THE
INDIAN LAW REPORTS

PUNJAB SERIES

LETTERS PATENT APPEAL

Before Bishan Narain and Chopra, JJ.

KIRPAL SINGH,—*Appellant.*

versus

HARKISHAN DAS,—*Respondent.*

Letters Patent Appeal No. 9-D of 1955.

1957

April, 5th

Indian Limitation Act (IX of 1908)—Article 182—Appeal dismissed in default—Whether affords a fresh starting point for execution—No appeal filed against the decree or order sought to be executed but appeal filed against some other decree or order, the decision of which is likely to affect the decree sought to be executed—Decision of the appeal—Whether affords a fresh starting point for execution—Indian Arbitration Act (X of 1940)—Section 39(vi)—Appeal filed against the order refusing to set aside the award but no appeal filed against the decree passed in accordance with the award—Decision of such appeal—Whether affords a fresh starting point for execution.

Held, that where an appeal is dismissed in default, then it is a final order under Article 182 of the Indian Limitation Act, and affords a fresh starting point for execution. Clause (2) in column 3 relates to the date of the order or decree of the appellate court to execute which an application is made under column (1). If, however, no appeal is filed against the decree or order sought to be executed but an appeal is filed against some other decree or order in the proceedings, like the preliminary decree, which will affect, modify or rescind the decree or order sought to be executed, the decision of that appeal will not afford a fresh starting point for execution.

Held, that where an appeal is filed under section 39(vi) of the Arbitration Act, 1940, against an order refusing to set aside the award but no appeal is filed against the decree passed in accordance with the award, the decision of the appeal does not afford a fresh starting point for execution and an application for execution of the decree made after three years of its date will be barred by time.

Case law reviewed.

Letters Patent Appeal under clause 10 of the Letters Patent against the judgment of Hon'ble Mr. Justice J. L. Kapur, dated the 15th February, 1955, in Execution First Appeal No. 15-D of 1954 (Harkishan Das v. *Kirpal Shah), setting aside the order of the executing Court and ordering that the execution application should be proceeded with in accordance with law.*

A. R. WHIG, for Appellant.

R. S. NARULA, for Respondent.

JUDGMENT

Bishan Narain, J. BISHAN NARAIN J.—This is an appeal under clause 10 of the Letters Patent and arises in execution proceedings. The only point that requires determination in this appeal is one of limitation. The facts relevant for deciding this question are not in dispute and may be stated as follows:—

During the pendency of cross-suits in the Court of Subordinate Judge, Gujranwala, the parties, Harkishan Das Chawla and Kirpal Singh, referred their disputes to arbitration on 10th October, 1945. On some date not clear on the record an award was made under which Chawla became entitled to recover Rs. 7,000 from Kirpal Singh. Chawla sought to get the award made

rule of the Court. Kirpal Singh filed objections to the award but they were dismissed on 19th November, 1946. A decree in accordance with the award was passed on 30th November, 1946. Kirpal Singh filed an appeal on 14th January, 1947, in the Lahore High Court under section 39(vi) of the Arbitration Act against the order of 19th November, 1946, refusing to set aside the award. He, however, did not file any appeal against the decree passed on 30th November, 1946, for Rs. 7,000. The appeal of Kirpal Singh was dismissed by the Lahore High Court on 6th February, 1948, for default of appearance by both parties. The decree-holder then made an application for the execution of the decree dated 30th November, 1946, in the Delhi Court on 14th August, 1950. The Judgment-debtor pleaded that the application was barred by time under Article 182(1) of the Indian Limitation Act and the decree-holder in reply pleaded that the limitation started from 6th February, 1948, when the Lahore High Court dismissed his appeal. The plea of the judgment-debtor was upheld by the executing Court but on appeal a Single Judge of this Court came to the conclusion that Article 182(2) applied to the case and the limitation started from the date of dismissal of appeal by the Lahore High Court. The judgment-debtor has filed the present appeal.

