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Dec. 1.

YESWANT DEORAO DESHMUKH

v.

WALCHAND RAMCHAND KOTHARI.

[SHRI HARILAL KANIA C.J., DAS and CHANDRASEKHARA AIYAR JJ.]

Limitation Act (II of 1908), ss. 14 (2), 18, Art. 182—Civil Procedure Code (V of 1908), s. 48—Execution of decree—Application after 12 years from decree and 3 years from order on last application—Fraudulent concealment of property to prevent execution—Maintainability of application—Limitation—Fraud preventing execution against particular property—Whether saves limitation under Art. 182—Applicability of s. 18—Decree directing payment of deficit court fee before execution—Whether conditional decree—Starting point of limitation—Time spent in proceedings to adjudge judgment-debtor insolvent, whether should be excluded.

An application for execution of a decree was made after the expiry of 12 years from the date of the decree and 3 years from the date of the final order on the last previous application for execution. The decree-holder contended that the judgment-debtor had fraudulently purchased a business in the name of a stranger and had conducted the same in the name of the latter with a view to prevent the assets of the business from being proceeded against in execution by the decree-holder and that therefore under s. 48 of the Civil Procedure Code he was entitled to make an application even after the expiry of 12 years. The High Court found that, as the decree-holder was prevented by the fraud of the judgment-debtor from executing the decree, the application was not barred under s. 48 of the Code, but as it was made more than 3 years from the date of the order on the last application it was barred under Art. 182 of the Limitation Act. The decree-holder appealed contending for the first time before the Supreme Court that as fraud for the purpose of s. 48 of Civil Procedure Code was proved, s. 18 of the Limitation Act was applicable to the case and his application was not barred under Art. 182 as it was made within three years of the date when he became aware of the fraud and the proper article applicable was Art. 181:

Held, (i) that the question whether on the proved facts s. 18 was applicable to the case was a pure question of law and the decree-holder was entitled to raise the question before the Supreme Court, even though he had not raised it before the lower courts; (ii) though s. 48, Civil Procedure Code, and Arts. 181 and 182 of the Limitation Act dealt with the time limit for making applications for execution of decrees and should be read together, they were different in their scope and object, and the fact that the application was not barred under s. 48, Civil Procedure Code, did not obviate the necessity of considering whether it was barred

under Art. 182; (iii) that, as the fraud committed by the judgment-debtor did not in any way conceal from the decree-holder the knowledge of his right to make an application for execution of the decree but only prevented him from exercising that right in respect of a particular property, s. 18 had no application to the case, and the application was therefore barred under Art. 182 of the Limitation Act; (iv) the fact that there was no provision in Art. 182 for cases where the judgment-debtor had committed a fraud as in the present case did not render that article inapplicable and bring the case within the purview of Art. 181 as Art. 182 has to be read with the general provisions contained in s. 18 relating to cases where there is fraud.

Held also, (i) A decree which provides that the plaintiff should pay the deficient court fees before executing the decree is not a conditional decree and time for making an application for execution of such a decree runs from the date of the decree, and not from the date on which the plaintiff pays the deficit court fees.

(ii) The period of time during which the decree-holder was prosecuting proceedings for adjudging the judgment-debtor an insolvent cannot be excluded under s. 14 (2) of Limitation Act, in computing the period of limitation for making an application for executing the decree.

Judgment of the Bombay High Court affirmed.

APPELLATE JURISDICTION: Civil Appeal No. 37 of 1950.

Appeal from a judgment of the Bombay High Court (Chagla C.J. and Dixit J.) in Appeal No. 281 of 1947.

