by the composite Punjab State Electricity Board, which was dissolved with effect from May 1, 1967, and the present Haryana State Electricity Board is not a successor of that Board. The Board having ceased to exist, it is not possible now to quash its orders in its absence.

(15) It is to be regretted that the officers of the Haryana State Electricity Board, while deciding the representation of Shri Sehgal, did not care to read my judgment in P.C. Sharma's case (C.W. 1749 of 1968), who had been selected along with the petitioner and the respondents 3 and 4 by the Selection Committee. In that case, I had clearly held that 1939 Rules and not the Regulations applied to the determination of seniority and according to those Rules the seniority would count from the date of appointment and the date of appointment meant the date on which a particular officer assumed charge of his post in pursuance of the appointment made. I had quashed the order fixing the seniority of various officers and directed the Punjab State Electricity Board to re-decide the matter of their seniority after hearing them. For this reason, I consider that the Haryana State Electricity Board should pay the costs of the petitioner in C.W. 109 of 1970.

(16) For the reasons given above, I allow the writ petition of Shri Sehgal (C.W. No. 109 of 1970) with costs to be paid by the Haryana State Electricity Board and direct that the seniority of the petitioner should be fixed in accordance with rule 7 of the 1939 Rules above respondents 3 and 4. Counsel's fee Rs. 300, C.W. 1269 of 1970 is dismissed but without any order as to costs.

K.S.K.

LETTERS PATENT APPEAL.

Before R. S. Narula and C. G. Suri, JJ.

LAKHPAT RAI SHARMA,—*Appellant.*

versus

ATMA SINGH,—*Respondent.*

Letters Patent Appeal No. 1 of 1967

August 26, 1970.

Code of Civil Procedure (*V of* 1908)—*Section* 44-*A*—*Limitation Act* (*IX of* 1908)—*Article* 182(5)—*Execution proceedings of a foreign decree in Indian*

Courts—Indian Law only—Whether to be applied to such proceedings—No step in aid for execution of a foreign decree having been taken in Indian Courts before the expiry of period of Limitation—Application for execution of the decree—Whether becomes barred by time.

Held, that it is the Indian Law only which is applicable to the execution proceedings of a foreign decree in Indian Courts under section 44-A of Code of Civil Procedure, 1908. The deeming provisions of the section do not leave any option with the Indian Courts. The foreign decree has to be executed in India "as if it had been passed by the District Court (Indian District Court)." The legal fiction envisaged by a deeming provision must be extended to its logical end. That being so, the decree of a foreign Court has to be treated, for purposes of section 44-A, as a decree passed by an Indian Court. If no step for execution of the decree and no step in aid for such execution is taken by the decree-holder in any Indian Court before the expiry of period of limitation as provided in Article 182 of Limitation Act, the application for execution becomes barred by time and cannot be allowed to be entertained.

(Para 4)

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment of Hon'ble Mr. Justice D. K. Mahajan, passed in E.F.A. No. 50 of 1962 on 2nd November, 1966, affirming that of Shri Ram Lall, District Judge, Jullundur, dated 26th December, 1961, dismissing the execution application.

H. L. Sarin, Senior Advocate, (Mr. A. L. Bahl, Advocate with him), for the appellant.

Gokal Chand Mittal, Advocate, for the respondent.

ORDER

R. S. Narula, J.—This appeal under clause 10 of the Letters Patent against the judgment of a learned Single Judge of this Court, dated November 2, 1966, dismissing Execution First Appeal No. 50 of 1962, and upholding the order of the executing Court dismissing the application of the decree-holder-appellant for execution of his decree against the respondent as barred by time, has been filed in the following circumstances :—

