

of the decretal amount and interest is running on that amount. Therefore he loses nothing of what he would have got if the defendants had done what they had been ordered to do. We, therefore, allow the appeal on these terms:—

The defendants should pay the costs of the Darkhast throughout and the instalment (including interest) which fell due in April or May 1920 within two months from the time the proceedings reach the lower Court. In default of payment the Darkhast should proceed.

Appeal allowed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

RAMCHANDRA VENKATESH SHOLAPUR (ORIGINAL DECREE-HOLDER)
 APPLICANT *v.* SHRINIWAS KRISHNA KULKARNI (ORIGINAL JUDG-
 MENT-DEBTOR), OPPONENT^o.

Civil Procedure Code (Act V of 1908), section 11—Res judicata—Decree—Execution—First Darkhast dismissed as barred by limitation—Second Darkhast sought to be brought within time by acknowledgment—Decision on first Darkhast does not operate as res judicata.

The applicant obtained a decree in 1913, which he sought to execute first in 1915 and again in 1919. The second application to execute the decree was rejected as barred by limitation. The applicant relied on an acknowledgment, dated 19th June 1917 and applied on the 19th June 1920, to execute the decree. The executing Court dismissed the application on the ground that the decision in the *Darkhast* of 1919 operated as *res judicata* in the present *Darkhast*. The applicant having applied:—

Held, the decision in the earlier *Darkhast* did not operate as *res judicata* in the present one.

Mahadeo v. Trimbakbhat⁽¹⁾, followed.

^o Civil Extraordinary Application No. 45 of 1921.

⁽¹⁾(1918) 21 Bom. L. R. 344.

1921.

NARSINHA
 GOPAL
v.
 BALVANT
 MADHAV.

1921.

October 13.

1921.

RAMCHANDRA
vs.
SHRINIWAS.

THIS was an application under the extraordinary jurisdiction of the High Court, against an order passed by B. D. Sabnis, Subordinate Judge at Bagalkot.

Execution proceedings.

On the 2nd August 1913 the applicant obtained a decree against the opponent. He first applied to execute the decree on the 3rd July 1915. He again applied on the 25th June 1919 but the application was dismissed as time-barred.

The applicant again applied on the 19th June 1920 relying on an acknowledgment, dated the 19th June 1917.

The executing Court dismissed the application on the ground that the Court's decision in the application of 1919 operated as *res judicata*.

The applicant applied to the High Court.

H. B. Gumaste, for the applicant.

MACLEOD, C. J.:—The petitioner obtained a decree in Suit No. 91 of 1913 in the Court of the Second Class Subordinate Judge at Bagalkot against the opponent on the 2nd August 1913 and filed an application for execution on the 3rd July 1915. The application was struck off as notices were not served on the opponent. A second application for execution No. 166 of 1919 was made on 25th June 1919 but was rejected as time-barred. The decree-holder again applied for execution on the 19th June 1920 relying on an acknowledgment made on the 19th June 1917 and signed by the opponent in a compromise application in a partition suit between himself and his brother. The learned Subordinate Judge said:—

“Darkhast was held to be time-barred in a previous application. The point is thus *res judicata*. The present application must, therefore, be rejected.”

He decided, therefore, that once a Darkhast had been rejected as time-barred no further Darkhast could be filed. That is not in agreement with the decision in *Mahadev v. Trimbakbhat*⁽¹⁾. All that was decided in the previous Darkhast of 1919 was that the Darkhast itself was not in time. That would not prevent the executing plaintiff from filing another Darkhast and seeking to bring it within limitation on grounds which were not before the Court when the previous Darkhast was filed. The only ground on which this Darkhast could be rejected would be that the petitioner ought to have relied upon the acknowledgment of June 1917, when he filed the previous Darkhast, and not having done so he is for ever barred from relying upon it. It does not seem to me that the doctrine of *res judicata* can be extended to that length. I agree with what was said by my brother Shah in the case *Mahadev v. Trimbakbhat*⁽¹⁾, which was cited, that in the earlier Darkhast there was no adjudication that the execution of the decree was barred but only that the application was not shown to be in time. I think, therefore, that the rule must be made absolute and that the Darkhast must be returned to the lower Court to be dealt with on the merits.

Costs to be costs in the Darkhast.

SHAH, J.:—I agree.

Rule made absolute.

R. R.

(1)(1918) 21 Bom. L. R. 344.

1921.

RAMCHANDRA
v.
SHRINIWAS.