It is common ground between the parties that if limitation starts from 30th November,, 1946 (the

Kirpal Singh
v.
Harkishan Das

Bishan Narain, J.

date of the decree for Rs. 7,000) then the present application for execution is barred under clause (1) of Article 182 of the Indian Limitation Act. It has been contended before us *inter alia* on behalf of the judgment-debtor that the execution application in question is not governed by clause (2) of Article 182, firstly because no appeal was filed against the decree that is now sought to be executed and secondly because the appeal was dismissed in default by the High Court and not on merits. The contention of the learned counsel for the decree-holder in reply is that clause (2) of Article 182 covers cases in which an appeal imperils partly or wholly the decree sought to be executed provided the order or decree appealed against arises out of the same proceedings as is the case in the present appeal. As regards the second point of the judgment-debtor the reply of the decree-holder is that when an appeal is dismissed under Order 41, Rule 17 of the Code of Civil Procedure, then the order of dismissal is a judicial order and the order or decree of the lower Court merges into that of the appellate Court and limitation starts afresh for execution of the decree.

I shall first take up the second objection as it is comparatively simple. It is urged on behalf of the judgment-debtor that when an appeal is dismissed in default then it cannot be said that the appellate Court has passed any final order or decree which can as such be executed. The argument is that an order under Order 41, Rule 17 of the Code of Civil Procedure is an administrative order and not a judicial order leaving the order or decree of the lower Court untouched or, in other words, the order or decree appealed against does not merge into the order or decree

of the appellate Court. In support of this contention the learned counsel has invited our attention to *Abdul Majid* v. *Jawahir Lal and others* (1), *Butak Nath* vs. *Munni Dei and others* (2), and *Sachindra Nath Roy and others* v. *Maharaj Bahadur Singh and others* (3). These decisions, however, relate to the order of dismissal passed by their Lordships of the Privy Council in appeals filed before them and are based on the rules framed by them on 15th June, 1853. These rules *inter alia* provide "and that in default of the appellant or his agent taking effectual steps for the prosecution of the appeal within such time or times respectively the appeal shall stand dismissed without further order and that report of the same be made to the Judicial Committee by the Registrar of the Privy Council at their Lordships' next sitting." In these rules of 1853 there is no rule corresponding to Order 41, Rule 17, Civil Procedure Code. It is, therefore, clear that under the rules of the Privy Council a dismissal in such circumstances was not an order passed by the Judicial Committee exercising judicial functions but by the Registrar of the Privy Council in the exercise of administrative powers. On the basis of these rules the observations made in *Abdul Majid* vs. *Jawahir Lal and others* (1), were quoted with approval in *Sachindra Nath Roy and others* v. *Maharaj Bahadur Singh and others* (3), relating to an order passed by the Privy Council on 16th April, 1910. This observation reads—

> "The order (i.e., the formal order) dismissing the appeal for want of prosecution, did not deal judicially with the matter of the suit, and could in no sense be

(1) I.L.R. 36 All. 350 (P.C.).
(2) I.L.R. 36 All. 284 (P.C.).
(3) I.L.R. 49 Cal. 203 (P.C.).

Kirpal Singh
v.
Harkishan Das

Bishan Narain, J.

regarded as an order adopting or confirming the decision appealed from. It merely recognised authoritatively that the appellant had not complied with the conditions under which the appeal was open to him, and that therefore he was in the position as if he had not appealed at all."

It was in these circumstances that it was held that under the Indian Limitation Act the period of three years named in Article 182 began to run from the date of the decree appealed against and not from the date of the dismissal by the appellate Court for want of prosecution. The Judicial Committee has changed its rules in 1924 and rule 36 has been introduced corresponding to Order 41, Rule 17 Civil Procedure Code, and no judgment of the Judicial Committee has been brought to our notice in which it has been held that after 1924 the order of dismissal under rule 36 is not a judicial order. It is true that following I.L.R. 36 Allahabad cases Bhide J. in *Secretary of State* v. *Mt. Reshmo and others* (1), has laid down that an order under Order 41, Rule 17, Civil Procedure Code, is not a judicial order for the purposes of Article 182. But with great respect I am unable to accept the correctness of this conclusion. Apparently a decision of the Division Bench of that Court in *Bank of Upper India Ltd.* v. *Sri Krishan Das and others* (2), was not brought to the notice of the learned Judge. In that case it was held that an order under Order 41, Rule 17, Civil Procedure Code, is a judicial order and is a final order dismissing the appeal within Article 182 of the Indian Limitation Act. A similar view has been taken in *P. Ram Kumar and*

(1) A.I.R. 1936 Lah. 479.
(2) A.I.R. 1935 Lah. 771.

another v. *Chaube Rudra Dutt* (1). It was observed by their Lordships of the Privy Council in *Abdulla Asghar Ali and others* v.*Ganesh Das Vij.* (2)—

> "Their Lordships think 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) of the Act of 1908."

