

44 INDIAN LAW REPORTS. [VOL. XLIII.]
APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Marten.

1918. HARGOVIND FULCHAND AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* NAJA SURA AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.
March 20.

Gujarat Talukdars' Act (Bombay Act VI of 1888), section 29E†—Decree against Talukdar—Execution of decree—Certificate from the managing Officer—Exclusion of time from the date of the decree to the date of the application for the certificate—Prior application to execute the decree unaccompanied by the certificate—Is such application in accordance with law—Limitation Act (IX of 1908), Article 182 (5).

On the 16th September 1910, an instalment decree was passed; on the 1st April 1911, on failure to pay the first instalment, the whole amount of the decree became payable. The decree was passed against Talukdars whose estate was taken under management under the provisions of the Gujarat Talukdars' Act (Bombay Act VI of 1888). The first application to execute the decree was made on the 1st April 1914; but as it was not accompanied by a certificate from the managing officer under the provisions of section 29E of

Second Appeal No. 581 of 1917.

† The section runs as follows :—

29E. (1) On the publication of a notice under section 29 B, sub-section (1), no proceeding in execution of any decree against the talukdar whose estate is taken under management or his property shall be instituted or continued until the decree-holder files a certificate from the managing officer that the decree claim has been duly submitted, or until the expiration of one month from the date of receipt by the managing officer of a written application for such certificate, accompanied by a certified copy of the decree.

(2) Any person holding a decree against such talukdar or his property shall be entitled to receive from the managing officer, free of cost, the certificate required by sub-section (1).

(3) In computing the period of limitation prescribed by the Indian Limitation Act, 1877, or by section 230 of the Code of Civil Procedure for any application for the execution of a decree, proceedings in which have been stayed or temporarily barred by reason of the claim not having been duly submitted, the time from the date of the notice published under section 29B, sub-section (1), or of the decree if it was passed subsequently to the publication of the notice, to the date of due submission shall be excluded.

the Gujarat Talukdars' Act, 1888, it was rejected on the 15th June 1914. In August of the same year, the certificate was applied for; it was obtained on the 29th idem. The second application to execute the decree was made on the 28th February 1916. Against the contention that the application was barred by limitation, it was urged that the first application was in accordance with law within the meaning of Article 182 of the Indian Limitation Act in spite of the absence of the certificate under the provision of section 29E of the Gujarat Talukdars' Act, 1888; and that the applicants were entitled to exclude the time from the date of the decree to the date of the application for the certificate under section 29 E, sub-section 3, of the Act. Both the lower Courts rejected the application as being time barred. On appeal,

Held; allowing the appeal, that the second application for execution was within time, for under section 29 E, sub-section 3, the applicants were entitled to exclude the time from the 16th September 1910 (the date of the decree) up to August 1914 (the date of the application for the certificate).

But the Court differed as to whether the appeal ought to be allowed apart from section 29 E (3) of the Gujarat Talukdars' Act. *Shah, J.* held that it ought, as the application of 1914 was "in accordance with law" within the meaning of Article 182 of the Indian Limitation Act, 1908, though no certificate of the managing officer under section 29 E (1) of the Gujarat Talukdars' Act, 1888, was produced.

Seemle per Marten, J., that the application of 1914 was not made to "the proper Court" as defined in Explanation II to Article 182 of the Indian Limitation Act, as at its date it was the duty of no Court to execute the decree or order there having been no certificate from the managing officer.

SECOND appeal from the decision of B. C. Kennedy, District Judge of Ahmedabad, confirming the order passed by K. C. Mehta, Subordinate Judge at Dhandhuka.

Execution proceedings.

On the 16th September 1910, the plaintiffs obtained a decree against the defendants who were Talukdars and whose estate was taken under management under the Gujarat Talukdars Act, 1888. The decree was payable in instalments, the first one of which fell due on the 1st April 1911. It provided that on failure to pay any one instalment in time, the whole of the decretal amount became payable. No payment was made under the decree.

1918.

HARGOVIND
FULCHAND
v.
NAJA
SURA.

1918.

HARGOVIND
FULGHAND
v.
NAJA
SURA.

