

Taking the law to be as we have stated it, the acquittal of Maruti—as to which we agree with the Session Judge—does not necessarily involve the acquittal of Constancia and Malhár; nor again does it necessarily involve our upholding the Session Judge's decision with respect to Náráyan and Sitábái.

We direct that the convictions of Náráyan and Sitábái be restored, with the amendment of their extending only to abetment of theft in a dwelling, the prisoners not having been present at the commission of the theft, and also the sentences passed on them respectively by the Magistrate, First Class.

Order accordingly.

1875
REG
MARUTI
DA'DA
AND OTHERS.

[APPELLATE CIVIL JURISDICTION.]

Application for the exercise of the Court's Extraordinary Jurisdiction.

No. 48 of 1875.

UMIA'SHANKAR LAKHMIRA'M (APPLICANT) v. CHHOT'ALA L
VAJERA'M (OPPONENT).

1875
Oct. 12.

Limitation Act (IX. of 1871), Schedule II., Nos. 166, 167.

An Act of Limitation, being restrictive of the ordinary right to take legal proceedings, must, where its language is ambiguous, be construed strictly, *i.e.*, in favour of the right to proceed.

A as purchaser of a decree against *B* applied for execution thereof, and having caused five fields of *B* to be sold in execution, purchased four of them at the court sale, and one from an execution-purchaser. On the 10th July 1871, however, the High Court, in a Miscellaneous Special Appeal by *B* held *A*'s application for execution to have been time-barred, and reversed the orders of the two lower courts. *A* having been put in possession of the fields under the orders of the lower courts, *B*, on a reversal of those orders by the High Court, applied, on the 9th July 1874, to have the fields restored to him together with mesne profits accruing during the time of his dispossession. The first court awarded the fields to *B* with mesne profits; but the District Judge, on appeal, held *B*'s application barred under Act IX. of 1871 Schedule II., No. 166:

Held by the High Court that the exception in No. 166 of the Limitation Act IX. of 1871 is not restricted to any particular species of appeal, that *B*'s application fell within No. 167 and not within No. 166 of the Limitation Act of 1871, and, therefore, was not barred.

This was an application for the exercise of the High Court's extraordinary jurisdiction, praying for a reversal of the order of

1875. W. H. Newnham, District Judge of Ahmedabad, made in an execution proceeding.

UMIÁSHANKAR LAKH-MIRÁM
v.
CHHOTÁ LÁL VAJERAM.

The facts of the case and the District Judge's reasons for his decision appear from the following extract from his judgment :—

“ Chhotálál purchased and executed a decree of 1851 against Umiáshankar, and bought four fields at the court sale and a fifth from a sale-purchaser.

“ In a Miscellaneous Special Appeal by Umiáshankar, the High Court decided on July 10, 1871, that the application for execution had been time-barred, and therefore reversed the lower court's orders.

“ Umiáshankar then applied to have the land sold made over to him again, together with mesne profits from date of possession ; and the Subordinate Judge of Kheda awarded them to him, with mesne profits Rs. 265-9-0.

“ The appellant objects that the claim is time-barred, and the sale having been lawful and regular as regards all the fields, and he having been a regular purchaser of one of them at second hand, the order to restore them was wrong ; the claimant should have brought a regular suit to establish his right ; mesne profits could not be claimed in such an application, and had not been awarded by the High Court ; he is a third party, and was not before the High Court in the capacity of a purchaser of the property, and Harilál, from whom he purchased the fifth field, is no party to this proceeding.

“ The first point to be decided is whether the claim was barred by limitation. I think that in the form in which it was made it was so. The order of the High Court was passed on July 10, 1871, and the application by Umiáshankar made on July 9, 1874, or just three years after. The order which he obtained from the High Court was made upon a plea of limitation, which would appear to have been raised at the very last moment, and it might have been expected that he would lose no time in having it carried out instead of waiting until three years were nearly over. Act IX. of 1871 was in force when his application was made. The order of the High Court was one not made in a regular suit or appeal

and under Schedule II., Article 166, he should have applied within one year to have it enforced. His Vakil contends, quoting *Gooroo Churn Bose v. Bykuntath Acharjee* (1) and *Nursing v. Bidyadhurce* (2), that there was no need for the High Court's order to contain a specific direction that the property should be restored, and that he could claim restoration without bringing a fresh suit, and that his application was not one to enforce the High Court's order. But in *Sheikh Bhoolloo v. Ram Narain Mookerjee* (3) the decision appears to imply that a fresh suit should be brought; and if his application was not one to enforce the order implied in the High Court's decision, I do not see what was. He was, I think, bound either to apply to have such order enforced, or to file a suit against the purchaser of the property. His application, if of the former kind, was made too late under Act IX. of 1871, and it is not a suit but a miscellaneous application. I find, therefore, that, as such, it was barred by limitation, and must be rejected. I do not decide the point whether he has the right to bring a fresh suit against the respondent as purchaser of the property which, the High Court has decided, ought not to have been attached and sold, because the decree was no longer capable of being enforced. The Subordinate Judge's order is reversed. Costs on the respondent.

On the 22nd July 1875, the High Court (KEMBALL and LAR-
PENT, JJ.,) granted a *rule nisi* on the application of *Dhirajlal Muthuradas* (Government Pleader) on behalf of the judgment-debtor, Umiashankar Lakhmiram, calling upon the execution-purchaser, Chhotalal Vajerim, to show cause why the order of Mr. W. H. Newnham, holding Umiashankar's application barred should not be set aside.

On the 12th October 1875, *Nagindas Tulsidas*, on behalf of Chhotalal, appeared to show cause before WESTROP, C.J., and KEMBALL, J., and contended that Umiashankar's application for the restoration of the fields, dated the 9th July 1874, was governed by No. 166, Schedule II., Act IX. of 1871, because what that

(1) 5 Calc. W. R. Mis. Ap. 38.

(2) 2 Calc. W. R. Civ. Rul. 275.

(3) Calc. W. R. (1864) Civ. Rul. 129.

1875.

UMIASHAN-
KAR LAKH-
MIRAMv.
CHHOTALAL
VAJERAM.

1875. application sought to execute was an order of the High Court dated the 10th July 1871, made in a miscellaneous execution matter, and not in a regular suit or in a regular appeal. [WESTROPP, C.J. —The appeal mentioned in No. 166 is not a regular appeal. It may be an appeal. While the word "regular" occurs before "suit" it is omitted before "an appeal".]

UMIA'SHAN-
KAR LAKH-
MIRA'M
".
CHHOTA'LA'E
VAJERA'M.

WESTROPP, C.J.—The Court is of opinion that the District Judge was in error in holding the present application to fall within Article 166 of Schedule II. of Act IX. of 1871, from which a decree or order on appeal is expressly excepted. That exception is not limited to any particular species of appeal, and this being a Limitation Act, and, as such, restrictive of the ordinary right to take legal proceedings, it must, where its language is ambiguous, be construed strictly, *i.e.*, in favour of the right to proceed (See 9 Bom. H. C. Rep. 111.) This case falls rather within Article 167 of the same schedule, which allows a period of three years for the execution of a decree or order of any civil court not provided for by Article 169, which latter is applicable only to judgments, decrees, or orders at the *original jurisdiction side* of courts established by Royal Charters or any order of Her Majesty in Council (see Act VI. of 1874, Sec. 21). The third column to Article 167 shows that decrees or orders made on appeal fall within that Article. This Court reverses the order of the District Judge, and restores that of the Subordinate Judge, but directs that the parties respectively bear their own costs of this appeal, as this Court is of opinion that the appellant has not shown any excuse for his laches in applying for the restoration of his property.