

Court No. 8

Case :- MATTERS UNDER ARTICLE 227 No. - 541 of 2024

Petitioner :- Smt. Shobha Srivastava And 2 Others

Respondent :- District And Session Judge Faizabad And 5 Others

Counsel for Petitioner :- Vipin Kumar Mishra

Counsel for Respondent :- R,R, Upadhyaya,Pradeep Kumar Singh Vats
Srivastava,C.S.C.,Dr. V.K.

Along with

Case :- MATTERS UNDER ARTICLE 227 No. - 1644 of 2022

Petitioner :- Smt. Shobha Srivastava And Others

Respondent :- District And Session Judge, Faizabad And Others

Counsel for Petitioner :- Vipin Kumar Mishra

Counsel for Respondent :- Pradeep Kumar Singh Vats,Raghaw Ram
Upadhyay,Uma Shankar Sahai

Hon'ble Jaspreet Singh,J.

1. Heard Sri Manoj Mishra, learned counsel for the petitioner and Sri R.R Upadhyay, along with Sri P.K. Singh Vats learned counsel for the private respondents.

2. The petitioners are the judgment-debtors of execution case no. 08 of 2017 which emanates from a SCC Suit No. 57 of 1980 which came to be decreed on 21.01.1982.The core question involved in the instant two petitions relates to question of limitation for executing a decree of eviction. Since the dispute between the parties has a chequered history, hence, in order to appreciate the issue involved in this petition, it will be necessary to briefly recapitulate certain facts giving rise to the instant petitions.

3. The predecessors-in-interest of the private respondents no. 3 to 6 namely Harimohan Verma had instituted a SCC suit bearing No. 57 of 1980 against the predecessors-in-interest of the petitioners namely Narsingh

Narayan Srivastava which was decreed on 21.01.1982.

4. The predecessors-in-interest of the petitioners had assailed the said decree of eviction dated 21.01.1982 in a revision which was also dismissed on 12.05.1983. The predecessors-in-interest of the petitioners further escalated the matter by filing a writ petition before this Court bearing No. 3408 of 1983 which was also dismissed on 22.01.1997. With this, the original proceedings between the parties came to an end.

5. It is only thereafter that a second round of litigation sprouted between the parties when the private respondent nos. 3 to 6 filed an execution application for getting the decree dated 21.01.1982 executed.

6. The execution application was filed on 19.07.2017 along with an application seeking condonation of delay which came to be registered as Misc. Case No. 8 of 2017. The Executing Court issued notices and in response the petitioners who are the successors-in-interest of Sri Narsingh Narain Srivastava, the original judgment-debtor filed their objections under Section 47 C.P.C. which was registered as Misc. Case No. 15 of 2018 and was dismissed on 06.04.2018. The petitioners further assailed the said order by filing a revision bearing No. 19 of 2018 which was also dismissed on 07.08.2018.

7. The petitioners further resisted the execution of the decree by moving a detailed application bearing Paper No. Ga-29 raising the the issue of limitation in terms of Article 136 as mentioned in the schedule appended with the Limitation Act, 1963 and contested the decree which could only be executed within 12 years and in the instant case, since the execution

application was filed on 19.07.2017 relating to the decree of the year 1982, hence, it was time barred and could not be executed. The Executing Court rejected the said application by means of order dated 14.09.2021 which was again assailed by the petitioners in Revision which was also dismissed on 10.11.2021.

8. It is thereafter that the private respondents who are the decree-holder not pressed their application under Section 5 of the limitation Act which was accompanying the execution application and the petitioners taking cue therefrom moved another application stating that since the decree-holders have not pressed their application under Section 5 of the Limitation Act, consequently, the execution application itself must be rejected as time barred. This application of the petitioners was rejected on 28.04.2022.

9. The petitioners being aggrieved preferred a petition under Article 227 of the Constitution of India before this Court registered as W.P. No. 1644 of 2022 (which is connected with the instant petition) wherein the petitioners laid a challenge to the orders passed by the Executing Court dated 06.04.2018 whereby the objections under Section 47 C.P.C. were rejected, order dated 07.08.2018 whereby the revision of the petitioners arising out of the order dated 06.04.2018 was rejected. The petitioners also challenged the order dated 14.09.2021 by which his separate application bearing Paper No. Ga-29 raising the issue of limitation was rejected by the Executing Court and also the order dated 10.11.2021 whereby the revision of the petitioners was dismissed wherein the order dated 14.09.2021 was challenged. The petitioners also challenged the order dated 28.04.2021 whereby the Trial Court had rejected the contention of the petitioners that

since the decree-holders had not pressed their application under Section 5 of the Limitation Act so the execution application must also be dismissed as time barred.

10. The petition bearing No. 1644 of 2022 was entertained by a coordinate Bench of this Court by means of an order dated 23.05.2022 requiring the parties to exchange the pleadings. While the aforesaid petition No. 1644 of 2022 was pending and as there was no stay to the execution proceedings, the Executing Court proceeded and passed an order dated 31.05.2022 permitting the execution to be done by breaking open the locks to enable the Amin to evict the petitioners and also permitting the Court Amin to seek police aid. This order dated 31.05.2022 came to be assailed by the petitioners by filing a petition under Article 227 of the Constitution of India bearing No. 2133 of 2022 wherein a coordinate Bench of this Court while calling upon the parties to exchange pleadings stayed the operation of the order dated 31.05.2022 and the said petition was also connected with the earlier petition bearing No. 1644 of 2022.

11. Later, the W.P. No. 2133 of 2022 came to be dismissed by a coordinate Bench of this Court by means of order dated 18.10.2023 and liberty was granted to the petitioners to assail the order before the Revisional Court. It is in view thereof that the W.P. No. 2133 of 2022 came to be dismissed and de-tagged.