An application to execute the decree was made on the 1st April 1914. It was rejected on the 15th June 1914, as it was not accompanied by a certificate under section 29E of the Gujarat Talukdars Act, 1888.

In August 1914, the plaintiffs applied for the certificate, which was issued to them on the 29th August 1914.

Another application to execute the decree was made on the 28th February 1916. The defendants contended that it was barred by limitation.

The lower Courts were of opinion that the application of 1914 was not in accordance with law inasmuch as it was not accompanied by the certificate required by section 29E of the Gujarat Talukdars Act, 1888; and that it could not save limitation under Article 182 of the Indian Limitation Act, 1908. They held that the application was barred by time.

The plaintiffs appealed to the High Court.

G. S. Rao, for the appellants :—The application of 1914 was in accordance with law. In Article 182 of the Limitation Act, 1908, the phrase “in accordance with law” qualifies “applies” and not “for execution,” and “law” means the law relating to execution contained in the Civil Procedure Code : see *Bando Krishna v. Narasimha*⁽¹⁾. An application for execution without the conciliator’s certificate under the Dekkhan Agriculturists’ Relief Act has been held to be in accordance with law : *Sadashiv v. Narsingrao*⁽²⁾. A suit under the Pensions Act can be instituted without a Collector’s certificate, but it can go on only after the certificate is produced : *Nawab Muhammad Aemat Ali Khan v. Mussumat Lalli Begum*⁽³⁾.

[SHAH J. referred to *Ramchandra v. Laxman*⁽⁴⁾.]

⁽¹⁾ (1912) 37 Bom. 42.

⁽³⁾ (1881) L. R. 9 I. A. 8.

⁽²⁾ (1914) 17 Bom. L. R. 203.

⁽⁴⁾ (1906) 8 Bom. L. R. 892.

H. V. Divatia, for the respondent:—The application for execution unaccompanied by a certificate under section 29E of the Gujarat Talukdars Act, 1888, is not in accordance with law under Article 182 of the Indian Limitation Act, 1908. Section 29E is emphatic in its terms. It says “no proceedings in execution shall be instituted, &c.” The word “institute” means “begin or commence”: Stroud’s Judicial Dictionary, Vol. II, p. 985; *Thorpe v. Priestnall*⁽¹⁾. It also means “to admit into consideration; to receive into the mind”: Murray’s New English Dictionary, Vol. V, p. 353. A suit is instituted when a plaint is presented to the proper officer: section 3 of the Indian Limitation Act, 1908; section 26 of the Civil Procedure Code, 1908.

It cannot be said that the expression “in accordance with law” qualifies “applies” and not “for execution.” Further, the word “law” means not only the law contained in the Civil Procedure Code, but any other law. An application for execution cannot be said to be in accordance with law, if it fails to satisfy the requirements of any provision of law: *Bhagwan v. Dhondi*⁽²⁾ and *Munawar Husain v. Jani Bijai Shankar*⁽³⁾.

[SHAH J.:—What do you say to the argument that the time between the date of the decree and the date of due submission of the decree-claim be excluded in computing limitation under section 29E, sub-section 3, of the Gujarat Talukdars Act? If that is so, the present application is in time.]

Sub-section 3 does not apply at all to the present case because it applies to the period between the date of Notification inviting claims and the date of due submission of these claims within six months. The Act

(1) [1897] 1 Q. B. 159.

(2) (1896) 22 Bom. 83.

(3) (1905) 27 All. 619.

1918.

HARGOVIND
FULCHAND
v.
NAJA
SURA.

1918.

HARGOVIND
FULCHAND
v.
NAJA
SURA.

nowhere provides for a second submission of his claim. Otherwise, a man may lengthen the period of execution to an inordinate length. All that the Act provides for is that a claim, whether it is a decree claim or an ordinary claim, should be once submitted within six months of the publication of the notice.

C. A. V.

SHAH, J.:—The facts which have given rise to this second appeal are few and undisputed. The plaintiff obtained an instalment decree on the 16th September 1910 against the defendants, who are Talukdars. The first instalment became payable on the 1st April 1911, and in consequence of the default in payment the whole amount became payable on that day. The plaintiff presented an application for execution on the 1st April 1914, but it was rejected on the 15th June 1914 as the certificate of the managing officer required by section 29E of the Gujarat Talukdars' Act was not produced. Subsequently the plaintiff applied to the managing officer for a certificate in August 1914 and obtained a certificate on the 29th August 1914. He then made the present application for execution on the 28th February 1916 accompanied with the certificate of the managing officer.

