

RAM BACHAN RAI AND ORS.

v.

RAM UDAR RAI AND ORS.

JANUARY 18, 2006

[ARIJIT PASAYAT AND TARUN CHATTERJEE, JJ.]

Limitaion Act, 1963:

Article 136—Limitation for execution of decree—Held, reference having already been made to a three Judge Bench in Chiranji Lal's case, the matter may also be placed along with that case.

On the question whether the period of limitation for filing the petition for execution of decree starts running from the date of decree or when the decree becomes enforceable, i.e. when it is signed,

Referring the matter to a three Judge Bench, the Court

HELD. There is some area of conflict amongst several two-Judge Bench decisions of the Court. Noticing the conflict, reference has been made to a three-Judge Bench in *Chiranji Lal's case**. This case may be placed before Hon'ble the Chief Justice of India for appropriate orders as regards listing it along with *Chiranji Lal's case*.

**Chiranji Lal (dead) by Lrs. v. Hari Das (dead) by Lrs. [2005] 2 SCC 261; W.B. Essential Commodities Supply Corpn. v. Swadesh Agro Farming & Storage Pvt. Ltd. and Anr., [1999] 8 SCC 315; Hameed Joharan (dead) and Ors. v. Abdul Salam (dead) by Lrs. and Ors., [2001] 7 SCC 573 and Shankar Balant Lokhande (dead) by Lrs. v. Chandrakant S. Lokhande & Anr., [1995] 3 SCC 413, referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1100 of 2000.

From the Judgment and Order dated 22.8.95 of the Patna High Court in C.R. No. 729/94.

S. Chandra Shekhar for the Appellants.

A S.B. Sanyal, Akhilesh Kumar Pandey, Sudhanshu Saran and Abhishek for the Respondents.

The Judgment of the Court was delivered by

B **ARIJIT PASAYAT, J.** The High Court of Patna dismissed the Civil Revision filed by the appellant summarily. Challenge in the Civil Revision was to the order passed by the learned Subordinate Judge, VII, Patna, in execution proceedings. By the said order Subordinate Judge held that the plea raised by the appellant about the execution petition being barred by time in terms of Article 136 of the Limitation Act, 1963 (in short the 'Limitation Act') was untenable.

C Learned Subordinate Judge held that the period of limitation starts running not from the date of decree, but when the decree becomes enforceable i.e. when it is signed.

D In support of the appeal strong reliance was placed on several decisions of this Court i.e. *W.B. Essential Commodities Supply Corpn. v. Swadesh Agro Farming & Storage Pvt. Ltd. and Anr.*, [1999] 8 SCC 315 *Hameed Joharan (Dead) and Ors. v. Abdul Salam (Dead) by Lrs. and Ors.*, [2001] 7 SCC 573.

E In *Hameed Joharan's* case (supra) it was held after referring to the meaning to the word 'enforce' from various dictionaries words 'when the decree or order becomes enforceable' should be read in literal sense and as per intention of the legislators 12 years period is to be reckoned from the date the decree became enforceable i.e. the date of the decree or order.

F *Per contra*, learned counsel for the respondents submitted that the correct position of law is expressed in *Shankar Balant Lokhande (Dead) by LRs. v. Chandrakant S. Lokhande & Anr.*, [1995] 3 SCC 413 and in other two cases the correct principles in law were not kept in view. We find that there is some area of conflict amongst several two-judge Bench decisions. It is also to be noticed that noticing the conflict between these judgments, reference has been made to a three-Judge Bench in *Chiranji Lal (dead) by Lrs. v. Hari Das (dead) by Lrs.*, [2005] 2 SCC 261.

This case may also be placed before Hon'ble the Chief Justice of India for appropriate orders to be placed alongwith *Chiranji Lal's* case (supra).

H R.P.

Appeal referred to three Judge bench.