Ghanashyam Mohapatra and ors. Vs. Suryamani Swain

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Court : Orissa

Decided On : Sep-10-1963

Reported in : AIR1964Ori205

Judge : R.L. Narasimham, C.J. and ;R.K. Das, J.

Acts : Limitation Act, 1908 - Schedule - Article 182(2) and 182(3); Code of Civil Procedure (CPC) - Order 9, Rule 13

Appeal No. : Misc. Appeal No. 131 of 1962

Appellant : Ghanashyam Mohapatra and ors.

Respondent : Suryamani Swain

Advocate for Def. : V. Passayet, ;B.K. Behura, ;N.C. Patnaik and ;S. Misra, Advs.

Advocate for Pet/Ap. : S. Mohanty, Adv.

Disposition : Appeal dismissed

Judgement :

R.K. Das, J.

1. This is a decree-holders' appeal against the appellate decision of the Dist. Judge of Cutback, Dhenkanal confirming the order of the Munsif rejecting their application for execution as time-barred.

2. The appellants obtained on 13-5-57 an ex parte money-decree for a sum of Rs. 2000/- against the respondent. The respondent, however, filed an application (Misc. Case No. 130/57) under Order 9, Rule 13 of the Civil Procedure Code for setting aside the ex parte decree, but the same was dismissed on 3-5-58 for default. It was however subsequently restored and again dismissed on 4-7-53. Against the said order of dismissal, the respondent carried an appeal (Misc. Appeal No. 75/59). The appellate Court on 22-3-60 directed the restoration of the aforesaid (Misc. case No. 130/57) to its file. After hearing, the Misc. case, was dismissed on 29-10-60. On 4-2-61 the present execution case was filed clearly beyond three years of the passing of the ex parte decree. The respondents resisted the execution on the ground that it is time barred. The appellant, however, contended that by virtue of the provisions of Clauses (2) and (3) of Article 182, the period of limitation was to run from 29-10-601 the date of the final disposal of the Misc. case No. 130/57 and not from the date of the ex parte decree.

3. The learned Munsif dismissed the execution petition as time-barred and rejected the contention of the appellants. In appeal, the learned Dist. Judge confirmed the decision of the lower Court. It is against the aforesaid decision, the present appeal has been preferred.

4. The result of the appeal depends upon the construction of Clauses (2) and (3) of Article 182 of the Limitation Act. The said article runs as follows :

'182. For the execution of a decree or order of any civil Court.

3 years

(1) From the date of the decree or order, or

(2) Where there has been an appeal the date ofthe final decree or order of theappellate Court, or the withdrawal of the appeal, or

(3) Where there has been review of judg-mentthe date of the decision passed on the review.'

It is clear that the execution petition would be beyond time, if the period of limitation is held to have started from 13-7-1957, i.e., the date of the Ex parte decree, now sought to be executed, unless of course the case comes under Clauses (2) and (3). It is equally manifest that it is within rime if the period is deemed to have commenced from 29-10-60, the date of the dismissal of the restoration application.

5. Mr. Mohanty, learned counsel for the appellant, contended that when the decree now under execution was itself in peril by reason of an application having been made under Order 9, Rule 13, C.P.C. by the respondents for setting it aside, the decree-holder cannot be compelled to pursue the so-often a thorny path of an execution when there is risk of the restoration application being allowed and the original ex parte decree itself being set aside. He contended that the decree-holder is entitled to exclude the period occupied under the aforesaid restoration proceedings. His argument in this respect was two-fold (i) That the word 'appeal' as appearing in Clause (2) of Article 182 is not one confined only to such appeals as are directly taken against a decree, but it also 'includes all appeals from orders passed in collateral proceedings such as the one under Order 9, Rule 13, C.P.C. and (ii) The restoration proceedings being in the nature of a review proceeding the decree-holder was also entitled to take the benefit under Clause (3) of the said Article; and thus, in any case, he is entitled to compute the period of limitation from 29-10-60, that is, the date of the final order in the Restoration Proceeding.