Both the lower Courts have dismissed this application on the ground that it has been made more than three years after the amount became payable under the decree, and that the intermediate application of the 1st April 1914 cannot save the bar of limitation as it is not in accordance with law within the meaning of Article 182 of the Indian Limitation Act, the certificate under section 29E not having been produced with it.

This appeal was adjourned to ascertain the dates of the notice under section 29B and of the submission of the "decree-claim". It is now admitted that the notice

under section 29B was published on the 5th November 1908, and the claim in respect of which the decree was subsequently passed, was submitted on the 27th April 1909. It is not disputed before us that apart from the submission of the claim before the date of the decree, in fact there was no submission of the decree-claim before August, 1914, when the application for the certificate under section 29E was made.

On behalf of the appellants two points are urged in support of the appeal: first that the darkhast of the 1st April 1914 was in accordance with law within the meaning of Article 182 in spite of the absence of the certificate under section 29E, sub-section (1); and, secondly, that under sub-section (3) of section 29E the appellant is entitled to exclude the time from the date of the decree to the date of the application for the certificate, which must be taken to be the date of the due submission of the decree-claim within the meaning of that sub-section. It is common ground that if either of these contentions is allowed the present application would be in time.

As regards the first contention, I am of opinion that it should be allowed. The expression used in Article 182, clause 5, in the third column of the Schedule of the Limitation Act is "applying in accordance with law to the proper Court for execution." In the present case in form the application was in accordance with law, i.e., in accordance with the provisions of the Code of Civil Procedure relating to such an application, and it was an application to the proper Court for execution. Unless the words "in accordance with law" are to be very widely construed, I think that a person applies "in accordance with law," when he makes an application in the prescribed form, and asks for the execution of the decree, i.e., for relief granted by the decree and

1918.

HARGOVIND
FULGHANDv.
NAJA
SURA.

1918.

HARGOVIND
FULCHNDv.
NAJA
SURA.

not for any relief outside the decree, nor for any relief which is prohibited by law. I think that sufficient meaning is given to the expression by interpreting it in that way.

It is clear that the Limitation Act must be construed strictly, and any provision, in the nature of an exception should be liberally construed. The expression, in my opinion, is fairly susceptible of a limited construction, and for the purposes of the Limitation Act the "applying in accordance with law" may fairly be understood to refer to the form and procedure relating to the application, unless of course there is a clear and definite prohibition outside these Acts, which would render such applying not in accordance with law within the meaning of the Limitation Act.

It is contended for the respondents that section 29E of the Gujarat Talukdars' Act contains such a prohibition. That section provides that on the publication of a notice under section 29B no proceeding in execution shall be instituted or continued until the decree-holder files a certificate from the managing officer that the decree-claim has been duly submitted or until the expiration of one month from the date of receipt by the managing officer of a written application for such certificate, accompanied by a certified copy of the decree. No doubt the expression "no proceeding shall be instituted" if literally construed is susceptible of the interpretation that there is a prohibition to make any application for execution until the proper certificate is produced or the prescribed period of one month has elapsed after the written application is made. But these provisions, in my opinion, should be read in the light of the scheme and the main purpose of these groups of sections in the Act. The scheme is to secure a due submission of all the claims to the managing

officer with a view to ascertain and liquidate the liabilities of a Talukdari estate which is taken under management, and in the case of decree-claims to secure their due submission before the execution is proceeded with. The purpose is not to prohibit the filing of any suit or the execution of a decree, but to give the managing officer an opportunity of considering the claim before the claimant or the decree-holder pursues his usual remedy in the civil Courts. This is clear from sub-section (3) of section 29D and sub-section (2) of section 29E. In sub-section (3) of section 29E the proceedings have been referred to as "stayed or temporarily barred by reason of the claim not having been duly submitted." It shows that the effect of sub-section (1) is not to prohibit the making of any application, which may be necessary to keep alive the decree for the purpose of the Limitation Act, but to insist upon a clear proof of the due submission before the execution is proceeded with or to allow the execution to be proceeded with after one month has elapsed from the date of the application for a certificate of the due submission of the decree-claim. It seems to me that the certificate is entirely extraneous to the application contemplated by the Limitation Act, and its production is undoubtedly a condition precedent to the actual execution of the decree but not necessarily to the making of the application.