12. In view of the aforesaid liberty granted in the W.P. bearing No. 2133 of 2022, the petitioners filed a revision before the Revisional Court which came to be dismissed on 24.01.2024 and being aggrieved against the said order, the instant petition bearing No. 541 of 2024 was filed wherein the

petitioners have assailed not only the order dated 24.01.2024 but also the order dated 31.05.2022. The instant petition bearing No. 541 of 2024 was entertained by a coordinate Bench of this Court by means of a detailed order dated 06.02.2024. The parties were required to exchange the pleadings, however, in the meantime, since there was no stay of the execution proceedings, accordingly, the Executing Court in furtherance of the order dated 31.05.02022 had directed the Court Amin to file its report regarding execution of the decree on 26.02.2024.

13. In the aforesaid circumstances, the learned counsel for the petitioner had mentioned the matter which was listed in the cause list for hearing as the petitioners were under a threat of dispossession and execution of the decree which was to be executed as per the programme set by the Amin on 21.02.2024. The Court with the consent of the respective parties fixed the matter on 21.02.2024 and heard the matter. Since the Court Amin along with the police had reached the site for executing the decree and this Court was simultaneously hearing the matter on merits, accordingly, the Court while reserving the judgment on the said date passed an order dated 21.02.2024 which reads as under:-

“1. Heard Shri Manoj Mishra, learned counsel for the petitioners and Shri R. R. Upadhyaya, learned counsel alongwith Shri P. K. Singh Vats for the private respondents.

2. The instant petition is connected with petition A-227 No.1644 of 2022 in between the same parties and relating to the same subject matter.

3. The issue in question relates to the question of law as to what would be the limitation for executing a decree of eviction and if period of 12 years as provided under Article 126 of the appended to Schedule the Limitation Act expires, then whether the said decree can be executed by taking recourse to Section 5 of the Limitation Act or the decree become inexecutable by lapse of time.

4. This matter was listed before the Court on 20.02.2024 and it was informed by the counsel for the petitioners that since the decree of eviction is being pressed against the petitioners for which the executing court had passed an

order directing the decree to be executed with police force fixing the matter on 26.02.2024 and it was also informed that the execution proceedings alongwith Court Amin and police force would be conducted on 21.02.2024.

5. It is in this view of the matter that the petitions were directed to be listed today for hearing. It has also been informed by the learned counsel for the parties that the police has reached the site and is being the process of conducting the execution.

6. The Court has heard the learned counsel for the parties and prima facie a case for consideration is made out as shall also be evident from the order passed by a Co-ordinate Bench of this Court dated 06.02.2024. Since the execution proceedings had commenced, accordingly the Court had requested the learned Standing Counsel to inform the police station concerned from where the possee of the police contingent had accompanied the Court Amin for executing the decree to go back as the matter has been heard and it is reserved for judgment.

7. This order has been passed in presence of Shri Manoj Mishra, learned counsel for the petitioners and Shri R. R. Upadhyaya, learned counsel alongwith Shri P. K. Singh Vats for the private respondents and the learned Standing Counsel.

8. The police is directed to go back and the Court Amin is also directed to stay the execution proceedings forthwith.

9. This order shall be communicated even to the executing court and for that the parties will be at liberty by filing an affidavit which shall be taken note of by the executing court where the matter is listed on 26.02.2024.

10. Accordingly till pronouncement of judgment the execution of the decree shall remain stayed and parties shall maintain status quo as it exists today.”

14. The submission of learned counsel for the petitioners is that the decree dated 21.01.1982 passed in SCC Suit No. 57 of 1980 was governed by Article 136 as mentioned in the schedule appended to the Limitation Act, 1963 which provides for a limitation of 12 years for executing a decree.

15. The submission is that the decree was passed on 21.01.1982 and even though the petitioners had filed a revision before the District Court and later a writ petition bearing No. 3408 of 1983 was filed before the Court but nevertheless during this period, there was no stay from either the Revisional Court or the High Court in the writ petition, hence, the period of limitation would start from the date of the decree i.e. 21.01.1982 and the period of 12 years expired in the year 1994.

16. It is further submitted that the execution application was filed on 19.07.2017 i.e. after 23 years from the expiry of the period of limitation and after 35 years from the date of decree. In such circumstances, apparently, the decree was time barred and no execution of such decree could take place.

17. The learned counsel for the petitioners further submits that the private respondents are guilty of sharp tactics, inasmuch as, when the application for execution was filed on 19.07.2017, there is a report of the Munsrim of the Court clearly stating that the application for execution was time-barred.

18. Even though, the provisions of Section 5 of the Limitation Act, 1963 do not apply to execution proceedings, nevertheless, the private respondents who are the decree-holders have moved an application, along with the execution application, seeking condonation of delay under Section 5 of the Limitation Act, 1963.

19. It is urged that though the Executing Court had passed an order directing the said case to be listed as a misc. case, however, the private respondents tampered with the record and instead of the words ‘Prakeen wad darj ho’ (register as misc. case) as ordered by the Executing Court, they interpolated the said words as “Ijraywad Darj Ho” (register as execution case).”

20. It is further urged that while the petitioners have filed objections under Section 47 C.P.C. yet the issue of limitation was not decided rather the Executing Court and the Revisional Court had proceeded as if the provisions of Section 5 of the Limitation Act were applicable and held that

since the explanation given by the decree-holder for filing the application late was adequate and thus it held that the execution application was within time. It is stated that no clear finding in this regard was given by any of the courts despite several rounds of litigation and though this core issue was raised by the petitioners but remained undecided.