6. Learned Counsel for the appellant in support of his first contention, that the word 'appeal' should be so liberally construed as to include appeals in collateral proceedings, relied upon a decision of the Privy Council reported in AIR 1932 P.C. 165, Nagendranath Dey v. Suresh Ch. Dey. In that case there was a preliminary mortgage decree passed on 10-6-1913 in favour of one Madanmohan on the footing that the appellants who were also co-mortgagees with Madanmohan, had assigned their interest in the mortgage in his favour. On appeal to the High Court of Calcutta, a compromise was effected between the parties and in terms of the said compromise a preliminary decree in supersession of the earlier preliminary decree was passed by the High Court on 10-6-1913. Under this decree Madan Mohan's claim against the

appellants was disregarded and the appellants were shown as mortgage-creditors in respect of certain sum of money.

When the appellants applied for withdrawal of the amount due to them, Madan Mohan renewed his previous claim and opposed the application of the appellants. His objection, however, was overruled by the Subordinate Judge against which he appealed to the High Court, but his appeal was dismissed. On 4-6-16 Madanmohan applied for a final mortgage decree with the same prayer, namely that he was the assignee of the appellants and that an order should be made to that effect in his favour. On 24-6-1920 the Subordinate Judge disallowed the prayer of Madanmohan and passed a final decree for the sale of the mortgage property. On 27-8-20 Madan Mohan presented an application to the High Court purporting to be an appeal against the said order of the Subordinate Judge alleging that no decree had been drawn up though as a matter of fact the decree had been drawn up on 2-8-20. His objection was confined to question of assignment and he joined in the appeal only the other decree-holder, but not the judgment-debtors.

This appeal was dismissed by the High Court on 24-8-22. On 3-10-23 the appellant presented an application for execution by sale of the mortgaged property to which the respondents-judgment-debtors objected on the ground that it was barred by limitation under Article 182. It was contended there by the appellants decree-holders that the time has to run from 24-8-1922 the date of decree of the High Court. The Subordinate Judge held that the application for execution was in time, but the High Court took an opposite view and the matter was carried to the Privy Council. There the respondents contended that:

(i) Madan Mohan's application filed on 27-8-20 before the High Court by reason of its irregularity was not an appeal at all within the meaning of Article 182(2); (2) To save limitation all the judgment-debtors also were to have been made parties and the whole decree must have been imperilled. It is in this context their Lordships observed: 'There is no warrant for reading into the words 'where there has been an appeal' in Article 182 (2) any qualification either as to the character of the appeal or as to the parties to it. The words mean just what they say. 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 lend to no advantage . . . . . and such a contention that an appeal in order to save limitation under Article 182 must be one to which persons affected were parties and that it must also be one in which the whole decree was imperilled is not sound'.

The case before their Lordships was entirely of a different nature and the point with which we are now concerned did not come up for consideration in the said appeal. The Judicial Committee, was plainly of the view that although the judgment-debtors were not made parties it was nevertheless an appeal within the plain meaning of the word 'appeal' occurring in Clause (2) of Article 182. This decision cannot therefore be of any assistance to the appellants in the present case.

7. A question similar to the one now before us came up for consideration before their Lordships of the Supreme Court, where, however, a different view was taken as will appear from a case reported in AIR 1950 SC 6, Bhawanipore Banking Corporation Ltd. v. Gouri Shankar. In that case a preliminary mortgage decree was passed ex parte on 21-8-40. On 19-9-1940 the judgment-debtor made an application under

Order 9, Rule 13 C.P.C. for setting aside the ex parte decree and this application was rejected on 7-6-1941. On 11-7-41 the judgment-debtor filed an application under Section 36 of the Money-lenders Act for reopening the preliminary mortgage-decree. This application was rejected for default on 29-12-41. Thereafter, the final mortgage decree was passed in favour of the appellant on 22-12-41. The judgment debtor then made an application under Order 9 Rule 13 for restoration of the proceedings under the Money-lenders Act and that application was dismissed on 1-6-42.