The use of the expression "in accordance with law" in Order XXI, Rule 17, sub-rule (2) of the Code of Civil Procedure lends some support to the view that the same expression in Article 182 may be appropriately construed as referring to the application itself and not to any extraneous accompaniment like the certificate under section 29E of the Gujarat Talukdars' Act.

It has been urged with some force by Mr. Divatia that the section provides that no proceedings in execution

1918.

 HARGOVIND
 FULCHAND
 v.
 NAJA
 SURA.

1918.

HARGOVIND
FULCHANDv.
NAJA
SURA.

shall be instituted or continued without the certificate or without allowing the necessary period to lapse. But in my opinion in effect it means no more than this that the execution shall not be proceeded with unless the necessary certificate is produced or unless the prescribed time has elapsed after the application for such a certificate. In the Code of Civil Procedure and the Limitation Act the word "institute" is used with reference to a suit, and in the course of the argument no instance of its use with reference to an application has been pointed out to us. Taking the meaning of the word with reference to the context in section 29E it seems to me that sufficient effect is given to it by reading it in the sense I have just mentioned.

I am fortified in this view by the consideration that there is no provision allowing the decree-holder any deduction of the time between the date of his application for such a certificate and the date of the certificate or of the month which must elapse before an application for execution can be filed. It may happen in some cases that the period of limitation prescribed by the Limitation Act may expire during this interval; and it is not reasonable to attribute to the Legislature the position that while the filing of an application for execution within the period prescribed by the Limitation Act may be practically prohibited, no provision should be made for deducting the time taken up in obtaining the certificate which is rendered obligatory by the Act. It is noticeable that under sub-section (3) the time up to the date of "due submission" can be excluded, and not the time taken up in obtaining the certificate. Further, unless the due submission of the decree-claim and the application for a certificate* under section 29E were intended by the Legislature to be simultaneous, there would be some provision excluding

the time that may be reasonably allowed after the due submission of the decree-claim and before the application for the certificate under section 29E in order to enable the managing officer to deal with the claim. But there is no such provision.

I do not say that the expression "no proceeding shall be instituted" is not susceptible of the construction put upon it by the lower Courts and urged by Mr. Divatia with ability before us. But on the whole I think that in spite of the provisions of section 29E it is permissible to a decree-holder to apply in accordance with law for execution in order to save limitation under Article 182 of the Limitation Act without obtaining the certificate under section 29E, though it is not permissible to proceed with the actual execution in the absence of the certificate.

I have not so far referred to the various cases which have been cited on either side. No case has been cited to us in which the effect of section 29E of the Gujarat Talukdars' Act has been considered with reference to the meaning of the expression "in accordance with law". I do not consider it necessary to refer to cases which deal with the provisions in other Acts, as they would have a bearing on the point only by way of analogy. I may, however, observe that the case of *Chatur Kushalchand v. Mahadu Bhagaji*⁽¹⁾, which has been relied upon for the respondents, is clearly distinguishable, because the applications in that case were held to be not in accordance with law as they were forbidden by section 22 of the Dekkhan Agriculturists' Relief Act; the expression then used in section 22 was that "no agriculturist's immoveable property shall be attached or sold". The case of an express prohibition stands on a different footing.

1918.

HARGOVIND
FULCHAND
v.
NAJA
SURA.

1918.

HARGOVIND
FULCHAND
v.
NAJA
SURA.

I do not read section 29E as laying down any prohibition against execution, but only as providing a method of securing the result that the execution shall not be proceeded with until the certificate that the decree-claim has been duly submitted is produced or until the prescribed period has expired after the decree-holder has made a proper effort to obtain the certificate.

I am, therefore, of opinion that the application made on the 1st April 1914 was in accordance with law within the meaning of Article 182 though no certificate of the managing officer was produced. The present application is, therefore, not barred by limitation.