K. S. Krishnaswami Aiyangar (*K. Narasimha Aiyangar*, with him) for the appellant.

M. C. Setalvad, Attorney-General for India, (*B. Sen*, with him) for the respondent.

1950. December 1. The Judgment of the court was delivered by

CHANDRASEKHARA AIYAR J.—This appeal, preferred from the decree of the Bombay High Court in Appeal No. 281 of 1947, raises the question whether an execution application seeking to execute a final decree, passed by the 1st Class Subordinate Judge's Court at Poona, on 6th December, 1932, for a sum of Rs. 1,24,215 and odd, is barred by limitation. The decree was made in a suit for dissolution of a partnership and the taking of accounts.

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The execution application was filed on 4th October, 1946, and the amount stated to be due under the decree on that date was Rs. 2,30,986 and odd. The previous execution application No. 946 of 1940 filed in the Court of the 1st Class Sub-Judge, Sholapur, to which the decree had been transferred for execution, was made on 24th June, 1940. It was dismissed on 9th September, 1940, for non-prosecution.

It would thus be seen that the present application was filed after the lapse of 12 years from the date of the final decree and 3 years from the date of the final order on the previous application. To surmount the bar of limitation, the decree-holder, who is the appellant before us, raised four contentions: firstly, that the final decree, which provided that the plaintiff should pay the deficit court fees on the decretal amount before the execution of the decree, was a conditional decree, and that time began to run from the date when the condition was fulfilled on 5th December, 1935, by payment; secondly, that the period occupied by the insolvency proceedings from 10th August, 1937, to 14th December, 1942, initiated by the decree-holder to get the first judgment-debtor Walchand Ramchand Kothari (with whom alone we are now concerned) adjudged an insolvent, should be excluded under section 14 (2) of the Limitation Act; thirdly, that the period occupied by one Tendulkar, who was the creditor of the present decree-holder, in seeking to execute this decree, should be deducted; and lastly, that as the judgment-debtor prevented execution of the decree against the 'Prabhat' newspaper by suppressing his ownership of the same, a fresh starting point of limitation springs up in the decree-holder's favour from the date of the discovery of the fraud.

The Subordinate Judge held that the execution application was not barred, agreeing with every one of these contentions. On appeal to the High Court Chagla C.J. and Dixit J. reversed this decision, holding that it was not a conditional decree, that the steps taken by Tendulkar to execute this decree were of no avail, and that the insolvency proceedings were for a

different relief altogether, so that section 14 (2) of the Limitation Act could not be invoked. They concurred with the finding of the Subordinate Judge that the judgment-debtor prevented the execution of the decree within 12 years by fraudulent concealment of his ownership of the 'Prabhat' newspaper and that the twelve years' bar of limitation did not apply ; but they held that the application was barred under article 182 of the Limitation Act, as more than three years had run from 9th September, 1940, the date of the dismissal of the previous execution application, before the present application was filed on 4th October, 1946.

Points 1 to 3 above mentioned are of no avail to the appellant. The decree was not a conditional one in the sense that some extraneous event was to happen on the fulfilment of which alone it could be executed. The payment of court fees 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. There could be no exclusion of the time occupied by the insolvency proceedings which clearly was not for the purpose of obtaining the same relief. The relief sought in insolvency is obviously different from the relief sought in the execution application. In the former, an adjudication of the debtor as insolvent is sought as preliminary to the vesting of all his estate and the administration of it by the Official Receiver or the Official Assignee, as the case may be, for the benefit of all the creditors ; but in the latter, the money due is sought to be realized for the benefit of the decree-holder alone, by processes like attachment of property and arrest of person. It may be that ultimately in the insolvency proceedings the decree-holder may be able to realize his debt wholly or in part, but this is a mere consequence or result. Not only is the relief of a different nature in the two proceedings but the procedure is also widely divergent.

The steps taken by the appellant's creditor Tendulkar to attach this decree and put it in execution do not save limitation. His *darkhast* for attachment of the

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present decree was on 3rd April, 1940, and for execution of the present decree was on 1st February, 1944, more than 3 years from 9th September, 1940, which is the date of the dismissal of the appellant's prior execution petition.