The judgment debtor carried an appeal to the High Court at Calcutta against the said order of dismissal and the said appeal was dismissed for non-prosecution on 3-7-44. On 2-6-45, an application for execution was filed and the question that arose for consideration before their Lordships was whether that application was within time. Similar contentions as now raised before us, were raised before the Supreme Court. Their Lordships held that the case does not come under Clause (2) of Article 182 and in delivering the judgment of the Court, Fazl Ali J. observed:

'The expression 'where there has been an appeal' in col. (ii) must be read with the words 'for the execution of a decree or order of the Civil Court' in Col. 1, and however broadly we may construe it, it cannot be held to cover an appeal from an order which is passed in a collateral proceeding which has no direct or immediate connection with the decree under execution'.

This decision of the Supreme Court, however, concludes the matter on the point and it has formed the basis for all subsequent decisions by the different High Courts in India. Even prior to the aforesaid decision of the Supreme Court the High Courts in India expressed similar views. I shall presently discuss some of the decisions cited at the bar on the point.

8. Before a Division Bench of the Bombay High Court in a case reported in ILR 16 Bom 123, Jivajee v. Ramchandra a similar point arose for consideration. That was a case under Article 179 of the Act 15 of 1877 corresponding to Article 182 of the present Limitation Act of 1908. In that case, the plaintiff obtained an ex parte decree against the defendant on the 10th of March 1886 and the defendant applied to have the decree set aside and his application was finally rejected by the appellate Court on 5-3-87. Thereafter the decree-holder presented an application for execution on 24-9-1889 and their Lordships held that it was clearly time-barred under Article 179 (2) as the 'appeal' referred to in that clause was clearly an 'appeal' from the decree or order sought to be executed and not an appeal from an order of the Court refusing to set it aside. The unsuccessful attempt made by the defendant to set aside the ex parte decree could not have the effect of extending the period prescribed by law for the execution of the decree. This view was also approved by the same High Court in a later decision reported in AIR 1948 Bom 337, Mahadeo Bhima Shankar v. Fatumia Hussein.

9. Before the Calcutta High Court a point similar to the point now raised came up for consideration as to whether an appeal in a restoration proceeding is an 'appeal' within the meaning of Article 182 (2) as would appear from the case reported in AIR 1946 Cal 375, Harish Chandra v. Dines Chandra where their Lordships took the view that:

'The words 'final decree or order of the appellate Court' under Article 182 (2) of the Limitation Act mean the final order passed in appeal from the decree which is sought

to be executed and did not include the final decree or order that may be passed on appeal from an order made in a proceeding under Order 9, Rule 13, C.P.C.'

Their Lordships declined to follow a contrary view of their own High Court reported in Lutful Huq v. Sumbhuddin Pattuck, ILR 8 Cal 248, but agreed with the view taken by a Division Bench of the Patna High Court reported in Rai Brijraj v. Nauratan Lal, AIR 1917 Pat 157. They further held that in the case reported in AIR 1932 P.C. 165, their Lordships were not called upon to decide a case like the present one.

10.A Division Bench of the Allahabad High Court in a case reported in AIR 1950 All 327, Bahadur Singh v. Sheo Shankar, following their earlier decision on the point held that 'an appeal' in Article 182 (2) means an appeal from the decree sought to be executed and no other appeal. Their Lordships held that where an application to set aside an ex parte decree is dismissed and the appeal against the said dismissal is also dismissed, limitation for execution of the ex parte decree runs from the date of the decree itself and not from the date of the appellate order in the restoration proceeding.

11.Similar view was also expressed by a single Judge of the Lahore High Court as would appear from the case reported in AIR 1929 Lah 283, Mulk Raj v. Guruditta Saha.