The second point urged on behalf of the appellant in the course of the argument has not been considered by the lower Courts. It is really a new point; but as the facts relating to it are not in dispute, and as it is a point of limitation, we have heard the pleaders on the point fully; in fact we invited arguments on the point, in view of the difficulty and the doubt that we felt on the first point in the course of the hearing. The point is whether apart from the intermediate application for execution the present application is within time by reason of the exclusion of the time from the date of the decree to the date of the due submission of the decretal claim, i.e., on the facts of this case to the date of the application for the certificate. Mr. Divatia has argued that sub-section (3) has no application to the present case as the original claim was duly submitted before the decree was passed and that no further submission of the claim was necessary under the decree.

It may be that the Legislature did not contemplate what in substance would be a second submission of the same claim to the managing officer. But the fact remains that section 29E clearly refers to the due submission of the "decree-claim" which would mean the

decretal claim or the claim under the decree and not the original claim in respect of which the decree has been subsequently passed. Now in this case we are not concerned with the submission of the claim before the decree but with the due submission of the decree-claim. Mr. Divatia's contention must, therefore, be disallowed.

On the facts either admitted before us or appearing on the record the decree-claim was brought to the notice of the managing officer when the decree-holder applied in August 1914 for a certificate of the due submission thereof. The officer has given the certificate under section 29E and the fact of the due submission of the claim in respect of the decree is beyond dispute. But whether the officer had in view the submission of the claim in 1909 before the decree was passed or the submission of the decretal claim when the application for the certificate was received is a question which it is by no means easy to decide. From the terms of the certificate, however, it can be inferred that the managing officer had in view the due submission of the decretal claim after the date of the decree. In the absence of any further information, on the facts of this case, it is a fair inference that the decree-claim was submitted when the application for the certificate was made. There is no particular form prescribed for the submission of the decretal claim and if the certified copy of the decree with a proper certificate from the Court as provided in section 29C, sub-section (1) is sent to the managing officer it may be a due submission of the claim. This was done in August 1914, and the managing officer has certified that the claim in respect of the decree was duly submitted to him. It follows, therefore, that the appellant is entitled to exclude the time from the date of the decree to some period in August 1914.

1918.

HARGOVIND
FULCHAND.v.
NAJIA
SURA.

1918.

HARGOVIND
FULCHAND
v.
NAJA
SURA.

No doubt this view involves the result that in such a case as we have here the decree-holder may practically extend the time for execution according to his own choice by making the application for the certificate at any time. It is probably a result not contemplated by the Legislature, and it may not be desirable that it should be possible to extend the time in that manner. It constitutes a difficulty in the way of the appellant on this point. But if the Legislature will insist upon certificates in all cases of decretal claims without any exception and if cases of this kind are not provided for in any other way, I do not see how sub-section (3) can be held to be inapplicable to the present case; and after all it has no further effect than that of saving limitation.

After giving the point my best consideration I am of opinion that the decree-holder is entitled to exclude the time from the date of the decree up to August 1914. On this ground also the present application for execution would be within time.

I would, therefore, allow this appeal, set aside the orders of the lower Courts and remand the Darkhast for disposal according to law.

Costs throughout to be costs in the Darkhast.

MARTEN, J.:—The respondent is a Gujarat Talukdar whose estate is being managed under the Gujarat Talukdars' Act, 1888, in pursuance of a Government Notification dated the 5th November 1908. The appellant is the holder of a money decree, against the respondent, dated the 16th September 1910. In endeavouring to execute this decree under a Darkhast, presented on the 28th February 1916, the appellant has been met by Article 182 (5) of the Indian Limitation Act and section 29E (1) of the Gujarat Talukdars' Act and has failed in both Courts below.

Before us the appellant has re-argued the points on which he failed in the Courts below and has also urged an alternative point, suggested to his pleader by my brother Shah, viz., that his Darkhast is saved on the facts of this particular case by section 29E (3) of the Gujarat Talukdars' Act. I propose to deal with this alternative point first. Section 29E (1) and section 29E (3) run as follows :—

1918.

HARGOVIND
FULCHAND
v.
NAJIA
SURA.