The learned Advocate for the appellant therefore devoted most of his argument to the fourth contention set forth above. That the judgment-debtor respondent suppressed his ownership of the 'Prabhat' newspaper and fraudulently prevented the execution of the decree against this property has been found by both the Courts below, as stated already. It was strenuously urged that the fraud so found is not merely fraud as broadly interpreted under section 48 (2), Civil Procedure Code, but also strict or concealed fraud within the meaning of section 18 of the Limitation Act. In this connection, it is as well to set out very briefly the nature of the concealment and the steps taken by the judgment-debtor to achieve the same. He purchased the 'Prabhat' newspaper with all its assets and goodwill from its previous owner one Purushottam Mahadev in 1938 under the letter marked Exhibit 129. He opened current accounts in several banks, and gave the name of one Abhyankar as the owner of the paper, but he was himself operating on those accounts. One Rajwade, a friend of the judgment-debtor, was shown as the printer and publisher of the paper. Even in his supplementary written statement filed in Court in answer to the present execution, marked Exhibit 88 (page 53 of the printed book), the defendant asserted in paragraph 2 that he became the owner of the newspaper only in April, 1944, and that previously he had no ownership or right in the same. He did not go into the witness box to refute the allegation that he was the owner ever since the purchase of the paper in 1938 and that he opened accounts in the names of other people on which he was operating for his own benefit. On these facts, the Subordinate Judge found as follows:—

"I think on the whole that the evidence establishes beyond doubt that the judgment-debtor had concealed his proprietary interest in his newspaper called

'Prabhat' from June, 1938, to April, 1944. The only purpose for which the property could have been concealed in this way was probably the fear that the decree-holder would pounce upon it if he came to know about it. The decree-holder came to know of this fraud after April, 1944 ; for thereafter the judgment-debtor made an open declaration that the newspaper belonged to him. I think therefore that this fraud has prevented the decree-holder from executing the decree against some property of the judgment-debtor." In this finding, the High Court concurred. After referring to the stratagem adopted by the judgment-debtor in *Bhagu Jetha* v. *Malick Bawasaheb*(1), the learned Judges observed :—

" In this case, in our opinion, the stratagem is much more dishonest. The attempt on the part of the judgment-debtor was to conceal his property, to deny its ownership and to put forward a mere *benamidar* as the real owner of that property. In our opinion, therefore, the execution of the decree is not barred under section 48. The judgment-debtor has, by fraud, prevented the execution of the decree within 12 years before the date of the application for execution by the decree-holder and therefore the decree under consideration is capable of being executed."

On the strength of this concurrent finding, Mr. Krishnaswami Iyengar for the appellant argued that the fraud fell within the scope of section 18 of the Limitation Act and that if it were so, he was out of the woods, inasmuch as the proper article to apply would be article 181 of the Limitation Act. The right to apply accrued to him when the fraud became known to him in or about June, 1946. Till then he was kept by the fraud from the knowledge of his right to make an application against the property. Law does not require him to make futile successive applications in execution, in the face of this fraud. He was not in a position to seek even the arrest of the judgment-debtor as he had got himself declared in the insolvency proceedings as an " agriculturist " within the meaning of the Deccan

(1) I.L.R. 9 Bom. 318.

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Agriculturists' Relief Act, alleging falsely that he was not in receipt of any income by way of salary or remuneration from the newspaper concerned and that he was mainly dependent on the income of his family lands for his maintenance.

