 of the U.P. Encumbered Estates Act simply provides that when an application has been duly made according to the provisions of section 4, the Collector shall forthwith pass an order that it be forwarded to the Special Judge, etc. Section 4 provides for the filing of an application by a landlord who is subject to or whose immovable property is encumbered with private debts to the Collector. Section 7 says that once the Court had made an order under section 6, all proceedings pending at the date of the said order in any Civil or Revenue Court in respect of any public or private debt to which the landlord is subject or with which his immovable property is encumbered shall be stayed and all attachments and other execution processes shall become null and void. By virtue of the above provisions, it is quite clear that there would be an order staying the institution of a suit and wiping out all attachments and other execution processes.

If section 17 of the Act had been applicable to the present case, there could be no doubt that the Allahabad decision mentioned above would have been fully applicable. The position which finally emerges, however, is that the Act did not contain any express provisoin by which all execution processes would be stayed, and as soon as the Begum was declared evacuee and her property vested in the Custodian she was disabled from executing the decree and only the Custodian could either execute the decree or carry on the execution proceedings, if execution had already been taken out. It is difficult to say that in these circumstances there was any injunction or order within the meaning of section 15(1) by virtue of which the institution of the execution application had

been stayed. Before the Begum's property was declared evacuee property, time had already begun to run for the purpose of article 182 of the Limitation Act and as provided by section 9, no subsequent disability or inability to sue could stop it. Section 9 has been applied even to execution proceedings. At any rate, even if it be assumed that section 9 is not applicable, deduction can be allowed from the prescribed period of limitation only under some provision of the Limitation Act itself. There is no provision in the Act to that effect and the learned counsel for the respondent has not been able to point to any provision other than section 15(1). As the case does not fall under section 15(1), I am constrained to hold that the execution application was barred by time.

In the result, the appeal is allowed, the orders of the Courts below are set aside and it is ordered that the application for execution be dismissed as barred by time. In the circumstances, I leave the parties to bear their own costs throughout.

*K. S. K.*

## REVISIONAL CRIMINAL

*Before Tek Chand, J.*

REMAL DASS AND ANOTHER,—*Petitioners.*

*versus*

THE STATE,—*Respondent.*

**Criminal Revision No. 1383 of 1962.**

1963

April, 5th.

*Penal Code (XLV of 1860)—S. 336—Rashly—Meaning of—Drunken person firing a gun—Whether acts rashly.*

*Held* that the phrase "rashly" means something more than mere inadvertence or inattentiveness or want of ordinary care. A person who acts rashly shows indifference to obvious consequences and to the rights of others, and does not mind whether a danger will result or not.