21. Elaborating his submissions, Sri Mishra has urged that the Executing Court who decided the objections under Section 47 C.P.C. completely went on a tangent and concluded that since the parties were litigating and during the pendency of W.P. No. 3408 of 1983 the original decree holder had expired and his heirs were not brought on record. But later when the legal heirs of decree holders came to know, they filed the execution application which it would not impact adversely the filing of the execution application and it further held that the compromise which had been arrived at between the parties was unregistered and insufficiently stamped and could not be taken note of by the executing court, hence, the objections were rejected.

22. On the matter being taken before the Revisional Court, it observed that since the W.P. No. 3408 of 1983 had been dismissed in default and the restorations applications were pending that would come to the benefit of the decree holder and it would be treated as the decree had not attained finality, hence, the limitation was not an issue to refuse execution.

23. It is also urged that the very fact that the decree holders had moved an application seeking condonation of delay along with the execution application, hence, this application in its first instance ought to have been decided by the court irrespective whether the judgment-debtors had raised the objections of limitation or not as it is the duty of the Court in terms of

Section 3 of the Limitation Act to consider the issue of limitation first and foremost.

24. It is urged that the petitioners had brought to the notice of the Court as well as the Revisional Court that a hugely time-barred decree could never be executed, yet the said issue was not decided which compelled the petitioner to keep running before different courts for seeking adjudication which was not done. In the aforesaid circumstances, the petitioners filed the petition bearing No. 1644 of 2022, however, while the same was pending, the Executing Court went ahead to get the decree executed through police aid which resulted in filing of the instant petition bearing No. W.P. 541 of 2024 and as such it is for the first time the correctness of the approach of the subordinate courts is to be tested and a conclusive finding be returned as to whether a decree of 1982 could have been entertained for execution in the year 2017 after a period of 30 years and odd, hence, in light of the provisions of the Limitation Act, the impugned orders are bad and the petitions deserve to be allowed.

25. Per Contra, Sri R.R. Upadhyay, learned counsel for the decree-holder-private respondent nos. 3 to 6 submits that the issue of limitation was raised by the petitioners in their objections under Section 47 C.P.C. which came to be rejected and thereafter the petitioner came forward by filing a revision which was also dismissed.

26. Once, the issue of limitation had been rejected, it was not open for the petitioners to have raised the aforesaid issue once again by moving a separate application bearing Paper No. Ga-29 which needless to say was dismissed and so also the revision wherein it was held that the issue of

limitation already stood decided and it could not be re-agitated again.

27. It is also urged that once the issue of limitation had been decided while dismissing the objections under Section 47 C.P.C. and also the revision emanating there from, hence, the subsequent attempts of the petitioners to raise the same issue over and over again by repeated applications only indicates the malafides of the petitioners who want to stall the execution of the decree dated 21.01.1982. It is also submitted that apart from the house in question wherein the petitioners are in occupation, there is large area which still belongs to the petitioners which is adjacent to the disputed property over which the petitioners are attempting to encroach it.

28. It is further urged that since the father of the private respondents namely Harimohan Verma had expired and the private respondents were residing away from District Ayodhya, hence, they were not aware and later when the application for execution was filed along with an application under Section 5 of the Limitation Act, the issue of limitation having been decided, in such circumstances, if the private respondents not pressed their application under Section 5 of the Limitation Act, it could not have any adverse impact on the petitioners who nevertheless were the judgment-debtors and were required to be evicted.

29. It is also urged that in so far as the judgment debtors are concerned, it is not as if any opportunity of hearing has been denied to the petitioners and in the aforesaid facts and circumstances, the petitions are misconceived and deserves to be dismissed since the two petitions are an outcome of malafides whereby the petitioners are attempting to rake up an

issue which already stands decided, hence, in the aforesaid facts and circumstances, the petitions are an abuse of process of law and deserve to be dismissed.

30. The Court has heard the learned counsel for the parties and also perused the material on record.

31. The core question that requires adjudication is regarding the issue of limitation viz.a.viz the execution of a decree.

32. In so far as the facts and dates are concerned, there is no dispute in between the parties. Apparently, SCC Suit No. 57 of 1980 came to be decreed on 21.01.1982. The same was challenged by the petitioners through their predecessors-in-interest by filing a revision which also came to be dismissed on 12.05.1983 which was further escalated by the predecessors of the petitioners by means of W.P. No. 3408 of 1983 which also came to be dismissed on 22.01.1997.

33. It is also not disputed that the decree-holder filed an execution application along with an application under Section 5 of the Limitation Act on 19.07.2017 i.e. after 35 years from the date of decree dated 21.01.1982 and nonetheless after 22 years from the year the writ petition was dismissed for want of prosecution in the year 1997.

34. It is also not disputed that as per Article 136 as mentioned in the schedule appended with the Limitation Act, 12 years limitation period is the provided for executing any decree and the said Article further provides that the time from which the period begins to run is from the date the decree becomes enforceable. At this stage, it will also be relevant to notice

the provisions of Section 3, Section 5 and Section 15 of the Limitation Act, 1963 which reads as under:-

“3. Bar of limitation.—*(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.*
(2) For the purposes of this Act,—
(a) a suit is instituted,—
(i) in an ordinary case, when the plaint is presented to the proper officer;
(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and
(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;
(b) any claim by way of a set-off or a counter-claim, shall be treated as a separate suit and shall be deemed to have been instituted—
(i) in the case of a set-off, on the same date as the suit in which the set-off is pleaded;
(ii) in the case of a counter-claim, on the date on which the counter claim is made in court;
(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.

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5. Extension of prescribed period in certain cases.—*Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.*
Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

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15. Exclusion of time in certain other cases.—*(1) In computing the period of limitation for any suit or application for the execution of a decree, the institution or execution of which 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.*
(2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.
Explanation.—In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.
(3) In computing the period of limitation for any suit or application for execution of a decree by any receiver or interim receiver appointed in

proceedings for the adjudication of a person as an insolvent or any liquidator or provisional liquidator appointed in proceedings for the winding up of a company, the period beginning with the date of institution of such proceeding and ending with the expiry of three months from the date of appointment of such receiver or liquidator, as the case may be, shall be excluded.