(2) Appellant obtained a money decree from the High Court of Singapore on September 22, 1954. Though the foreign law of Singapore has not been formally proved, both sides are agreed that the flat period of limitation for execution of the decree in the Singapore Court was twelve years. In view, however, of an earlier decision of this Court (P. C. Pandit, J.) inter partes, dated December 9, 1960,

since reported in **Lakhpat Rai Sharma** v. **Atma Singh,** (1), the question of limitation relating to the execution proceedings under reference has to be decided according to Indian law, and the foreign law cannot be looked at for that purpose. Admittedly, no step for execution of the decree was taken in any Court in this country within three years of the date of the decree. The application for execution filed under section 44-A of the Code of Civil Procedure after the expiry of three years from the date of the decree was returned by the order of the executing Court, dated January 12, 1959, to the decree-holder as it was not accompanied by the requisite certificate of non-satisfaction from the Singapore Court. Thereafter the decree-holder applied for and obtained on March 4, 1959, the requisite certificate from the High Court of Singapore, and re-presented the application for execution to the executing Court in this country on March 13, 1959, along with the said certificate. By order, dated December 26, 1961, the execution application was dismissed as barred by time and the said order was upheld by the appellate judgment of the learned Single Judge on November 2, 1966.

(3) Mr. Harbans Lal Sarin, learned counsel for the appellant, has claimed the execution application to be within time by invoking the last sentence of article 182(5) of the Indian Limitation Act (9 of 1908).

(4) Sections 44-A (1) and (2) of the Code of Civil Procedure are in the following terms :—

> "(1) Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.
>
> (2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment."

(1) I.L.R. (1961) 2 Pb. 166.

It is common ground between the parties that Singapore is a reciprocating territory within the meaning of section 44-A(1) of the Code. The competence of the Indian Court to entertain the execution application subject to the question of limitation is, therefore, not disputed. Mr. Sarin's argument is that a step in aid of execution by obtaining the certificate of non-satisfaction requisite under sub-section (2) of section 44-A was a **sine qua non** for making a proper application for execution to this Court, and that step in aid was taken in the Singapore Court within the time allowed by the law of that country, i.e., within twelve years. Mr. Sarin argued that once this is found to be correct, clause 5 of article 182 comes to his aid and the limitation for executing the decree in this country would be three years from March 4, 1959. Article 182 states that 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, the period of limitation is (except in a case where certified copy of the decree or order has been registered) three years from the date of the decree or order (or appellate order etc.), and clause 5 in the third column states that time from which the period of three years begins to run shall in the circumstances covered by that clause be computed as under :—

> "5. (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, or
>
> (6) (in respect of any amount, recovered by execution of the decree or order, which the decree-holder has been directed to refund by a decree passed in a suit for such refund) the date of such last-mentioned decree or, in the case of an appeal therefrom, the date of the final decree of the appellate Court or of the withdrawal of the appeal."

Mr. Sarin submits that the application for the certificate of non-satisfaction given to the Singapore Court must be considered to be a "step in aid of execution of the decree" within the meaning of the

last lines of clause 5 of article 182, and inasmuch as the application for execution resubmitted to the Indian Court on March 13, 1959, had been filed within three years of the grant of the certificate by the Singapore Court, i.e., three years from March 4, 1959, the application should be held to have been filed within time as the prayer for the grant of the certificate of non-satisfaction had been made to the Singapore Court within the time allowed by the law of that country. After carefully considering the submission of the learned counsel, we have not been able to persuade ourselves to agree with the same. In order to allow the contention of Mr. Sarin to succeed, we have to apply the Singapore law to the case in order to bring the step in aid within limitation. This we are precluded from doing on account of the previous judgment of Pandit, J., dated December 9, 1960, between the parties whereunder decree-holder himself took benefit of his success in the contention then pressed by him that it is the Indian Law only which would be applicable to the execution proceedings of the foreign decree in the Indian Courts under section 44-A of the Code. The deeming provisions of section 44-A do not leave any option with the Indian Courts. The foreign decree has to be executed in India "as if it had been passed by the District Court (Indian District Court)." It is settled law that the legal fiction envisaged by a deeming provision must be extended to its logical end. That being so, the decree of the Singapore Court has to be treated, for purposes of section 44-A, as a decree passed by the District Judge, Jullundur, on September 22, 1954. No step for execution of the decree and no step in aid for such execution having been taken by the appellant in any Indian Court on or before September 22, 1957, the present application filed in 1959, must be held to be barred by time, and cannot possibly be allowed to be entertained. In this view of the matter, we are unable to find any ground for interference with the judgment of the learned Single Judge.

(5) This appeal, therefore, fails and is accordingly dismissed. In the circumstances of the case we leave the parties to bear their own costs.

C. G. Suri, J.—I agree.

K. S. K.