These observations, in my opinion, fully apply to the present case of dismissal in default although they were made in a case in which the appeal had been dismissed as having abated. I am, therefore, clearly of the opinion that where an appeal is dismissed in default then it is a final order under Article 182 of the Indian Limitation Act and affords a fresh starting point for execution. In this view of the matter this argument of the learned counsel fails and is rejected.

This brings me to the main contention raised in the present appeal. Article 182, clauses (1) to (4) read—

Description of application	Period of limitation	Time from which period begins to run
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; or where a certified copy of the decree or order has been registered, six 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, or the withdrawal of the appeal, or 3. Where there has been a review of judgment) the date of the decision passed on the review, or 4. where the decree has been amended) the date of amendment, or"

(1) A.I.R. 1951 All. 493.
(2) A.I.R. 1933 P.C. 68.

Kirpal Singh
v.
Harkishan Das

Bishan Narain, J.

Clause (2) has led to considerable conflict in decisions but no useful purpose will be served by discussing these cases in detail or by treating the matter on historical basis. Both sides before us have placed their reliance mainly on the decisions given in *Nagendra Nath Dey and another* v. *Suresh Chandra Dey and others* (1) and in *Bhawanipore Banking Corporation Ltd.* v. *Gouri Shankar Sharma* (2). It may be stated here that these decisions have failed to resolve the conflict existing in various Courts but the weight of authorities now is in favour of the contention of the judgment debtor.

The principle for construing the provisions of the Indian Limitation Act has been laid down by the Judicial Committee in *Nagendra Nath Dey and others* v. *Suresh Chandra Dey and others* (1), and in *General Accident Fire and Life Assurance Corporation Ltd.* v. *Janmahomed Abdul Rahim* (3). It has been laid down in the former case—

> "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 the only safe guide."

In the latter case the Privy Council approved of the statement of law made by Mr. Mitra in his Tagore Law Lectures. This statement reads—

> "A law of limitation and prescription may appear to operate harshly or unjustly

(1) A.I.R. 1932 P.C. 165.
(2) A.I.R. 1950 S.C. 6.
(3) A.I.R. 1941 P.C. 6.

> in particular cases, but where such law has been adopted by the State ..... it must if unambiguous be applied with stringency. The rule must be enforced even at the risk of hardship to a particular party. The Judge cannot on equitable grounds enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by it."

The difficulty arises in reality when occasion arises to apply this principle to facts of a particular case. The Limitation Act debars and prevents a party who has a right from enforcing that right and the idea of equity that a party should, as far as possible, not be prevented from exercising his right often leads Courts and Judges to travel beyond the strict grammatical meaning of the words used in the statute so as to enlarge the time on equitable grounds. This is, however, exactly what the Judicial Committee has repeatedly disapproved. There is another rule of construction which has been laid down by the Supreme Court relating to the Indian Limitation Act. In *Bhawanipore Banking Corporation Ltd.* v. *Gouri Shankar Sharma* (1), their Lordships have laid down that the first and third columns of the schedule in the Limitation Act should be read together. In this judgment their Lordships have observed—

> "The expression 'where there has been an appeal' must be read with the words in column 1 of Article 182, viz., 'for the execution of a decree or order of any Civil Court."

(1) A.I.R. 1950 S.C. 6.

Kirpal Singh
v.
Harkishan Das

Bishan Narain, J.

Bearing these rules in mind if the scheme of the Article in question is examined it will be clear that clause (2) in column 3 relates to the date of the order or decree of the appellate Court to execute which an application is made under column 1. Column 1 describes the application for execution of a decree or order. Column 2 describes period of limitation of three years. Column 3 lays down the time from which the period for execution of the order or decree begins to run. In Article 182 this time is laid down in six clauses and the first four are relevant for our present purposes. Clause (1) obviously deals with the order or decree sought to be executed while the other clauses refer to a point of time when the decree or order sought to be executed has been subject to appeal, amendment application or review application. In clause (2) the starting time is laid to be the date when the final order or decree is made by the appellate Court irrespective of the fact whether the appeal has been referred or not. While in clauses (3) and (4) fresh starting time is furnished provided the review or amendment application has been granted. Clause (4) clearly relates like clause (1) to the decree sought to be executed as there is no other decree in fact in existence. On the same analogy clauses (2) and (3) should also be held to relate to the order or decree sought to be executed and the reference in column (2) to appeal is to the appeal filed against the order or decree sought to be executed. I am in respectful agreement with Rajamannar C. J.'s analysis of the scheme of this Article described in *Sivaramachari* v. *Bayya Anjaneya Chetty* (1).