(4) In computing the period of limitation for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

(5) In computing the period of limitation for any suit the time during which the defendant has been absent from India and from the territories outside India under the administration of Central Government shall be excluded.”

35. The conjoint impact of the aforesaid provisions would be that any application made after the prescribed period of limitation subject to the provisions contained in Section 4 to Section 24 of the Limitation Act are liable to be dismissed even though the limitation may not have been set-up as a defense, meaning thereby that it is incumbent upon the court to see the issue of limitation even though it may not have been raised as a defence by the defending party.

36. Section 5 of the Act of 1963 clearly provides that that there cannot be an extension of the prescribed period of limitation in respect of an application moved under Order 21 of C.P.C. meaning clearly that provisions for extension of time/condonation of delay is not applicable on an application filed originally to execute a decree in terms of Order 21 C.P.C., however, in order to compute the period of limitation, if Section 15 is seen with Article 136 mentioned in the schedule appended to the Limitation Act, it would be clear that for the purposes of computing the limitation for any suit or application for execution of a decree, the institution or execution of which has been stayed by an order of injunction, it shall be excluded including the day on which such order was passed as well as the day on which it was withdrawn.

37. If the aforesaid principle is applied in the instant case, it would be absolutely clear that the decree dated 21.01.1982 became enforceable on the said date and the period of limitation would commence from 21.01.1982 and thus 12 years would expire in the year 1994. Though, it is stated by the petitioners that there was no stay on the execution of the decree while the petitioners had preferred a revision which came to be dismissed in the 1983 and even in the W.P. 3408 of 1983 was dismissed for want of prosecution on 22.01.1997 even then if the period of 12 years is reckoned from the year 1997 even then it would expire in the year 2009.

38. Thus, it would be seen that considering the issue of limitation and its computation from any angle, it would reveal that the application for execution filed on 19.07.2017 was much beyond the period of limitation as prescribed in the Limitation Act.

39. It is also to be seen that apparently the Munsrim of the court had given his report to the effect that the application for execution was time barred. Once, such a report was placed by the Munsrim, it was incumbent upon the Executing Court to examine the issue in the first instance as required in terms of Section 3 of the Limitation Act. The decision of the Apex Court in (i) ***SBI v. B.S. Agriculture Industries (I)*, (2009) 5 SCC 121**; (ii) ***Noharlal Verma v. Distt. Coop. Central Bank Ltd.*, (2008) 14 SCC 445**; (iii) ***Chandi Prasad v. Jagdish Prasad*, (2004) 8 SCC 724** ; (iv) ***Bimal Kumar v. Shakuntala Debi*, (2012) 3 SCC 548** will be relevant to be noticed wherein it has been held that it is the duty of the court in terms of Section 3 of the Limitation Act to examine the limitation irrespective whether the Limitation has been taken as a defence or not. The relevant

paras of the said reports read as under:-

The Apex Court in ***SBI v. B.S. Agriculture Industries (I), (2009) 5 SCC***

121 has held as under:-

12. As a matter of law, the consumer forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the consumer forum to take notice of Section 24-A and give effect to it. If the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside.

13. In Union of India v. British India Corpn. Ltd. [(2003) 9 SCC 505] while dealing with an aspect of limitation for an application for refund prescribed in the Business Profits Tax Act, 1947 this Court held that the question of limitation was a mandate to the forum and, irrespective of the fact whether it was raised or not, the forum must consider and apply it.

14. In HUDA v. B.K. Sood [(2006) 1 SCC 164] this Court while dealing with the same provision viz. Section 24-A of the Act, 1986 held : (SCC pp. 167-68, paras 10-12)

“10. Section 24-A of the Consumer Protection Act, 1986 (referred to as ‘the Act’ hereafter) expressly casts a duty on the Commission admitting a complaint, to dismiss a complaint unless the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that the complainant had sufficient cause for not filing the complaint within the period of two years from the date on which the cause of action had arisen.

11. The section debars any fora set up under the Act, admitting a complaint unless the complaint is filed within two years from the date of which the cause of action has arisen. Neither the National Commission nor had the State Commission considered the preliminary objections raised by the appellant that the claim of the respondent was barred by time. According to the complaint filed by the respondent, the cause of action arose when, according to the respondent, possession was received of the booth site and it was allegedly found that an area less than the area advertised had been given. This happened in January 1987. Furthermore, the bhatties which were alleged to have caused loss and damage to the respondent, as stated in the complaint, had been installed before 1989 and removed in 1994. The complaint before the State Commission was filed by the respondent in 1997, ten years after the taking of possession, eight years after the cause of alleged damage commenced and three years after that cause ceased. There was not even any prayer by the respondent in his complaint for condoning the delay.

12. Therefore, the claim of the respondent on the basis of the allegations contained in the complaint was clearly barred by limitation as the two year period prescribed by Section 24-A of the Act had expired much before the complaint was admitted by the State Commission. This finding is sufficient for allowing the appeal.”

15. In a recent case of Gannmani Anasuya v. Parvatini Amarendra Chowdhary [(2007) 10 SCC 296] this Court highlighted with reference

to Section 3 of the Limitation Act that it is for the court to determine the question as to whether the suit is barred by limitation or not irrespective of the fact that as to whether such a plea has been raised by the parties; such a jurisdictional fact need not be even pleaded.”

The Apex Court in **Noharlal Verma v. Distt. Coop. Central Bank Ltd., (2008) 14 SCC 445** and the relevant portion of the said report read as under:-

32. Now, limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a court or an adjudicating authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.

33. Sub-section (1) of Section 3 of the Limitation Act, 1963 reads as under:

“3. Bar of limitation.—(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.”