There can be no question that the conduct of the respondent was fraudulent within the meaning of section 48 (2) of the Civil Procedure Code. Though *benami* transactions are common in this country and there is nothing *per se* wrong in a judgment-debtor purchasing property in another man's name, we have to take into account all the circumstances attending the purchase and his subsequent conduct for finding out whether it was part of a fraudulent scheme on his part to prevent the judgment-creditor from realizing the fruits of his decree. Fraudulent motive or design is not capable of direct proof in most cases; it can only be inferred. The facts before us here leave no room for doubt that the true object of the judgment-debtor was to prevent the execution of the decree against the 'Prabhat' newspaper which he had purchased. Other persons were shown as the printer and the publisher of the newspaper, while Abhyankar was mentioned as the proprietor. The judgment-debtor, was, however, operating on those accounts for his own benefit. In the Insolvency Court, he set up the plea that he was an agriculturist, by suppressing the truth about his ownership of the paper, and pretending that his income was mainly, if not solely, from the family lands. He kept up this show till April 1944, when probably he felt that he was safe from the reach of the judgment-creditor. Even in his answer to the execution application, out of which this appeal has arisen, he had the hardihood to assert that he was not the owner of the paper till April 1944. It should also be remembered that he did not get into the witness box to explain what other necessity there was for all this camouflage, except it be to cheat the appellant of his dues under the decree.

Mr. Setalvad, the learned Attorney-General, who appeared for the respondent, pointed out that there

was no *benami* purchase and that the holding out of Abhyankar as the proprietor of the 'Prabhat' did not amount to any false representation or misrepresentation to the judgment-creditor, as the accounts on which reliance was placed were accounts opened in the banks and were not ordinarily available for inspection by third parties. This line of reasoning is hardly convincing, when we have to consider whether what is attributed to the judgment-debtor does not amount to a fraudulent scheme or device for preventing execution of the decree that had been passed against him for a very large sum of money. In the very nature of things, fraud is secret in its origin or inception and in the means adopted for its success. Each circumstance by itself may not mean much, but taking all of them together, they may reveal a fraudulent or dishonest plan.

It would be convenient to set out here *in extenso* section 48, Civil Procedure Code, and section 18 of the Limitation Act before we proceed to consider the soundness of the arguments advanced by both sides in support of the positions they have taken up.

Section 48, Civil Procedure Code (which corresponds to section 230 of the Code of 1882), is in these terms:—

"48. (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of 12 years from

(a) the date of the decree sought to be executed, or,

(b) 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, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed—

(a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the

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judgment-debtor has by fraud or force prevented the execution of the decree at some time within twelve years immediately before the date of the application; or

(b) to limit or otherwise affect the operation of article 183 of the first Schedule to the Indian Limitation Act, 1908."

Section 18 of the Limitation Act, 1908, runs thus:—

" 18. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application —

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production."

Whether the fraud of the judgment-debtor should actually prevent the execution of the decree or whether it is enough if the fraud has been committed without resulting in actual prevention is a question on which there has been some divergence of opinion in the decided cases. The former view was taken in an early Madras case *Kannu Pillay* v. *Chellathammal and Others*(1) and receives support from the decision reported in *Sri Raja Venkata Lingama Nayanim Bahadur Varu and Another* v. *Raja Inuganti Rajagopala Venkata Narasimha Rayanim Bahadur Varu and five Others*(2) to which our learned brother Mr. Justice Patanjali Sastri was a party. The latter view

(1) [1898] M.L.J. 203. (2) I.L.R. 1947 Mad. 525.

is indicated in *M. R. M. A. S. P. Ramanathan Chettiar* v. *Mahalingam Chetti*(1) by a Bench of which Sir Madhavan Nair J. was a member. It is not necessary to determine which view is correct, as we have here definite findings of both the Courts below that there was fraud preventing the execution of the decree within the meaning of Section 48 of the Civil Procedure Code.

The appellant thus escapes the bar of the 12 years' period and he has a fresh starting point of limitation from the date of the fraud for section 48 of the Civil Procedure Code. In other words, the decree-holder has another 12 years within which he can execute his decree.