12.In a single Judge decision of this court reported in ILR 1958 Cut 341, Gadadhar Mohapatra v. Jagabandhu, the learned Judge following the aforesaid Supreme Court decision, held that the appellate decree contemplated under Article 182 (2) of the Limitation Act must be a decree passed in appeal against the decree in original suit and it does not cover a case of an appeal in a collateral proceeding like the one under Order 9, Rule 13, C.P.C.

13.A Full Bench of the Patna High. Court in the case reported in AIR 1951 Pat 1, Rameswar Prasad v. Parameswar Prasad, approved an earlier decision of their Court reported in AIR 1917 Pat 157 and overruled the contrary view taken by a division Bench of the same Court reported in AIR 1937 Pat 337, Firm Dedharaj Lachminarayan v. Bhagwan Das and held that the word 'appeal' in Clause (2) of Article 182 of the Limitation Act does not include an appeal preferred against an order refusing ,to set aside an ex parte preliminary decree for partition, in computing the period of limitation for executing the final decree passed in a partition suit, a the word 'appeal' in the clause means an appeal only from the decree or order sought to be executed. While dealing with the aforesaid case of the Privy Council Shearer, J. who gave the leading judgment observed:

'It is I think plain that the point which their Lordships of the Judicial Committe had to consider was not at all the point with which we are concerned now.'

14.A Full Bench of the Madras High Court in a case reported in Sivaramachari v. Anjaneya Chetty, AIR 1951 Mad 962 upheld the same view. In this case during the pendency of a suit, an application was made to add a legal representative of a deceased defendant, but the application was rejected and an ex parte decree was passed. The respondent filed a Civil Revision in the High Court against the said order, but the same was also dismissed on 6-2-43. The appellant-decree-holder filed an execution petition on 17-7-44 which was dismissed as not pressed. On 23-12-46 the appellant filed another execution petition and similar contentions as are now raised

before us were raised there and their Lordships held that the true test to apply Clause (2) of Article 182 is that the decree of the appellate Court in the appeal must be the decree which is sought to be executed, and this irresistibly follows from reading col. 3 along with col. 1 of the Article 182. They observed that in the case of an appeal against an order refusing to set aside an ex parte decree this test will not be satisfied for it is not the order passed in that appeal that is sought to be executed, but is the original decree itself. Their Lordships overruled an earlier decision of their High Court holding a contrary view reported in Sriramachandra Rao v. Venkateswara Rao, AIR 1939 Mad, 157.

15.The Rajasthan High Court, in the case reported in AIR 1951 Raj 150 (1), Chandmall v. Babu Mall also held a similar view and refused to apply Clause (2) of Article 182 to appeals in collateral proceedings under Order 9, Rule 13, C.P.C.

16.Reliance was placed by the learned Counsel for the appellant on a single judge decision of the Bombay High Court in a case reported in AIR 1960 Bom 154, Sardar Singh Amar Singh v. Ram Karan Ramnath. There the plaintiff filed a suit to set aside certain sale deeds executed by his father. The dispute was referred to arbitration and after the arbitrator gave his award a decree was passed on 19-10-50 for a sum of Rs. 4000/-. The plaintiff filed an application challenging the award-decree but the same was dismissed. Against the said order of dismissal, the plff. filed an appeal to the High Court which also was dismissed on 8-7-53. Thereafter the plff. filed an application for execution on 11-11-54. The question that, arose in that appeal was whether limitation was to run from 19-10-50 the date when the award-decree was passed or from 8-7-53 when the appeal was dismissed by the High Court. In the circumstances, Vyas, J. dissented from the aforesaid Full Bench decisions of the Madras and Patna High Courts, AIR 1951 Mad 962 (FB) and AIR 1951 Pat 1 (FB) and held that the construction of the word 'appeal' in a narrow and restricted sense has been discouraged by their Lordships of the Privy Council in AIR 1932 PC 165.