(emphasis supplied)

Bare reading of the aforesaid provision leaves no room for doubt that if a suit is instituted, appeal is preferred or application is made after the prescribed period, it has to be dismissed even though no such plea has been raised or defence has been set up. In other words, even in absence of such plea by the defendant, respondent or opponent, the court or authority must dismiss such suit, appeal or application, if it is satisfied that the suit, appeal or application is barred by limitation.”

The Apex Court again in **Chandi Prasad v. Jagdish Prasad, (2004) 8 SCC 724** has observed as follows:-

“18. The reasons for bringing on the statute-book, the present Article 136 may be noticed. By reason of the said amendment, the filing of the execution petition has been simplified and the difficulties faced for computation which used to arise for grant of stay or not have become immaterial. In terms of Article 136 of the Act, thus, a decree can be executed when it becomes enforceable.

19. Article 136 substantially reproduces the provisions of Section 48(1) of the Code of Civil Procedure which by reason of the Act stands repealed. In that view of the matter, Parliament thought it fit to provide for one period of limitation for an application for execution in stead and place governing each of the several execution applications which the decree-holder can make within a period of 12 years.

20. It is not disputed that all decrees, be they original or appellate, are enforceable. Once a decree is sought to be enforced for the purpose of execution thereof irrespective of being original or appellate, the date of the decree or any subsequent order directing any payment of money or delivery of any property at a certain date would be considered to be the starting period of limitation.

21. It is axiomatic true that when a judgment is pronounced by a High Court in exercise of its appellate power upon entertaining the appeal and a full hearing in the presence of both parties, the same would replace the judgment of the lower court and only the judgment of the

High Court would be treated as final. (See U.J.S. Chopra v. State of Bombay [AIR 1955 SC 633 : (1955) 2 SCR 94 : 1955 Cri LJ 1410] .)

22. When an appeal is prescribed under a statute and the appellate forum is invoked and entertained, for all intent and purport, the suit continues.

Merger

23. The doctrine of merger is based on the principles of propriety in the hierarchy of the justice-delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time.

24. It is trite that when an appellate court passes a decree, the decree of the trial court merges with the decree of the appellate court and even if and subject to any modification that may be made in the appellate decree, the decree of the appellate court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the appellate court affirms, modifies or reverses the decree passed by the trial court. When a special leave petition is dismissed summarily, doctrine of merger does not apply but when an appeal is dismissed, it does. [See V.M. Salgaocar and Bros. (P) Ltd. v. CIT [(2000) 5 SCC 373 : AIR 2000 SC 1623] .]”

Similarly, the Apex Court in ***Bimal Kumar v. Shakuntala Debi, (2012) 3***

SCC 548 has held as under:-

“29. Presently, we shall dwell upon the issue whether the execution levied by the respondents was barred by limitation or not. The executing court, by its order dated 10-7-2006, accepted the plea of the present appellants and came to hold that the execution petition filed by the decree-holder was hopelessly barred by limitation.

30. In the civil revision, the learned Single Judge overturned the decision on several counts:

(i) that no steps were taken and no objection was raised by the father of the opposite parties for setting aside the ex parte decree passed in the first suit, if he was aggrieved by it, for about 9 years, though he had appeared and had full knowledge about the first suit;

(ii) that as per the compromise decree, the parties were in possession of the respective shares allotted to them and, accordingly, neither preliminary nor final decree was drawn up and there was no occasion for the petitioners for filing an execution case for enforcement of the compromise decree;

(iii) that the second suit challenging the compromise decree passed in the first suit remained pending for about 21 years;

(iv) that the appeal filed against the dismissal of the second suit also remained pending for about 10 years;

(v) that after the appeal was dismissed and the judgment and decree passed in the second suit became final, the execution case was filed by the petitioner alleging dispossession from the family business being run in the ground floor of the building; and

(vi) that on the basis of such allegation, the compromise decree passed in the first suit became enforceable.

31. Apart from the aforesaid reasons, the learned Single Judge has opined that after the execution case was admitted by the predecessor of the learned Sub-Judge presumably after condoning the delay, the successor should not have dismissed it on the ground of limitation. He placed reliance on *Bharti Devi* [AIR 2010 Jhar 10 : (2009) 3 JLJR 90] and buttressed the reasoning that there was no delay in levying of the execution proceeding. The learned Single Judge further took note of the pending Miscellaneous Appeal No. 369 of 2008 preferred by the present appellants to reinforce the conclusion.

32. It is well settled in law that a preliminary decree declares the rights and liabilities, but in a given case, a decree may be both preliminary and final and that apart, a decree may be partly preliminary and partly final. It has been so held in *Rachakonda Venkat Rao v. R. Satya Bai* [(2003) 7 SCC 452 : AIR 2003 SC 3322] . It is worth noting that what is executable is a final decree and not a preliminary decree unless and until the final decree is a part of the preliminary decree. That apart, a final decree proceeding may be initiated at any point of time. It has been so enunciated in *Hasham Abbas Sayyad v. Usman Abbas Sayyad* [(2007) 2 SCC 355] .

33. In *Bikoba Deora Gaikwad v. Hirabai Marutirao Ghorgare* [(2008) 8 SCC 198] a two-Judge Bench of this Court has held that only when a suit is completely disposed of, thereby a final decree would come into being. In the said case, it has also been laid down that an application for taking steps towards passing a final decree is not an execution application and further, for the purposes of construing the nature of the decree, one has to look to the terms thereof rather than speculate upon the court's intention.

34. Regard being had to the aforesaid principles and having opined that the decree passed on the basis of a compromise in the case at hand is the final decree, it is to be addressed whether the execution is barred by limitation.

35. Article 136 of the Limitation Act, 1963 (for brevity “the Act”) reads as follows:

	“Description of suit	Period of limitation	Time from which period begins to run
136.	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years	When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.”