“Section 29E (1). On the publication of a notice under section 29B, sub-section (1), no proceeding in execution of any decree against the Talukdar whose estate is taken under management or his property shall be instituted or continued until the decree-holder files a certificate from the managing officer that the decree-claim has been duly submitted, or until the expiration of one month from the date of receipt by the managing officer of a written application for such certificate, accompanied by a certified copy of the decree.

“Section 29E (3). In computing the period of limitation prescribed by the Indian Limitation Act, 1877, or by section 230 of the Code of Civil Procedure for any application for the execution of a decree, proceedings in which have been stayed or temporarily barred by reason of the claim not having been duly submitted, the time from the date of the notice published under section 29B, sub-section (1), or of the decree if it was passed subsequently to the publication of the notice, to the date of due submission shall be excluded.”

I think the words “decree-claim” in sub-section (1) mean “the claim under or by virtue of a decree.” In other words a decree is essential, and consequently it is not sufficient to submit the claim to the managing officer before any decree is obtained. This construction is, I think, borne out by the concluding words of sub-section (1), which require the written application for a certificate to be accompanied by a certified copy of the decree. It is the decree and the execution thereof which is particularly important to the managing officer. A suit may or may not end in a decree. It is the decree and above all the execution of it which effects a practical alteration of the position.

1918.

HARGOVIND
FULCHANDv.
NAJÁ
SURA.

For the purposes, therefore, of sub-section (1) I disregard the respondent's submissions of his claims to the managing officer in April 1909 as they were prior to the decree and for the matter of that to the suit as well. Further, his pleader before us has formally admitted that there was no submission between the date of the decree (16th September 1910) and some date from 11—29th August 1914, and that the submission, if any, made after the decree was in August 1914 when the managing officer gave his certificate. I have already said that the Government Notification was published on 5th November 1908. Consequently sub-section (1) prevented the appellant from instituting execution proceedings till August 1914 when he got the requisite certificate.

This brings one to sub-section (3). That sub-section is still dealing with proceedings for the execution of a decree and, in my opinion, the word "claim" means the same as "decree-claim" under sub-section (1). This is, I think, borne out by the context, viz., the words "application for the execution of a decree, proceedings in which have been stayed or temporarily barred by reason of the claim not having been duly submitted." On my construction of sub-section (1) no bar can arise from a non-submission before decree, and consequently the above words in sub-section (3) must refer to a bar arising from a non-submission of a decree-claim.

Further, in the present case, time has to be calculated under sub-section (3) from the date of the decree, as it was passed subsequently to the Government Notification, and under sub-section (3) this time has to be calculated up "to the date of due submission." I think the words "due submission" refer again to due submission of the decree-claim. I do not accept the respondent's contention that the due submission in the

present case was in April 1909 before the decree and consequently that sub-section (3) has no application. On the contrary, I think; the Legislature intended the exemption in sub-section (3) to apply to all execution proceedings barred under sub-section (1) and did not intend to omit one branch of them, viz., proceedings in which a submission had been made before decree of a claim which might or might not correspond to the amount awarded by the decree itself.

Respondent's pleader has urged that the above construction of sub-sections (1) and (3) would unduly favour a decree-holder in the matter of limitation. That, however, is for the Legislature to decide on. The Gujarat Talukdars' Act is an Act of a special nature. Its details may cause difficulty owing to the drafting. But in its broad outlines the scheme of the Act seems to me as follows. For certain reasons a Talukdari estate may be attached and managed by a Government Officer (section 26). In that event all creditors must submit their claims [section 29 B (1)], which are then investigated [section 29 D (1)] and may be compromised [section 29 D (2)]. If the estate appears to be hopelessly involved or there is any other sufficient reason, then Government management may be withdrawn and possession of the estate restored to the owner (section 29).

How then does the Act deal with the claims of creditors in the event of such withdrawal; e.g., (1) creditors who have submitted their claims and been paid nothing; (2) creditors who have submitted and compromised their claims and been paid an instalment; and (3) creditors who have not submitted their claims?

As regards class (2), the proviso to section 29 D (2) would apparently prevent claims being time-barred prior to the withdrawal of management. Similarly as

1918.

HARGOVIND
FULCHAND.v.
NAJAJI
SURA.

1918.