His Lordship though referred some of the earlier Division Bench decisions of their own High Court including the aforesaid cases reported in ILR 16 Bom 123 which was also followed in AIR 1948 Bom 337, did not follow them as according to him these decisions were not in conformity with the principle of law decided in AIR 1932 PC 165. With great respect, I cannot persuade myself to agree with the reasoning adopted by the learned Judge. As we have already seen, the Privy Council was not called upon to decide the point considered an AIR 1951 Pat 1 (FB), AIR 1951 Mad 962 (FB), ILR 16 Bom 123 and AIR 1948 Bom 337. As already seen the Supreme Court in the aforesaid case in AIR 1950 SC 6 has directly dealt with the point. His Lordship relying on AIR 1950 SC 6 held however on the facts of the case that the miscellaneous application of the plaintiff challenging the award-decree had a direct and immediate connection with the award-decree and therefore such a proceeding is an appeal within the meaning of Article 182, Clause (2) even according to the construction given by the Supreme Court.

17.A Division Bench decision of the High Court of Jammu and Kashmir reported in AIR 1952 J. and K. 16 appears to support the contention of the learned counsel for the appellant. Their Lordships in that case held that where there has been an appeal against an order of the trial Court refusing to set aside an ex parte decree, the limitation for execution of the decree shall start from the date of the order dismissing the appeal arid not from the date of the decree of the trial Court. Their Lordships relied upon the case reported in AIR 1937 Pat 337 and applied the principles of law

laid down in AIR 1932 PC 165. It appears that the case reported in AIR 1950 SC 6 or AIR 1951 Pat 1 (FB) which expressly overruled the decision in AIR 1937 Pat 337 were not brought to the notice of their Lordships.

It is thus fully dear that the Supreme Court as also almost all the High Courts in India are not in favour of giving such a wide construction to the word 'appeal' in Clause (2) of Article 182, so as to include the appeals in collateral proceedings of the present nature.

In view of the aforesaid decision, the first contention raised on behalf of the appellant cannot Ibe accepted. 1

18.It was next urged that the application, for restoration being one in the nature of a review, petition, the applicant was entitled to the benefits of Article 182(3) of the Limitation Act. The contention was that an application for restoration was nothing more than a request to the Court to review its previous decision and to set aside the ex parte decree already passed. This argument no doubt found favour in a decision of the Patna High Court in AIR 1937 Pat 337 already referred to, where Courtney-Terrel, C. J. held that there is no essential difference, between the order for restoration and an order for review as in both the cases the Court has first to decide whether on the grounds specified, it is justified in law to reconsider its own decision and either to allow or refuse the application for reconsideration.

With great respect, I would differ from the view expressed by the learned Chief Justice quoted above. A restoration proceeding and an application for review are essentially different. In at review application, the Court has to examine the judgment itself so as to consider the propriety or otherwise varying or setting aside the same on merits. But in a restoration application, the Court is concerned only with the limited question whether the party was prevented by any sufficient cause from attending the Court when the case was called on for hearing and at that stage it has not to consider the merits of the judgment itself. The view expressed in AIR 1937 Pat 337 was also not approved in a, later decision of the same Court reported in AIR 1941 Pat 213, Md. Naquir v. AJauddin Ahmad. This decision was also later on overruled by a Full Bench of the Patna High Court as would appear from the aforesaid case reported in AIR 1951 Pat 1 (FB).

19.It may be mentioned here that a similar contention was also raised before the Supreme Court in the aforesaid case, AIR 1950 SC 6 the facts of which have already been briefly indicated by me while dealing with Clause (2) of Article 182 above. Briefly recapitulated, what actually happened in that case was that an application under Section 36 of the Bengal Money-lenders Act for reopening the preliminary decree and 'not the final decree which is the decree sought to be executed' was dismissed for default and the application under Order 9, Rule 9, C.P.C. for restoration of the said proceeding under Section 36 was also dismissed. It was contended there that the application filed by the judgment-debtor for reopening the preliminary mortgage-decree under Section 36 of the Money Lenders Act must be regarded as an application for review and time should be held to run from the date of the final order passed in the proceedings connected with that application and thus, the case is covered under Article 182 (3). While rejecting this contention Fazl Ali, J. said:

'The important words in Clause (3) of Article 182 are: (i) 'where there has been a review'and (2) 'the decision passed on the review'.These words show that before a

case can be broughtunder Article 182, Clause (3), it must be shown firstlythat the Court had undertaken to review the relevant decree or order and secondly that there hasbeen a decision on the review. In the present case,even if it be assumed that the word 'review' hasbeen used in Article 182, in a large sense and thatthe application for reopening the decree under Section 36of the Bengal Money-lenders Act was an application for review, the appellant cannot succeed because the Court never undertook or purported toreview the decree in question'

It was contended that the Supreme Court did not expressly decide the question of the applicability of Article 182(3), to restoration proceedings, but examined the question merely on an argument based on the above contention. Thus, this contention cannot be accepted to be correct in view of the following observation of his Lordship:

'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. The proceedings under Order 9, Rule 9 are not material to the present discussion because they did not Involve the review of the decree under execution, but if a review of it is at all possible to call it a 'review' (which in our opinion it is not) of the order dismissing the judgment-debtor's application under Section 36 for default.' The aforesaid Full Bench decision of the Patna High Court, (AIR 1951 Pat 1) while dealing with the decision of Courtney-Terrel, C.J. also referred to the decision of the Supreme Court and quoted the opinion expressed by Fazl Ali, J.; 'That the application under Order 9, Rule 9 did not involve a review of the judgment thereby negativing the argument which commended itself to Courtney-Terrel, C. J.'

20. Similar contention was also advanced before a Division Bench of the Allahabad High Court already referred to above, AIR 1950 All 327. While Rejecting that contention their Lordships held:

'There seems to be no force in this contention, for an application for review in its very essence, is quite different from an application for restoration, the one aims at reconsideration of the judgment already pronounced while the other seeks that the judgment be entirely ignored from consideration and to set it aside whether it is right or wrong.'

21. A Division Bench of the Assam High Court where a similar contention was also raised in the case of Kalikadas Lahiri v. Kerarimall Agarwalla, AIR 1962 Assam 136, relying upon, the Decision reported in AIR 1950 SC 6 and AIR 1951 Pat 1 (FB) held that the words 'where there has been review of judgment' in Clause (3) of Article 182, only apply to cases where an application for, review has been considered by the Court and has been either rejected or allowed on merits, and not to cases where such application has been dismissed for default. The same view also finds expression in the case reported in AIR 1959 Mad 552, Ramakrishna Naidu v. Srinivasalu Naidu.

22. The Bombay High Court in a case reported in AIR 1936 Bom 162, Narayaa Ganpat v. Radhabai Krishnaji took similar view and held that for purposes of Article 182, the decision passed on review means the decision passed on review proceedings under Order 47, Rule 4, C.P.C. and the orders made in appeal against such orders.

23. Before the Allahabad High Court in the,case reported in AIR 1958 All 565, Tulsipat Ramv. Nayab Singh, a question exactly of this naturecame up for consideration and the learned Judgefollowing an earlier decision of that High Courtreported in AIR 1950 All 327, held that an orderrefusing to set aside an ex parte decree is not areview of judgment within the meaning of Article 182(3) of the Limitation Act.