On a perusal of the said article, it is quite vivid that an application for execution of a decree (other than a decree granting a mandatory injunction) or order of any civil court is to be filed within a period of twelve years.

36. In *Chiranji Lal v. Hari Das* [(2005) 10 SCC 746] the question arose whether a final decree becomes enforceable only when it is engrossed on the stamp paper. The three-Judge Bench dealing with the controversy

has opined that Article 136 of the Limitation Act presupposes two conditions for the execution of the decree; firstly, the judgment has to be converted into a decree and secondly, the decree should be enforceable. The submission that the period of limitation begins to run from the date when the decree becomes enforceable i.e. when the decree is engrossed on the stamp paper, is unacceptable.

37. The Bench, while elaborating the said facet, proceeded to lay down as under: (Chiranjilal case [(2005) 10 SCC 746] , SCC pp. 755-56, paras 24-26)

“24. A decree in a suit for partition declares the rights of the parties in the immovable properties and divides the shares by metes and bounds. Since a decree in a suit for partition creates rights and liabilities of the parties with respect to the immovable properties, it is considered as an instrument liable for the payment of stamp duty under the Stamp Act. The object of the Stamp Act being securing the revenue for the State, the scheme of the Stamp Act provides that a decree of partition not duly stamped can be impounded and once the requisite stamp duty along with penalty, if any, is paid the decree can be acted upon.

25. The engrossment of the final decree in a suit for partition would relate back to the date of the decree. The beginning of the period of limitation for executing such a decree cannot be made to depend upon the date of the engrossment of such a decree on the stamp paper. The date of furnishing of stamp paper is an uncertain act, within the domain, purview and control of a party. No date or period is fixed for furnishing stamp papers. No rule has been shown to us requiring the court to call upon or give any time for furnishing of stamp paper. A party by his own act of not furnishing stamp paper cannot stop the running of period of limitation. None can take advantage of his own wrong. The proposition that the period of limitation would remain suspended till the stamp paper is furnished and decree engrossed thereupon and only thereafter the period of twelve years will begin to run would lead to absurdity. In *Yeshwant Deorao v. Walchand Ramchand* [1950 SCC 766 : AIR 1951 SC 16 : 1950 SCR 852] it was said that the payment of court fee on the amount found due was entirely in the power of the decree-holder and there was nothing to prevent him from paying it then and there; it was a decree capable of execution from the very date it was passed.

26. Rules of limitation are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. As abovenoted, there is no statutory provision prescribing a time-limit for furnishing of the stamp paper for engrossing the decree or time-limit for engrossment of the decree on stamp paper and there is no statutory obligation on the court passing the decree to direct the parties to furnish the stamp paper for engrossing the decree. In the present case the court has not passed an order directing the parties to furnish the stamp papers for the purpose of engrossing the decree. Merely because there is no direction by the court to furnish the stamp papers for engrossing of the decree or there is no time-limit fixed by law, does not mean that the party can furnish stamp papers at its sweet will and claim that the period of limitation provided under Article 136 of the Act would start only thereafter as and when the decree is engrossed thereupon. The starting of period of limitation for execution of a partition decree cannot be made contingent upon the engrossment of the decree on the stamp paper.”

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45. Thus analysed, the reasons ascribed by the learned Single Judge are absolutely unsustainable. The period of limitation stipulated under Article 136 of the Act could not have been condoned as has been so presumed by the learned Single Judge. The reliance placed on Bharti

Devi [AIR 2010 Jhar 10 : (2009) 3 JLR 90] is totally misconceived inasmuch as in the said case, the execution proceeding was initiated for permanent injunction. No exception can be taken to the same and, therefore, reliance placed on the said decision is misconceived.”

40. If the Executing Court would have performed its duty and obligation to examine the said issue at the threshold, perhaps it would have saved the parties from multiple litigation and could have saved a lot of judicial time of the courts and forums as the core issue of limitation was raised and more so when the decree holder itself had filed the application under Section 5 of the Limitation Act, 1963 and without passing any formal order of condonation of delay, the execution proceedings could not have proceeded on merits, least realizing that Section 5 of the Act of 1963 was not attracted. Thus, the decree holder knew that the execution application was time barred yet by skirting the issue it led the parties to be at logger heads since 2017.

41. There can be no doubt on the proposition of law that whatever be the cause, the period of limitation for executing a decree cannot be extended as Section 5 of the Limitation Act is not applicable. In this regard, the decision of the Apex Court in ***West Bengal Essential Commodities Supply Corporation Vs. Swadesh Agro Farming & Storage Pvt. and Another; (1999) 8 SCC 315*** has clearly held that the Section 5 of the Limitation Act is not applicable on the Execution Application. The relevant portion of the said report read as under:-

“19. Under the scheme of the Limitation Act, execution applications, like complaints have to be presented in the court within the time prescribed by the Limitation Act. A decree-holder does not have the benefit of exclusion of the time taken for obtaining the certified copy of the decree like the appellant who prefers an appeal, much less can he claim to deduct time taken by the court in drawing up and signing the decree. In this view of the matter, the High Courts of Patna and Calcutta in *Chandra Mouli Deva v. Kumar Binoya Nand Singh* [AIR 1976 Pat 208 : 1976 BCCJ 124] and *Sunderlal & Sons v. Yagendra Nath Singh* [AIR 1976 Cal 471] have correctly laid down the law;

the opinion to the contra expressed by the High Court of Calcutta in Ram Krishna Tarafdar v. Nemai Krishna Tarafdar [AIR 1974 Cal 173] is wrong. Section 5 of the Limitation Act has no application; Section 12(2) of the Limitation Act is also inapplicable to an execution petition. If the time is reckoned not from the date of the decree but from the date when it is prepared, it would amount to doing violence to the provisions of the Limitation Act as well as of Order 20 and Order 21 Rule 11 CPC which is clearly impermissible.

