

**WP No. 69 of 2026
C/W WP No. 38117 of 2025**

RESERVED ON 25TH AUGUST 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION NO.69 OF 2026 (GM-CPC)

C/W

WRIT PETITION NO.38117 OF 2025 (GM-CPC)

IN W.P. NO.69/2026:

BETWEEN:

1. M/S. S.K.T. & COMPANY
A PARTNERSHIP FIRM
RAMESHWARA TEMPLE BUILDING
1ST CROSS, CHAMARAJPET,
BENGALURU-560 018
REP. BY SRI DEVARAJULU H.B.
2. SRI. H.B. DEVARAJULU
S/O LATE H. BASAVAIAH,
AGED ABOUT 83 YEARS,
R/AT RAMESHWARA TEMPLE BUILDING,
1ST CROSS, CHAMARAJPET,
BENGALURU-560 018.

...PETITIONERS

(BY SRI. T.N. VISWANATHA, ADVOCATE)

AND:

BENGALURU WATER SUPPLY &
SEWERAGE BOARD, BENGALURU,
REPRESENTED BY ITS
CHIEF EXECUTIVE OFFICER CUM SECRETARY,
KAVERI BHAVAN,
BENGALURU-560 009.

...RESPONDENT

(BY SRI. MONESH KUMAR K.B., ADVOCATE)

Digitally
signed by C K
LATHA
Location: High
Court of
Karnataka

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED 14.11.2025 PASSED ON I.A.NO.III IN EXECUTION PETITION NO.2328/2019 ON THE FILE OF THE XVI ADDITIONAL CITY CIVIL & SESSIONS JUDGE, BENGALURU VIDE ANNEXURE-H AND ETC.

IN W.P. NO.38117/2025:

BETWEEN:

1. M/S. S.K.T. & COMPANY
A PARTNERSHIP FIRM
RAMESHWARA TEMPLE BUILDING,
1ST CROSS, CHAMARAJPET,
BENGALURU-560 018
REPRESENTED BY SRI DEVARAJULU H.B.
(PROPRIETOR CONCERN)
2. SRI. H.B. DEVARAJULU,
S/O LATE H. BASAVIAH,
AGED ABOUT 83 YEARS,
R/AT RAMESHWARA TEMPLE BUILDING,
1ST CROSS, CHAMARAJPET,
BENGALURU-560 018.

...PETITIONERS

(BY SRI. T.N. VISWANATHA, ADVOCATE)

AND:

BENGALURU WATER SUPPLY &
SEWERAGE BOARD, BENGALURU
REPRESENTED BY ITS
CHIEF EXECUTIVE OFFICER CUM SECRETARY,
KAVERI BHAVAN,
BENGALURU-560 009.

...RESPONDENT

(BY SRI. MONESH KUMAR K.B., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED 14.11.2025 PASSED ON I.A.NO.IV IN EXECUTION PETITION NO.2328/2019 ON THE FILE OF THE XVI ADDITIONAL

CITY CIVIL & SESSIONS JUDGE, BENGALURU VIDE ANNEXURE-H
AND ETC.,

THESE WRIT PETITIONS HAVING BEEN HEARD AND
RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT
THIS DAY, ORDERS WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA

CAV JUDGMENT

1. These two writ petitions are filed by the judgment debtors impugning the common order dated 14.11.2025 passed on I.A.Nos. III and IV in Execution Petition No.2328/2019 on the file of XVI Additional City Civil and Sessions Judge, Bengaluru **[Executing Court]**. By the impugned common order, the Executing Court rejected I.A.No.III filed under Section 151 of Code of Civil Procedure, 1908 **[CPC]** seeking recall of the order of attachment and I.A.No. IV filed under Section 151 read with Article 136 of the Limitation Act, 1963 **[Limitation Act]** seeking dismissal of the execution petition on the ground that it was barred by limitation. Both the applications were filed by the judgment debtors.