Having thus got over the difficulty in his way under section 48 of the Code of Civil Procedure, he has next to meet the objection under the Limitation Act. On behalf of the appellant, it was urged that section 18 of the Limitation Act applied to the facts and that the right to apply accrued to the appellant when the fraud by the judgment-debtor became known to him in 1946. No reliance was placed on section 18 of the Limitation Act in the courts below and no reference to it is found in the grounds of appeal to this court. It is however mentioned for the first time in the appellant's statement of the case. If the facts proved and found as established are sufficient to make out a case of fraud within the meaning of section 18, this objection may not be serious, as the question of the applicability of the section will be only a question of law and such a question could be raised at any stage of the case and also in the final court of appeal. The following observations of Lord Watson in *Connecticut Fire Insurance Co.* v. *Kavanagh* (2) are relevant. He said: "When a question of law is raised for the first time in a court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interests of justice to entertain the plea. The expediency of

(1) I.L.R. 58 Mad. 311. (2) [1892] A.C. 473.

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adopting that course may be doubted when the plea cannot be disposed of without deciding nice questions of fact in considering which the court of ultimate review is placed in a much less advantageous position than the courts below."

Mr. Setalvad, however, urged that the appellant should not be allowed to rely on section 18 now for the first time and that even if fraud within the meaning of that section had been pleaded the respondent might have adduced counter-evidence by himself going into the witness box or otherwise. According to him, the approach to the question of fraud under section 18 of the Limitation Act is quite different from the approach under section 48 of the Civil Procedure Code. There may be cases where the fraud alleged and found is fraud in the wider sense of the term within the meaning of section 48 (2) of the Civil Procedure Code, but the same facts do not amount to fraud as strictly construed under section 18 of the Limitation Act. The fact that the decree-holder in the lower courts relied on section 48, Civil Procedure Code, only does not prevent him from relying on section 18 of the Limitation Act if the facts necessary to be established for bringing in the assistance of section 18 of the Limitation Act are admitted, or proved. It is not disputed that the fraud contemplated by section 18 of the Limitation Act is of a different type from the fraud contemplated by section 48 (2) of the Civil Procedure Code. The wording of section 18 which requires the fraud "to prevent knowledge of the right to make the application" is necessarily of a different nature from the fraud which prevents the decree-holder from making an application for execution.

Conceding to the appellant the right to rely on section 18 of the Limitation Act even at this late stage, let us see if it is really of any help to him on the facts found. The section has been quoted already. It speaks of the right to institute a suit or make an application which by means of fraud has been kept from the knowledge of the person having the right or the title on which it is founded. The right to apply for

execution of a decree like the one before us is a single and indivisible right, and not a composite right, consisting of different smaller rights and based on the decree-holder's remedies to proceed against the person of the judgment-debtor or his properties, moveable and immoveable. To give such a meaning would be to split up the single right into parcels and to enable the decree-holder to contend that while his right to proceed against a particular item of property is barred, it is not barred in respect of other items. We would then be face to face with different periods of limitation as regards one and the same decree. An interpretation which leads to this result is prima facie unsound. Both sides agreed that this is the true position, but they reached it from slightly varying standpoints. According to the appellant, fraud even with reference to one property gives him a further extension of 12 years under section 48 (2) as regards the whole decree and it is not necessary for him to show that he had proceeded against the other properties of the judgment-debtor. According to the respondent, the fraud must consist in the concealment of the knowledge of the decree-holder's right to apply for execution of the decree and it is not enough to prove or establish that the fraud prevented him from proceeding against a specific item. The two contentions, lead to the same conclusion about the indivisibility of the decree, but along different lines.

In our opinion, the facts necessary to establish fraud under section 18 of the Limitation Act are neither admitted nor proved in the present case. Concealing from a person the knowledge of his right to apply for execution of a decree is undoubtedly different from preventing him from exercising his right, of which he has knowledge. Section 18 of the Limitation Act postulates the former alternative. To read it as referring to an application for execution to proceed against a particular property would be destructive of the oneness of the decree and would lead to multiplicity of periods of limitation. It is true that articles 181 and 182 of the Limitation Act and section 48,