It was argued on behalf of the decree-holder that the terms of clause (2) are vague and indefinite inasmuch as this clause does not lay down the

(1) A.I.R. 1951 Mad. 962 (F.B.).

order or decree against which an appeal is to be filed. It is argued that this clause cannot be given effect to without adding words therein and then it was suggested that such words should be introduced which would enable the decree-holder to enforce his right. It is, however, clear to me that if column 1 is read along with clause (2) in column 3 then there in no difficulty in holding that the clause as it stands without any additions refers to an appellate Court's order or decree which is sought to be executed under clause (1).

This brings me to the decisions In *Nagendra Nath Dey and another* v. *Suresh Chandra Dey and others* (1), and in *Bhawanipore Banking Corporation, Ltd.* vs. *Gouri Shanker Sharma* (2), which were discussed at great length before us by the counsel for both sides. Each counsel relies on these decisions in support of his respective contentions. The Privy Council case has been discussed by almost all the Courts in India but unfortunately with conflicting conclusions. The learned Single Judge in this case has relied on the observations of Sir Dinshah Mulla—

> "It is at least an intelligible rule that so long as 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. Nor in such a case as this is the judgment-debtor prejudiced. He may indeed obtain the boon of delay, which is so dear to debtors, and if he is virtuously inclined there is nothing to prevent his paying what he owes into Court."

(1) A.I.R. 1932 P.C. 165
(2) A.I.R. 1950 S.C. 6

Kirpal Singh
v.
Harkishan Das

Bishan Narain, J.

It appears to me that these observations were made not to enlarge the scope of clause (2) but to suggest the ratio for enacting a fresh start of limitation from the order or decree of the appellate Court. That case was in fact decided on the construction of actual words used in this clause after laying down that strict grammatical meanings must be given in the Article and it is further made clear by the observations that "whether there be or be not a theoretical justification for the provision in question" the words of Article being plain the limitation runs from the time of the appellate Court's decree. It is difficult to hold that by laying down the strict rule of construction the Privy Council immediately proceeded to adopt and approve of 'liberal' construction to enlarge the period of limitation. The judgment of their Lordships of the Supreme Court also supports this strict construction of the provisions of the Limitation Act. Their Lordships on the facts of that case observed—

> "What actually happened was that the application under section 36 for reopening the preliminary decree (not the final decree which is the decree sought to be executed) was dismissed for default and the application under Order 9, Rule 9, Civil Procedure Code, for the restoration of the proceedings under section 36, Money-lenders Act, was also dismissed. Even if the fact that the judgment-debtor's application under section 36 was directed against the preliminary mortgage decree is overlooked, that application having been dismissed for default, the Court never had occasion to apply its mind to the question as to whether the decree could or should be

reopened, and hence it cannot be said that 'there has been a review' of the decree."

It will be noticed that when dealing with clause (3) of Article 182 their Lordships emphasised the fact that the application had been made to reopen the preliminary decree and 'not the final decree which was sought to be executed'. It was then observed that the application did not involve a review of the decree *under execution*. Moreover, their Lordships indicate in this passage that the fact that the application was directed against the preliminary mortgage decree only should not be overlooked but was for the sake of argument overlooked in that case. These observations to my mind clearly indicate that in the opinion of their Lordships of the Supreme Court the decree under execution ought to have been the subject-matter of review and not of the preliminary decree. Similarly when dealing with clause (2) their Lordships reproduced the argument of the learned counsel for the decree-holder before them and then held it to be a highly far-fetched argument. It is clear from these two decisions that an appeal has to be filed against the order or decree sought to be executed to give a fresh start of limitation under clause (2) in column 3 of Article 182. This is also the opinion now of almost all the High Courts (vide *Kunwar Bahadur Singh* v. *Sheo Shankar* (1), *D. M. Jacinto and another* v. *J. D.B. Fernadez* (2), *A. S. Subba Iyer* v. *Metal Corporation of India Ltd.* (3), *Sivaramachari* v. *Bayya Anjaneya Chetty* (4), *Rameshwar Prasad Sahu* v. *Parmeshwar Prasad*

(1) A.I.R. 1950 All. 327.
(2) A.I.R. 1939 Bom. 454.
(3) A.I.R. 1954 Cal. 169.
(4) A.I.R. 1951 Mad. 962 (F.B.).