Prefatory facts

2. The Bangalore Water Supply and Sewerage Board **[BWSSB]** (respondent) instituted suit. O.S No.1171/1983 against the petitioners for recovery and other consequential reliefs. The

petitioners had filed suit, O.S. No.1477/1983 seeking recovery of transportation charges, demurrage charges and earnest money deposit against the respondent. Both the suits were clubbed together and by common judgment dated 02.03.2002, the respondent's suit was decreed holding that the respondent is entitled to recover the suit sum of ₹7,60,382.02 with future interest at the rate of 18% and the petitioners suit O.S No.1477/1983 was dismissed with costs. The petitioners challenged the judgment and decree dated 02.03.2002 in RFA No.950/2002. There was no interim stay of the decree. The appeal was dismissed on 23.10.2009, confirming the decree. The respondent thereafter filed Execution Petition No.2328/2019. The petitioners' objection to the maintainability of the execution petition was rejected by the Executing Court. Aggrieved by the said order, the petitioners preferred W.P.No. 30384/2024, which came to be dismissed. The order of this Court was thereafter challenged before the Supreme Court in SLP (C) No.13650/2025 which was also dismissed, thereby confirming the order of the executing court. Thus, the maintainability of the execution petition is no longer open to challenge.

3. The petitioners filed I.A.No.III seeking recall of the attachment warrant and I.A. No.IV was filed seeking dismissal of the execution petition as barred by limitation. Against the rejection of I.A.No.III, the petitioners have preferred W.P No.69/2026 and against rejection of I.A.No.IV, the petitioners have preferred W.P No.38117/ 2025.

Findings of the Executing Court

4. The Executing Court held that the decree passed by the Trial Court on 02.03.2002 was challenged in RFA No.950/2002 and the same was dismissed on 23.10.2009 confirming the decree and applied the doctrine of merger holding that the decree of the Trial Court merged with the decree in the appeal upon dismissal. Consequently, for the purpose of computing limitation for execution, the relevant date was treated as 23.10.2009 (RFA 950/2002 dismissal) and not 02.03.2002 (the decree in Trial Court). The Executing Court held that since the Execution Petition 2328/2019 was filed on 02.07.2019, it was within the period of 12 years as prescribed under Article 136 of the Limitation Act.

Contentions

5. The learned counsel appearing for the petitioners contends that the execution petition is filed beyond the period of

limitation as prescribed under Article 136 of the Limitation Act. According to him, the decree was passed on 02.03.2002, whereas the execution petition was filed only in 2019, nearly 17 years later. It is contended that the limitation period commenced from the date of decree of the Trial Court dated 02.03.2002, which continued to run as there was no order of stay of the said decree during the pendency of RFA 950/2002.

6. Takes support of Section 9 of the Limitation Act and Order XLI Rule 5 CPC, to contend that mere pendency of an appeal does not arrest the running of limitation or operate as a stay of execution. Therefore, the subsequent dismissal of the appeal on 23.10.2009 could not give a fresh starting point for limitation.

7. The learned counsel appearing for the respondent on the other hand, contends that the decree of the Trial Court merged with the appellate decree upon dismissal of RFA No.950/2002 dated 23.10.2009. Consequently, the period of limitation for execution commenced from the date of disposal of the appeal and the execution petition filed on 02.07.2019 was within 12 years. In

support of his contention, he places reliance on the decision of the Supreme Court in the case of ***Gajanan vs Pralhad*¹ (Gajanan)**.

Reasons and conclusions

8. The principal question is whether the execution petition filed was within the period prescribed under Article 136 of the Limitation Act and whether the dismissal of the appeal on 23.10.2009 in RFA No.950/2002 furnished a fresh starting point of execution, notwithstanding the absence of stay during the pendency of the appeal. The relevant statutory provisions necessary for answering the said question are set out below :

9. Article 136 of the Limitation Act reads as under :

Description of application	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:

¹ 2026 LiveLaw (SC) 341

		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.
--	--	---

10. The provision thus makes the enforceability of the decree the starting point of limitation, and prescribes a period of 12 years for execution.

11. Section 9 of the Limitation Act reads thus:

“9. Continuous running of time.—Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it:

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues.”

12. This provision embodies the principle that once limitation has commenced, a subsequent disability or inability does not stop its running.

13. "Order XLI Rule 5 reads as under :

“5. Stay by Appellate Court.—(1) *An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.*

xx xx xxxx”

14. The above provision makes it clear that mere filing of an appeal does not operate as a stay of the execution. A stay has to be specifically granted by the appellate court.