20. In the result, we hold that the period of limitation under Article 136 of the Limitation Act runs from the date of the decree and not from the date when the decree is actually drawn up and signed by the Judge. We, therefore, do not find any illegality in the impugned judgment of the High Court. The appeal fails and it is accordingly dismissed. No costs.

42. Even if the provisions of Section 15 of the Limitation Act is examined in the facts of the instant case, it would be seen that there is a clear averment made by the petitioners that while they have been assailing the decree dated 21.01.1982 in a revision which was dismissed in the year 1983 and even the W.P. No. 3408 of 1983 was dismissed in the year 1997 yet there was no stay order in the said proceedings. For the said reasons, Section 15 had no applicability but even otherwise for the sake of arguments, if it is to be considered that there may have been an order of stay for some time, even then the fact remains that the writ petition was dismissed on 22.01.1997, consequently, at best the period of limitation could have commenced from 1997 which also came to an end in the year 2009, accordingly, there was no justification for entertaining the execution application in the year 2017.

43. Merely, because some restoration application was filed in the W.P. No. 3408 of 1983 and it remained pending without any substantive hearing or order and in any case there was no stay on the operation of the decree, mere pendency of the said application for restoration in the aforesaid writ petition could not come to the rescue of the decree-holders.

44. Even though, this Court has no sympathy for the petitioners who are

the judgment-debtors but the fact remains that this Court is bound to decide the question of law in accordance with the provisions of law which are attracted in respect of the subject matter of dispute.

45. There is nothing on record to indicate that once the Munsrim had given his report that the execution application was time barred, how the Executing Court dealt with the matter and how it satisfied itself treating the application to be within time that it issued notices to the judgment-debtor to respond on merits of the execution application, without a formal order of condonation of delay.

46. It is also to be seen that perhaps the Executing Court and the Lower Revisional Courts were under a misconception that Section 5 of the Limitation Act was applicable, inasmuch as, the reasoning given by the Executing Court in order dated 06.04.2018 and of the Revisional Court in its order dated 07.08.2018 which are under challenge in the connected petition bearing No. 1644 of 2022 would reveal that they have proceeded on the premise that the pendency of the proceedings before the writ court would come to the benefit of the decree holders. This reasoning of the two courts is palpably erroneous and does not flow from the provisions of law.

47. Apparently, looking into the order sheet, a certified copy of which has been brought on record as Annexure No. 4 in W.P. No. 541 of 2024 it would indicate that prima facie there appears to be some interpolation in the order dated 19.07.2017. Even though, it cannot be verified with certainty at this stage as to whether there was any interpolation and if so by which party but the fact which is undisputed and flows from the record is that it was the duty of the court to have considered the issue of limitation at

the first instance. The very fact that the decree-holders had filed an application under Section 5 of the Limitation Act, this should have caught the attention of the court in the first instance before proceeding any further on merits but the same has not been done.

48. The record further indicates that the issue of limitation has been most improperly considered by the Executing Court while dismissing the objections preferred by the petitioners under Section 47 C.P.C. by means of order dated 06.04.2018 as well as by the Revisional Court which dismissed the revision on 07.08.2018 and though it was not taken any higher at that stage but the petitioners raised the same issue by moving a separate application and thereafter when they did not find any success, they have yet again raised the same issue over and over again.

49. Even though, the petitioners may not have assailed the order dated 06.04.2018 and 07.08.2018 at that stage but the same has been assailed in the connected petitions no. 1644 of 2022 and though it can be stated that the act of the petitioners may be mired with laches yet the issue which has been raised is an issue of law.

50. It is also a settled proposition of law that where an issue may not have been appropriately considered and is brought to the notice of the court at a later stage and which materially affects the rights of the respective parties then in certain circumstances, the constitutional courts cannot be said to be denuded of its jurisdiction to deal with the issues and the propositions of limitation, Resjudicata may not come in the way of the courts to do complete justice between the parties. In this regard, the observations of the Apex Court in *Ashok Leyland Ltd. Vs. State of Tamil*

Nadu and Another; (2004) 3 SCC are relevant and it reads as under:-

"

Res judicata

118. *The principle of res judicata is a procedural provision. A jurisdictional question, if wrongly decided, would not attract the principle of res judicata. When an order is passed without jurisdiction, the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking the procedural principles like estoppel, waiver or res judicata. This question has since been considered in Ramnik Vallabhdas Madhvani v. Taraben Pravinlal Madhvani [(2004) 1 SCC 497 : (2003) 9 Scale 412] wherein this Court observed in the following terms: (SCC pp. 518-19, paras 55-57)*

"55. So far as the question of rate of interest is concerned, it may be noticed that the High Court itself found that the rate of interest should have been determined at 6%. The principles of res judicata which according to the High Court would operate in the case, in our opinion, is not applicable. Principles of res judicata is a procedural provision. The same has no application where there is inherent lack of jurisdiction.