Kirpal Singh
v.
Harkishan Das

Bishan Narain, J.

Sahu and others (1), *Shah Sankal Chand* v. *Punam Chand* (2), *and Naryanan Thampi Velaydhan Thampi and another* v. *Lekshmi Narayana Iyer Ananthasubramonia Iyer and another* (3). Bhide J. of the Lahore High Court also took the same view in *Mulkh Raj and others* v. *Gurditta Shah Hari Chand* (4).

This conclusion appears to me to be in consonance with the start of limitation laid down in section 48, Civil Procedure Code, which specifically states that the limitation of twelve years is to start from the date of the decree sought to be executed. Under section 48, Civil Procedure Code, it cannot be argued that an appeal against a decree which imperils the decree sought to be executed would furnish a fresh start of limitation. It is difficult to hold that the limitation for twelve years should start from the date of the decree sought to be executed while under Article 182(2) it should start from the date of the decision of an order or decree which imperils the decree sought to be executed. It is true that Article 182(2) does not use the words 'sought to be executed' but these words in this Article were, in my opinion, unnecessary inasmuch as reading clause (2) with column 1 the necessary inference is that it relates to a decree sought to be executed.

The learned counsel on behalf of the decree-holder then advanced another argument in support of his contention. He urged that although no appeal was filed against the decree passed in accordance with the award in the present case but that decree was so directly and intimately connected with the order under appeal that the

(1) A.I.R. 1951 Pat. 1 (F.B.).
(2) A.I.R. 1954 Raj. 273.
(3) A.I.R. 1953 Trav. Cochin 220 (F.B.).
(4) A.I.R. 1929 Lah. 283.

acceptance of the appeal against the order would have made the decree automatically ineffective and therefore it must be held that under clause (2) an appeal against such an order starts fresh limitation for execution of the decree. It is urged that Civil Procedure Code in Order 20 gives cases in which a Court may pass a preliminary decree in a suit. Under section 97, Civil Procedure Code, an appeal lies against such a preliminary decree and if it is not filed, then the rights decided therein could not be questioned in an appeal against the final decree. If a preliminary decree is set aside or modified, then the final decree passed during the pendency of the appeal is superseded whether an appeal against the final decree was filed or not. This is correct. In substance the same situation arises under section 17 read with section 39(vi) of the Indian Arbitration Act. In support of his contention the learned counsel for the decree-holder relies on certain decisions relating to decrees passed under the Civil Procedure Code and to my mind these decisions are relevant in the present case. The learned counsel has relied on *Ramesh Chandra* v. *Seth Ghanshiam Das* (1). In this case it has been laid down that the final decree merely carries into fulfilment the preliminary decree passed in the suit and if an appeal against the preliminary decree succeeds then the final decree based upon it also falls to the ground. It has, therefore, been decided in this case that the phrase 'when there has been an appeal' must include an appeal from a preliminary decree though the execution application relates to the final decree. A similar observation has been made by Rajamannar C. J. In *Sivaramachari* v. *Bayya Anjaneya Chetty* (2), although this point did not directly arise in that

(1) A.I.R. 1955 All. 552 (D.B.).
(2) A.I.R. 1951 Mad. 962.

Kirpal Singh
v.
Harkishan Das

Bishan Narain, J.

Full Bench case. A Division Bench of the Nagpur High Court in *Balkishan Dhanraj* v. *Dhanraj Jainarayan and others* (1), has also come to a similar conclusion although in that case also the question of construing section 48, Civil Procedure Code, only was before the learned Judges. A contrary view has been taken in *Mahadeo Bhimashankar Madhaya and another* v. *Fatumiya Husseinbhai and others* (2). It appears to me that this conflict is merely a branch of the conflict noticed earlier in this judgment and the conflict relates to the point of view as to whether the provisions of the Indian Limitation Act should be construed grammatically or in consonance with equitable considerations. The Full Bench case of the Madras High Court referred to above is the only judgment which takes the narrower view of Article 182(2) and yet holds that the decision of an appeal from the preliminary decree would give fresh start of limitation under Article 182(2) to an application for execution of final decree. With great respect I am unable to accept this view. Once it is held that under Article 182(2) limitation starts from the date of the decision of the appeal against the decree sought to be executed then it is not possible to hold that an appeal against a preliminary decree must be deemed to be one against the final decree also. The two types of decrees are separate and distinct and there is no warrant for treating them as one in law for the purposes of limitation. A final decree is independently appealable under the Civil Procedure Code and a decree in accordance with the award is also appealable independently under certain circumstances. After all the Civil Procedure Code does not automatically stay the passing

(1) A.I.R. 1956 Nag. 200.