15. The contention of the petitioners is that in the absence of any stay of the decree during the pendency of the appeal, limitation continued to run from the date of the original decree. The said contention, however, is unsustainable. Order XLI Rule 5 of CPC provides that filing of an appeal does not by itself stay execution. Section 9 of the Limitation Act embodies the principle that once limitation has commenced, a subsequent disability or inability does not stop its running. However, neither of these provisions can be read in isolation from Article 136 so as to disregard the effect of the subsequent appellate decree upon the decree sought to be executed. In **Chandi Prasad and Others vs Jagdish Prasad and Others**², the Hon'ble Supreme Court observed at para Nos. 19, 20, 21, 23 and 24 as under :

“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

² (2004) 8 SCC 724

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.)*

X X X

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.]”*

16. The Hon'ble Supreme Court held that Article 136 provides a period of 12 years for execution of a decree or order from the date when it becomes enforceable. It was observed that where an appeal is provided by law and entertained, the suit continues in an appellate forum. The doctrine of merger is founded upon the principle that there cannot be more than one operative decree governing the same subject matter at the same time. Consequently, where the appellate court passes a decree, the decree of the Trial Court merges with the appellate decree, irrespective of whether the appellate court confirms, modifies or reverses the decree. The appellate decree is a decree which supersedes the decree of the Trial Court and becomes the operative decree for the purposes of execution. The Supreme Court held that the date of the appellate decree is the starting point of limitation when the appellate decree has superseded the decree of the Trial Court. The doctrine of merger, therefore does not make a distinction between an order of reversal, modification or confirmation passed by the appellate authority.

17. The same principle was reiterated in **Shyam Sundar Sarma vs Pannalal Jaiswal and Others**³ (Shyam Sundar),

³ (2005) 1 SCC 436

wherein the Supreme Court held that the dismissal of an appeal for default or non-prosecution is a decision in the appeal and the decree attains finality only upon the final dismissal of the appeal.

18. More recently, in **Gajanan** (*supra*), the Supreme Court while discussing **Shyam Sundar Sarma's** case held at para Nos. 19, 20, 21 and 22 as under :

“19. Furthermore, this Court, in Shyam Sundar Sarma (*supra*), while discussing the implication of the Explanation to Order 9 Rule 13 of CPC, held that even if an appeal is dismissed in default or as time-barred, such dismissal would still amount to a final disposal of the appeal, as the same cannot be equated with non-filing of appeal or withdrawal of the appeal. The relevant portions of the said judgment are extracted hereunder:

“12. Learned counsel placed reliance on the decision in *Ratansingh v. Vijaysingh* [(2001) 1 SCC 469] rendered by two learned Judges of this Court and pointed out that it was held therein that dismissal of an application for condonation of delay would not amount to a decree and, therefore, dismissal of an appeal as time-barred was also not a decree. That decision was rendered in the context of Article 136 of the Limitation Act, 1963 and in the light of the departure made from the previous position obtaining under Article 182 of the Limitation Act, 1908. But we must point out with respect that the decisions of this Court in *Mela Ram and Sons* [1956 SCR 166 : AIR 1956 SC 367] and *Sheodan Singh* [AIR 1966 SC 1332 : (1966) 3 SCR 300] were not brought to the notice of Their Lordships. The principle laid down by a three-Judge Bench of this Court in *Mela Ram and Sons* [1956 SCR 166 : AIR 1956 SC 367] and that stated in *Sheodan Singh* [AIR 1966 SC 1332 : (1966) 3 SCR 300] was, thus, not noticed and the view expressed by the two-Judge Bench, cannot be accepted as laying down the correct law on the question. Of course, Their Lordships have stated that they were aware that some decisions of the