HARGOVIND
FULCHAND
v
NAJA
SURA.

regards class (3), it would seem from section 29 F (2) (c) and (3) that on the withdrawal their claims would revive and that the period of Government management would be excluded in calculating the periods of limitation. The words "during the continuance of the management or *afterwards*" in section 29 B (3) cause some difficulty in this respect but as the cases provided for by section 29 F (2) (c) are expressly saved, presumably the latter section is intended to have some operation. Counsel have not, however, referred me to any clause, keeping alive expressly the claims of class (1) of creditors unless it be by the joint operation of sections 29 D (3) and 29 E (1) and (3).

Be that as it may, I think that section 29 F (3) shows that in certain cases the whole period of Government management is to be excluded in reckoning limitation. That being so I see nothing strange in the Legislature saying in section 29 E that in certain other cases, a portion of the period of Government management is to be excluded, viz., down to the date of the submission of the claim under the decree.

In the view, therefore, which I take of section 29 E (3), the period from 16th September 1910 (decree) to August 1914 (date of submission of claim under decree) must be excluded in the present case. Consequently in my judgment the Darkhast of 28th February 1916 was in time, and therefore this appeal ought to be allowed.

Apart then from costs, it is unnecessary in the view I take to consider the other branch of the appellant's case, viz., that time should run from another Darkhast which was presented on the 1st April 1914 and which in the absence of any certificate was dismissed. But as the point was argued and has a bearing on costs I ought perhaps to state the view which I take. Mr. Rao contended that this Darkhast was an application

“in accordance with law to the proper Court for execution” within the meaning of Article 182 (5) of the Indian Limitation Act. He had to contend that on the one hand this was an application by the appellant for execution under Article 182 (5) of the Indian Limitation Act, and that on the other hand the appellant had not in so doing instituted proceedings for execution within section 29E of the Gujarat Talukdars’ Act. “Institution,” he said, did not begin till the application was admitted under Order XXI, Rule 17 (4). The ordinary meaning, however, of “institute” is to begin or to commence. Accordingly, I think that execution proceedings were instituted, i.e., begun or commenced when the Darkhast of 1st April 1914 was presented to the Court. This is in accordance with the explanation to section 3 of the Indian Limitation Act which states that a suit is instituted in ordinary cases when the plaint is *presented* to the proper officer. But this institution of execution proceedings was contrary to the express provisions of section 29E for no certificate had been obtained or even applied for. I do not think those provisions are directory merely, or that we can read “instituted” as meaning proceeded with. I think, therefore, the application was not in accordance with law.

Further, I doubt whether the application was “to the proper Court” for execution within the meaning of Article 182(5). Explanation II says that the “‘proper Court’ means the Court whose duty it is to execute the decree or order.” At the date of this Darkhast it was the duty of no Court to execute the decree or order for there was no certificate from the managing officer; and in fact the Darkhast was dismissed for want of such a certificate. The contention of the appellant really amounts to this that this utterly irregular application of his prevented time running. I do not think this is the case. Nor do I think it correct to say that provided

1918.

 HARGOVIND
 FULCHAND
 v.
 NAJA
 SURA.

1918.

HARGOVIND
FULCHANDNAJA
SURA.

the application fulfilled the formal requirements of the Civil Procedure Code, it did not matter that it was contrary to the Gujarat Talukdars' Act.

*Certain authorities were cited to us but I do not propose to discuss them as they were on other Acts and depended on different expressions, e.g., "entertain." "Institute" is, I think, a stronger and more definite word than "entertain." I may refer to section 18 of the Religious Endowments Act, 1863, as an instance of both words being used in the same section.

It was argued that hardship might result if the period of limitation expired during the month after the application for a certificate. However, on my construction of section 29E, this would be extremely unlikely to happen. Even if it did, I see no particular hardship in giving a creditor a delay of say two years and eleven months instead of three years.

On the points, therefore, argued before the lower Court I agree with the findings of the learned Judges in the Courts below. On the new point taken before us, the appellant succeeds. On the other hand he did not take this point in the Courts below. I think therefore on the whole that in allowing the appeal we should direct that the costs throughout up to date of both parties should be costs in the Darkhast of 1916. The actual order of this Court will be as indicated by my learned brother.

Appeal allowed.

R. R.