56. In Chief Justice of A.P. v. L.V.A. Dixitulu [(1979) 2 SCC 34 : 1979 SCC (L&S) 99 : AIR 1979 SC 193] the law is stated in the following terms: (SCC p. 42, para 24)

'23[24]. As against the above, Shri Vepa Sarathi appearing for the respective first respondent in CA No. 2826 of 1977, and in CA No. 278 of 1978 submitted that when his client filed a writ petition (No. 58908 of 1976) under Article 226 of the Constitution in the High Court for impugning the order of his compulsory retirement passed by the Chief Justice, he had served, in accordance with Rule 5 of the Andhra Pradesh High Court (Original Side) Rules, notice on the Chief Justice and the Government Pleader, and, in consequence, at the preliminary hearing of the writ petition before the Division Bench, the Government Pleader appeared on behalf of all the respondents including the Chief Justice, and raised a preliminary objection that the writ petition was not maintainable in view of clause 6 of the Andhra Pradesh Administrative Tribunal Order made by the President under Article 371-D which had taken away that jurisdiction of the High Court and vested the same in Administrative Tribunal. This objection was accepted by the High Court, and as a result, the writ petition was dismissed in limine. In these circumstances — proceeds the argument — the appellant is now precluded on principles of res judicata and estoppel from taking up the position, that the Tribunal's order is without jurisdiction. But, when Shri Sarathi's attention was invited to the fact that no notice was actually served on the Chief Justice and that the Government Pleader who had raised this objection had not been instructed by the Chief Justice or the High Court to put in appearance on their behalf, the counsel did not pursue this contention further. Moreover, this is a pure question of law depending upon the interpretation of Article 371-D. If the argument holds good, it will make the decision of the Tribunal as having been given by an authority suffering from inherent lack of jurisdiction. Such a decision cannot be sustained merely by the doctrine of res judicata or estoppel as urged in the case.

(emphasis supplied)

57. In Dwarka Prasad Agarwal v. B.D. Agarwal [(2003) 6 SCC 230] it is stated: (SCC p. 245, para 37)

'37. It is now well settled that an order passed by a court without jurisdiction is a nullity. Any order passed or action taken pursuant thereto or in furtherance thereof would also be nullities. In the instant case, as the High Court did not have any jurisdiction to record the compromise for the

reasons stated hereinbefore and in particular as no writ was required to be issued having regard to the fact that public law remedy could not have been resorted to, the impugned orders must be held to be illegal and without jurisdiction and are liable to be set aside. All orders and actions taken pursuant to or in furtherance thereof must also be declared wholly illegal and without jurisdiction and consequently are liable to be set aside. They are declared as such.’ ”

Similarly, the Apex Court in ***A. Jithendranath Vs. Jubilee Coop. House Building Society and Another; (2006) 10 SCC 96*** in paragraphs 48 and 49 has held as under:-

“48. We have, furthermore, noticed hereinbefore the prayers made by the appellant in the said arbitration proceedings. In view of prayer (a) which was the main prayer ex facie the Registrar acted illegally and without jurisdiction in directing the first respondent to allot Plot No. 39. The first respondent made it clear that the plot in question had been allotted in favour of the said Srinivas. The question as to whether he raised constructions thereupon or not was immaterial. He despite such allotment having been made in his favour was not impleaded as a party. He was a necessary party. No award therefor could have been passed in his absence. In any event, so far as Plot No. 39 is concerned, the only prayer made by the appellant was an order of injunction. The Registrar while exercising his judicial function had no jurisdiction to pass such an order of injunction in view of prayer (a) made in the application.

49. The said award, therefore, was a nullity. In this view of the matter, the principles of res judicata will have no application. (See Haryana State Coop. Land Development Bank v. Neelam [(2005) 5 SCC 91 : 2005 SCC (L&S) 601] and Ram Chandra Singh v. Savitri Devi [(2003) 8 SCC 319 : JT (2005) 11 SC 439] .) An order which was passed by an authority without jurisdiction need not be set aside, being a nullity, it in the eye of the law never existed. (See Balvant N. Viswamitra v. Yadav Sadashiv Mule [(2004) 8 SCC 706] .)”

51. It is also to be seen that a court of law is required to decide the issue before it and in the instant case what this Court finds that the issue of limitation which was a jurisdictional issue and was raised but was never addressed by the courts below on its core strength. The courts at the first instance moved on complete wrong premise moving on the assumption, as if, Section 5 of the Limitation Act was applicable and later when the said issue was raised again it has been discarded for the reason that the issue had already been considered and decided.

52. This Court finds that the impugned orders are patently erroneous and suffers from apparent errors on the face of record. There is no explanation

which could be given by the learned counsel for the private respondents as to in what circumstances, the execution application could have been registered and decided on merits once it was hopelessly time-barred.

53. The learned counsel for the private respondents also could not explain the fact as to when the decree holders themselves had moved the application under Section 5 of the Limitation Act with the Execution Application as they themselves knew that their application was beyond the prescribed period of limitation then in what circumstances such delay could have been ignored, condoned and how such a time barred execution application could be put to execution.

54. In light of the aforesaid discussions, this Court is of the clear opinion that the decree dated 21.01.1982 was hopelessly time barred and could not be executed in the execution proceedings in the year 2017.

55. For the aforesaid reasons, this Court has no hesitation to hold that the proceedings of Execution Case No. 8 of 2017 were ex-facie time barred and could not be proceeded and all orders passed in the execution proceedings including orders by which the application under Section 47 C.P.C. was rejected and the orders passed by the Revisional Court affirming the same are per se against the settled legal principles and the relevant sections of the Limitation Act which have been noticed hereinabove. Accordingly, the writ petition bearing W.P. No. 1644 of 2022 and W.P. No. 541 of 2024 are allowed on a cost of Rs. 50,000/- to be paid by the petitioner to the private respondent within a period of three weeks from today by a demand draft and as a consequence, the Execution Case No. 8 of 2017 shall stand dismissed as time barred subject to deposit of costs as

aforesaid. However, this in itself will not entitle the petitioners to claim any right, or interest whatsoever on any part of the land or property of the private respondents except the property which was the subject matter of SCC Suit No 57 of 1980 from which the execution case emerged. Moreover, in case if the cost is not paid within the aforesaid period, it shall be open for the Executing Court in Case No. 8 of 2017 to recover the same through the process of the Court from the judgment debtor and pay it to the decree-holder along with interest at the rate of 9% per annum.

Order Date :- 15th March, 2024

Asheesh

(Jaspreet Singh, J.)