High Courts have taken the view that even rejecting an appeal on the ground that it was presented out of time is a decree within the definition of a decree obtaining in the Code. Thereafter, noticing the decision of the Calcutta High Court above- referred to, Their Lordships in conclusion apparently agree with the decision of the Calcutta High Court. Though the decision of the Privy Council in Nagendra Nath Dey v. Suresh Chandra Dey [(1932) 59 IA 283 : AIR 1932 PC 165] was referred to, it was not applied on the ground that it was based on Article 182 of the Limitation Act, 1908, and there was a departure in the legal position in view of Article 136 of the Limitation Act, 1963. But with respect, we must point out that the decision really conflicts with the ratio of the decisions in Mela Ram and Sons [1956 SCR 166 : AIR 1956 SC 367] and Sheodan Singh [AIR 1966 SC 1332 : (1966) 3 SCR 300] and another decision of this Court rendered by two learned Judges in Rani Choudhury v. Lt.-Col. Suraj Jit Choudhury [(1982) 2 SCC 596]. In Essar Constructions v. N.P. Rama Krishna Reddy [(2000) 6 SCC 94] brought to our notice, two other learned Judges of this Court left open the question. Hence, reliance placed on that decision is of no avail to the appellant.

13. In the context of the Explanation to Order 9 Rule 13 of the Code, the question was squarely considered by this Court in Rani Choudhury case [(1982) 2 SCC 596] . The High Court, in our view, has rightly held that the decision of this case is directly covered by that decision. Therein, the plaintiff, the wife, obtained an ex parte decree for divorce against the husband, the defendant. The husband preferred an appeal in the High Court against the decree and also made an application under Section 5 of the Limitation Act for condoning the delay in filing that appeal. The High Court dismissed the appeal as being time-barred. The husband, the defendant, then filed a petition under Order 9 Rule 13 of the Code for setting aside the ex parte decree along with an application under Section 5 of the Limitation Act. The trial court dismissed the application holding that no sufficient cause was made out for condoning the delay in filing the petition under Order 9 Rule 13 of the Code. The husband filed a civil miscellaneous appeal in the High Court challenging the said order of the trial court. The High Court took the

view that the Explanation to Order 9 Rule 13 of the Code did not create a bar to the maintainability of the petition under that rule as the appeal against the ex parte decree had been dismissed not on merits but on the ground of limitation by not accepting the application for condonation of delay which meant that no appeal was preferred in the eye of the law. This view of the High Court was challenged in appeal before this Court. It was argued that the High Court has misunderstood the scope and ambit of the Explanation to Order 9 Rule 13 of the Code and that in the circumstances, the High Court should have held that the petition under Order 9 Rule 13 of the Code would not lie. This Court accepted that contention. This Court held that where there has been an appeal against an ex parte decree and the appeal has not been withdrawn by the appellant and had been disposed of on any ground, the application under Order 9 Rule 13 of the Code would not lie and should not be entertained. Hence, even though the appeal against the ex parte decree was disposed of on the ground of limitation and not on merits, the Explanation to Order 9 Rule 13 of the Code was attracted and hence no petition under Order 9 Rule 13 of the Code would lie. On the scope of the Explanation, it was stated that the disposal of the appeal as contemplated in the Explanation was not intended to mean or imply a disposal on merits resulting in the merger of the decree of the trial court with a decree, if any, of the appellate court on the disposal of the appeal. The disposal of the appeal may be on any ground and though the withdrawal of an appeal by an appellant is also to be considered a disposal of the appeal, the same has been expressly exempted by the Explanation. It was also observed that the legislative intent incorporated in the Explanation to Order 9 Rule 13 of the Code was to confine the defendant to a single course of action and to discourage the prolonging of the litigation on the ex parte decree, namely, by preferring an application to the trial court under Order 9 Rule 13 of the Code for setting aside the decree and by filing an appeal to a superior court against it. If he did not withdraw the appeal filed by him or allowed the appeal to be disposed of on any other ground, he was denied the right to apply under Order 9 Rule 13 of the Code. The Court also clarified that by the introduction of the Explanation, the area of operation of the doctrine

of merger was enormously extended. By virtue of the Explanation, the disposal of the appeal on any ground whatever, apart from its withdrawal, constituted sufficient reason for bringing the bar into operation. In the light of this, it was held that though in that case the appeal filed by the husband against the ex parte decree was dismissed on the ground of it being barred by limitation, it was a disposal of the appeal and the petition under Order 9 Rule 13 of the Code was hit by the Explanation. In P. Kiran Kumar v. A.S. Khadar [(2002) 5 SCC 161] this Court followed the decision in Rani Choudhury [(1982) 2 SCC 596] and held that the dismissal of the appeal against an ex parte decree as barred by limitation, prevented the trial court which passed the ex parte decree, from exercising its power under Order 9 Rule 13 of the Code in view of the Explanation.