24. Our attention was also drawn to a DivisionBench decision of this Court, reported in AIR 1953Orissa 285, Ratikanto Padhi v. Ramesh Chandrahere the applicability of Clause (3) of Article 182 came up for consideration, but in a different context. There the question before their Lordships,was not the very question now before us. In thatcase Das, J. held that though Clause (3) of Article 182 has been construed as applicable only tocases where, a review has been granted and notwhere it had been rejected, what is meant bygranting of the review is not that the decree, asoriginally passed, should be modified or reversed,but that a, rehearing should have been granted.This decision though directly not on the point weare now concerned with, yet it may, rather implythat Clause (3) of Article 182 applies not to restoration applications, but it confined only to reviewproceedings. (25) Obviously there are other difficulties inaccepting the construction sought to be given bythe learned counsel for the appellant. The expression 'review of judgment' has been used in anumber of places in the Limitation Act such asin Sections 5 and 12 and in Articles 161, 162 and173. It is one of the settled canons of construction that ordinarily the same meaning should begiven to the same words occurring in differentparts of the same statute unless, sufficient reasonexists to import different constructions to similarwords used in different parts of the same Act.Nothing has been showns as to why a differentmeaning should be given to the words 'review ofjudgment' appearing in Clause (3) of Article 182 soas to treat them as application for restoration also.In this context, it may be noted that separateprovision has also been made in Article 160 for restoration to the file of an application for review,rejected in consequence of the failure of the applicant to appear when the application, was called onfor hearing, whereas under Article 164 separate provision has been made for an application to bemade by a defendant to set aside an ex parte decree.

Similar provision has also been made for theplaintiff under Article 163 to apply for restoration when his suit is dismissed for default. In both these articles a period of thirty days has been provided whereas under Article 160 a period of 15 days only has been provided. The difference is manifest. If the construction sought to be given by the learned, counsel for the appellant is applied, it would lead to an anomalous position as the period of limitation prescribed is different in the two types of cases, that is, restoration application for review and application under Order 9, Rule 13 of the C.P.C. A party whose application for review is dismissed for default, may, instead of filing an application for restoration within 15 days, completely ignore that article and file an application under Article 163 or 164 as the case may be within thirty days and thus avail of an enlarged period of limitation. The Legislature could not have intended or contemplated such a course. The significance of separate treatment of these two kinds of applications in the Limitation Act cannot be ignored. The contention that a review application should be considered in a broader sense to include restoration of applications thus cannot be accepted.

26. Let us examine the question from another stand-point. The Civil Procedure Code and the Limitation Act were enacted simultaneously and almost in one and the same sitting of the Legislature. The word 'review' finds place both in the Limitation Act as

well as in the Civil Procedure Code and the different Articles of the Limitation Act deal with review matters as contemplated under the Code of Civil Procedure, and the word 'review' has not been defined or explained anywhere in the Limitation Act. Section 114 of the Civil Procedure Code prescribes a general power of review and the procedure for the exercise of such power has been given under Order 47, C.P.C. in accordance with which an aggrieved party may apply only under certain circumstances such as discovery of a new matter of evidence etc., for a review of the judgment to the Court which passed the decree or made the order.

A restoration application under Order 9, Rule 13 however does not come within the purview of these circumstances or conditions provided in Order 47, C.P.C. Even according to the dictionary meaning or ordinary parlance of the term, it weans nothing more than 'viewing again' or considering once again a matter. But as stated above, an application for restoration of a suit within the meaning of Order 9, Rule 13 is not such an application where the Court is called upon to reconsider the merits of the judgment. As already stated in considering such an application, the Court has to satisfy itself as to whether the party was prevented by any sufficient cause from appearing when the suit was called on for hearing. Therefore in no sense can such an application be said to be on the same footing as an application for review where the whole judgment has to be examined on merits in the light of changed circumstances.

27. In view of the aforesaid position of law, the construction given to Article 182, Clauses (2) and (3) by the learned Counsel for the appellant cannot be accepted. Thus, the execution filed by the appellant-decree-holder was clearly beyond time. The learned Subordinate Judge has rightly dismissed the execution case as time barred.

28. It was however contended that the decree involves a heavy sum and the decree-holder should not be deprived of the fruits of his decree on account of mere technicalities. But as is well settled equitable considerations have no place in matters like this.

29. In the result, therefore, the appeal is dismissed with costs.

R.L. Narasimham, C.J.

30. I agree.