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Civil Procedure Code, should be read together. The articles expressly refer to the section. But they are independent or parallel provisions, different in their scope and object. As held in *Kalyanasundaram Pillai* v. *Vaithilinga Vanniar* (1) section 48 (2) extends the 12 years' period of closure by a further period of similar duration but the necessity of resort to article 182 is not thereby obviated. The decree-holder must have been taking steps to keep the decree alive and the only circumstance that could relieve him of this obligation is the existence of fraud under section 18 of the Limitation Act. The learned Advocate of the appellant asked how it could be possible for him to apply in execution when there was the fraud and whether the law contemplated that, even though the fraud prevented execution of the decree, he was to go on filing useless or futile applications every three years merely for keeping the decree alive. The answer is simple. The fraud pleaded, namely suppression of ownership of the 'Prabhat' newspaper, did not conceal from him his right to make an application for execution of the decree. Indeed, the suppression, which began in 1938, did not prevent the decree-holder from applying for execution in 1940; and in his answers in cross-examination, he has admitted that there were other properties to his knowledge against which he could have sought execution, *viz.*, deposits in several banks of the judgment-debtor's monies but standing in his wife's or daughter's names, life insurance policies for which premia were being paid by him, law books written and published by him, movable properties in the house at Poona etc. As a matter of fact, the appellant's present application seeks execution against several of these properties. Nothing prevented him therefore from seeking such execution within 3 years of the dismissal of his prior application in 1940. Even with reference to the 'Prabhat', all that the decree-holder states is that as he had no evidence to prove that the concern belonged to the defendant he did not take any steps, and not that he had no

(1) I.L.R. 1939 Mad. 611.

knowledge of the ownership. To quote two sentences from his deposition : "I had suspected that defendant No. 1 was the real owner of the business all the while. But I had no positive knowledge or information till 1946".....'I could not take any step for attaching the defendant's business till 1946 as I had no evidence to prove the defendant's fraud till then." There is no obligation on the judgment-debtor to post the decree-holder with all details of his properties; it is the decree-holder's business to gather knowledge about the properties so that he can realise the fruits of his decree.

In dealing with this evidence, Mr. Krishnaswami Iyengar relied on the Privy Council decision, *Rahimbhoy* v. *Turner* in 20 I. A. 1 and referred to the following observation of Lord Hobhouse at page 5 : —

"But their Lordships consider, and in this they agree with both the Courts below, that all that the appellant Rahimbhoy has done is to show that some clues and hints reached the assignee in the year 1881, which perhaps, if vigorously and acutely followed up, might have led to a complete knowledge of the fraud, but that there was no disclosure made which informed the mind of the assignee that the insolvent's estate had been defrauded by Rahimbhoy of these assets in the year 1867."

The passage cited does not apply here because the appellant admits knowledge, which is more than a mere suspicion, but states that he had no evidence to prove the defendant's ownership. In any event, it has not been established within the meaning of section 18 of the Limitation Act that the fraud alleged and proved kept back from him the knowledge of his right to execute the decree.

It is thus clear that the appellant cannot get the benefit of section 18 of the Limitation Act. It was next argued on behalf of the appellant that under section 48(2) of the Civil Procedure Code, because of the fraud of the respondent the appellant got a fresh starting point of limitation for the Limitation Act also

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and therefore the starting point contemplated in the third column of the schedule to the Limitation Act relating to applications for execution should be the date when the fraud was discovered by the appellant. In other words, it was argued that the effect of section 48 was not merely to make the 12 years' period start from the discovery of fraud for the purpose of section 48(2) of the Civil Procedure Code but also to give a fresh starting point for the schedule to the Limitation Act. This argument cannot be accepted. If a man is prevented from making an application, because of the fraud of the debtor, he is not necessarily prevented from knowing his right to make the application. By the enactment of section 18, the Legislature has distinctly contemplated that for the Limitation Act the starting point is changed on the ground of fraud, only when the knowledge of the right to make the application is prevented by the fraud of the judgment-debtor. Having the knowledge that he had the right to make the application, if the judgment-debtor prevents the decree-holder from knowing the existence of certain properties against which the decree could be enforced, the case is clearly not covered by the words of section 18 of the Limitation Act. Therefore the argument advanced on behalf of the appellant is unsound.