xxx

15. We are not impressed by the argument of learned counsel for the appellant that the decision in Rani Choudhury case [(1982) 2 SCC 596] requires reconsideration. On going through the said decision in the light of the objects and reasons for the introduction of the Explanation to Order 9 Rule 13 and the concept of an appeal as indicated by the Privy Council and this Court in the decisions already cited, the argument that an appeal which is dismissed for default or as barred by limitation because of the dismissal of the application for condoning the delay in filing the same, should be treated on a par with the non-filing of an appeal or the withdrawal of an appeal, cannot be accepted. The argument that since there is no merger of the decree of the trial court in that of the appellate court in a case of this nature and consequently the Explanation should not be applied, cannot also be accepted in the context of what this Court has earlier stated and what we have noticed above.

(Emphasis supplied)

20. The Judgment Debtor's reliance on the two-Judge Bench judgment in Ratansingh (supra) is erroneous as the said judgment has already been overruled by a three-Judge Bench of this Court in Shyam Sundar Sarma (supra), which clarified that Ratansingh does not lay down the correct law.

21. The upshot of this discussion is that an appeal is intrinsically a continuation of the suit and thus, even if an appeal against an order or decree of the Trial Court is dismissed on any preliminary or technical ground, such as limitation or non-prosecution, rather than the merits of the case, it still gives rise to a fresh starting point for the limitation period for execution of such order or decree. The original decree of the Trial Court cannot be deemed as "final" as long as the appeal against the same remains pending. Thus, the order of dismissal of the appeal finally disposes of the matter and confirms the decree of the Trial Court, even if such dismissal is for reason of non-prosecution.

22. The order dated 25.11.2004, which dismissed the appeal in default, was thus a "final order" as it finally confirmed the decree of the Trial Court and disposed of the appeal. Therefore, the limitation period for execution of the decree dated 03.12.1999 accrued on the date of dismissal of the appeal i.e. 25.11.2004 and the execution application filed on 04.12.2015 was within time, if we compute the period of 12 years from 25.11.2004. "

Emphasis supplied

19. The Supreme Court while considering the point of limitation for execution under Article 136, held that dismissal of an appeal even on the preliminary ground such as limitation or non-prosecution, provides a fresh starting point of 12 years for execution. The Supreme Court held that an appeal is continuation of the suit and that a decree does not attain absolute finality until the appeal is disposed of. The Supreme Court further cautioned against adopting a hyper technical approach to limitation so as to defeat substantive justice.

20. In the present case, the decree dated 02.03.2002 was challenged in RFA No.950/2002, which was dismissed on 23.10.2009, confirming the decree. The fact that there was no stay of the decree during the pendency of the appeal would not, by itself mean that the decree ceased to be capable of execution or that the appellate decree would be disregarded for the purpose of limitation. The relevant question is whether the appellate decree superseded the decree of Trial Court and became the operative decree. In view of the doctrine of merger, the answer is in the affirmative. Thus, where an appeal has been preferred against the decree, the appellate proceedings and the date on which they attain finality become relevant for determining the commencement of limitation. The contention that the limitation necessarily commenced from the date of the Trial Court decree, irrespective of the pending appellate proceedings, therefore cannot be accepted. The petitioners may be right in contending that in the absence of an order of stay the decree holder could have initiated execution proceedings during the pendency of the appeal. However, the fact that the decree holder did not do so by itself, determine the commencement of limitation of an execution petition filed after the disposal of the appeal. Since the appellate proceedings concluded on 23.10.2009 and the decree of the Trial Court merged in the appellate decree,

the period of limitation is to be reckoned from the date of disposal of the appeal.

21. Accordingly, for the foregoing reasons, the finding of the Executing Court that the execution petition was within limitation does not call for any interference. The rejection of I.A.Nos.III and IV is therefore justified. Accordingly, the writ petitions are dismissed.

Sd/-

JUSTICE K.S. HEMALEKHA

CKL