(2) A.I.R. 1948 Bom. 337.

of the final decree after an appeal has been filed against the preliminary decree nor does it prohibit execution or enforcement of the final decree during the pendency of the appeal against the preliminary decree. A decree-holder can execute his final decree when an appeal is pending against the preliminary decree on the basis of which the final decree has been passed. The argument that the final decree merely carries into fulfilment the preliminary decree passed in the suit does not, with great respect to the learned Judges, affect the position at all. It is true that if the preliminary decree on appeal succeeds then the final decree falls to the ground and a new final decree must be passed in accordance with the appellate Court's order in an appeal against the final decree and it is then that final decree that will have to be enforced by the parties in whose favour that decree has been passed. It must, however, be remembered that an executable order or decree need not be passed only at the termination of the suit after all proceedings before the termination have been exhausted in all Courts. An executable order or decree can always be passed for part of the claim before the suit is finally decided (*vide* Order 12, Rule 6, Civil Procedure Code). There is nothing in the Civil Procedure Code to lead to the conclusion that an executable decree or a final decree can be passed only on termination of the suit. The Court may in some cases pass a composite decree, partly preliminary and partly final, and in such cases there is nothing to prevent the decree-holder to execute the final portion of the decree during the proceedings taken after the preliminary decree in the same suit. It is true that if a final decree is executed during the pendency of the appeal against the preliminary decree then the parties

Kirpal Singh
v.
Harkishan Das

Bishan Narain, J.

will be put to inconvenience if the appeal succeeds. In such a case, however, the rights of the parties can be worked out within the framework of the procedure laid down in the Civil Procedure Code. It appears to me that it is to avoid this inconvenience that Courts sometimes stay passing of the final decree or stay its execution during the pendency of an appeal against the preliminary decree. This ground of inconvenience, however, cannot enlarge the scope of Article 182(2) as grammatically construed in accordance with the principle laid down by the Privy Council and the Supreme Court. This may be a good ground for the legislature to give a fresh start of limitation to execute a final decree after an appeal has been filed against the preliminary decree but it has not done so. If it was intended to do so, then words to carry out that intention could and would have been used by the legislature in the Indian Limitation Act. No such words can be said to exist in clause (2) of Article 182. I am, therefore, in respectful agreement with the decision in *Mahadeo Bhimashankar Madhaya and another* v. *Fatumiya Husseinbhai and others* (1), which decides the matter on grammatical construction of this provision in the Limitation Act.

For all these reasons I am clearly of the opinion that in the present case the limitation for executing the decree started on 30th November, 1946, when the decree in accordance with the award was passed and that no fresh period of limitation started on the date of dismissal of the appeal by the Lahore High Court on 6th February, 1948, under section 39(vi) of the Indian

(1) A.I.R. 1948 Bom. 337.

Arbitration Act. That being so, it must be held that the execution application filed by the decree-holder on 14th August, 1950, is barred by time.

Bishan Narain, J.

In this view of the matter it is not necessary to discuss the legal effect of the fact that the order of dismissal by the Lahore High Court was made after 15th of August, 1947.

For the reasons given above I would accept this appeal and dismiss the execution application as barred by time. In the circumstances of the case, however, I would leave the parties to bear their own costs throughout.

CHOPRA, J.—I agree. Chopra, J.

B.R.T.

APPELLATE CIVIL.

Before Falshaw and Mehar Singh, JJ.

UNION OF INDIA,—*Defendant-Appellant.*

versus

HARBANS SINGH AND OTHERS,—*Respondents.*

Civil Regular First Appeal 52-D of 1953.

1957

Sept., 14th

Tort—Union of India—Whether liable to damages for any act of its servant done in pursuance to the exercise of its sovereign powers—Sovereign powers—Meaning of—Employee of the Military Department engaged on duty to distribute meals to Military personnel on duty committing tort—Union of India, whether liable.

Held, that the Union of India is not liable to damages for any act of its servant done in pursuance to the exercise of its sovereign powers.

Held, that Sovereign powers are powers which cannot be lawfully exercised except by a sovereign or a private individual to whom the exercise of such powers is delegated by the sovereign.