It was urged that the various starting points mentioned in the third column to article 182 of the Limitation Act cannot apply because none of them specify a fresh starting point for execution acquired on the ground of the fraud of the judgment-debtor. This argument, in our opinion, instead of helping the appellant, goes against him. Such a provision in the third column in the article relating to execution of decrees is not necessary because provision for such a contingency is made in section 18. Affirmatively, by the inclusion of section 18 in the Limitation Act, and, negatively, by not providing for a separate period of limitation in the case of the fraud of the judgment-debtor in the third column in the articles, the Legislature has clearly indicated that unless advantage could be taken by the

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decree-holder under section 18 on the ground of the fraud of the judgment-debtor, fraud does not give any other relief under the Limitation Act. This scheme of the Legislature is not inconsistent with section 48 of the Civil Procedure Code. The two provisions in the two Acts have to be read as related to the same subject but dealing with two differents aspects. Without section 48 of the Civil Procedure Code a decree-holder, if he made applications as required by article 181 or 182 of the Limitation Act, could keep his decree alive for an indefinite period. The Legislature, as a matter of policy, ruled that a decree of a civil court (but excluding the High Court) shall not be kept alive for more than 12 years, although all necessary steps are taken under the Limitation Act to keep the decree alive and operative. That is one limit to the right of the decree-holder to enforce the decree of the court. The second limitation to his right, which is independent of the first, is that he must keep the decree alive under article 182 or 181, as the case may be. In the case of the fraud of the judgment-debtor provision is made in section 48(2) for enlarging the 12 years period prescribed under section 48. For defeating the plea of the bar of limitation under the Limitation Act, in the case of fraud of the judgment-debtor, provision is found in section 18 of the Limitation Act. If the particular case of fraud set up and proved is not covered by those words, there is no protection against the same in the Limitation Act. Read in that way, the two legislative provisions are neither conflicting nor overlapping; and they are capable of operating harmoniously, as they deal with different situations and circumstances. The argument advanced on behalf of the appellant that because of the fraud he got not merely a fresh starting point for computing the 12 years period prescribed in section 48 (2) of the Civil Procedure Code but is also entitled to an extension of the time under the Limitation Act, must therefore fail.

The second contention urged on behalf of the appellant that because in the third column of article 182

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fraud is not mentioned, the case is covered by article 181 does not also appear to be sound. The third column in article 182 prescribes the starting point of limitation under different specified circumstances. It does not, and indeed need not, mention the ground of fraud because if fraud of the kind against which the Limitation Act contemplates relief, as prescribed in section 18 of the Limitation Act, is established, the time is automatically altered by operation of that section. If the case does not fall under that section, no relief is permitted under the Limitation Act and the starting point for computing the period must be as mentioned in the third column, irrespective of the question of fraud. In our opinion, therefore, the contention that because of the fraud established in the present case under section 48(2) of the Civil Procedure Code, the appellant gets a fresh starting point of limitation under article 182 of the Limitation Act is unacceptable.

The appellant relied on the general principle of jurisprudence that fraud stops or suspends the running of time and that it should be applied in his favour, apart from section 18 of the Limitation Act. Rules of equity have no application where there are definite statutory provisions specifying the grounds on the basis of which alone the stoppage or suspension of running of time can arise. While the courts necessarily are astute in checkmating or fighting fraud, it should be equally borne in mind that statutes of limitation are statutes of repose.

For the reasons given above we concur in the conclusion reached by the High Court and dismiss the appeal with costs.

Appeal dismissed.

Agent for the appellant : *K. J. Kale.*

Agent for the respondent : *Ganpat Rai.*