A

# LALJI RAJA & SONS.

*v.*

# FIRM HANSRAJ NATHURAM

*February* 23, 1971

B [S. M. SIKRI, C.J., G. K. MITTER, K. S. HEGDE, J. JAGANMOHAN REDDY AND V. BHARGAVA, JJ.]

*Code of Civil Procedure,* 1908, *ss.* 2(5), 2(12), 20, 38, 39, 40 48—*Code of Civil Procedure (Amendment) Act,* 1950 (*Act* 2 *of* 1951), *s.* 20(1)(*b*)—*Decree passed under Code can be transferred to any court governed by Code—Court in Madhya Bharat not governed by Code prior to passing of Act* 2 *of* 1951—*Transfer of decree from West Bengal Court* C *to Madhya Bharat Court while invalid before passing of Act* 2 *of* 1951 *could be validly made thereafter—'Foreign Court', 'Foreign Decree', meaning of—Foreign Decree when a nullity—'Privileges' and 'rights' when protected under s.* 20(1)(*b*) *of Act* 2 *of* 1951—*Limitation for Execution—Section* 48 *whether provides a bar or period of limitation.*

The appellants obtained a decree against the respondent in the court of Sub-Judge, Bankura (West Bengal) on December 3, 1949. On March D 28, 1950 they applied to the court which passed the decree to transfer the decree with a certificate of non-satisfaction of the court at Morena in the then State of Madhya Bharat. It was ordered accordingly. The Judgment debtors resisted the execution on the ground that the court had no jurisdiction to execute the same as the decree was that of a foreign court and that the same had been passed *ex-parte*. The court accepted that contention and dismissed the execution petition on December 29, 1950. On April 1, 1951 the Code of Civil Procedure (Amendment) Act 2 of 1951 came E into force. By this Act the Code was extended to the former State of Madhya Bharat as well as various other places. Meanwhile the appellants appealed against the order of the Additional District Judge Morena dismissing the execution petition to the High Court of Madhya Pradesh. The appeal was allowed. In further appeal this Court restored the order of the Addl. District Judge, Morena. Thereafter on February 15, 1963 the appellants filed another execution case before the Bankura Court praying F for the transfer of the decree to the Morena Court for execution. The Bankura Court again ordered the transfer of the decree of the Morena Court. The judgment debtors resisted execution on the following grounds : (1) that it was barred by *res judicata* in view of the aforesaid decision of this Court; (2) that it was barred by s. 48 of the Code of Civil Procedure; (3) that it was barred by limitation and (4) that it was not executable because it was the decree of a foreign court. The Addl. District Judge rejected the objections. The High Court in appeal agreed with G the executing court that the execution petition was neiher barred by *res judicata* nor was there any bar of limitation but it disagreed with that court and held that the decree was not executable as the court which passed the decree was a foreign court. The decree holders filed the present appeal by special leave. The questions which fell for consideration were : (i) whether the decree under execution was not executable by courts situate in the area comprised in the former State of Madhya Bharat; (ii) whether the decree was barred by s. 48 of the Code.

H

HELD : *Per* Sikri C.J., Mitter, Hyde and Bhargava JJ. (1) (a) On the date when the decree under execution was passed 'foreign court' was

defined in s. 2(5) of the Code as a court situate beyond the limits of British India which had no authority in British India and was not established or continued by the Central Government. After the amendment of the Code of Civil Procedure in 1951, 'foreign court' under the Code means a court situate outside India and not established or continued by the authority of the Central Government. Whether we take the earlier definition or the present definition the Bankura Court could not be considered as a foreign court within the meaning of that expression in the Code. 'Foreign judgment' is defined as the 'judgment of a foreign court'. Hence the decree under execution could not be considered as a foreign decree for the purpose of the Code. [820 D-G]

Accordingly the judgment-debtors could not take advantage of the provision in s. 13(b) of the Code under which the *ex-parte* decree of a foreign court is not conclu ive. Nor could they take advantage of s. 13(d). They were served with notice of suit but did not choose to appear before the court. Hence, there was no basis for the contention that any principle of natural justice has been contravened. Further s. 13(d) was not applicable because the judgment in question was not a foreign judgment. [821 D]

(b) Under Private International Law a decree passed by a foreign court to whose juri diction a judgment-debtor had not submitted is an absolute nulity only if the local legislature had not conferred jur.sdiction on the domestic courts over the foreigners either generally or in specified circumstances. Clause (c) of s. 20 of the Code provides that subject to the limitations mentioned in the earlier sections of the Code a suit can be instituted in a court within the local limits of whose jurisdiction the cause of action wholly or in part, arises. This provision confers jurisdiction on a court in India over foreigners when the cause of action arises within its jurisd ction. There was not dispute in the present case that the cause of action for the suit which led up to the decree under execution arose within the jurisdict on of the Bankura Court. Hence, it must be held that the suit in question was properly instituted. Accordingly the decree in question was a valid decree though it might not have been executable at one stage in courts in the former Indian States [822 B-F]

*Sardar Gurdyal Singh* v. *The Rajah of Faridkot,* 21 I.A. 171, referred to.

(c) A combined reading of ss. 2(12), 38, 39 and 40 of the Code shows that a decree can be transferred for execution only to a court to which the Code applie . This is what was ruled by this Court in *Hansraj Nathu Ram's* case. But by the date the transfer in the present case was made, the Code had been extended to the whole of India. It followed that the transfer of the decree in question which was not a foreign decree, to the Morena Court, was in accordance with the provisions of the Code. [823 B-D]

*Hansraj Nathu Ram* v. *Lalji Raja & Sons of Bankura,* [1963] 2 S.C.R. 619, applied.

*Narsingh Rao Shitole* v. *Shri Shankar Saran & Ors.,* [1963] 2 S.C.R. 577, distinguished.

(d) Section 20(1)(b) of the Code of Civil Procedure Amendment Act, 1951 by which the Code was extended to Madhya Bharat and other areas undoubtedly protects the right acquired and privileges accrued under the law repealed by the amending Act. But even by straining the language of the provis on it cannot be said that the non-executability of the decree within a particular territory can be considered a 'privilege' [824 E-F]

A Nor is it a 'right accrued' within the meaning of s. 20(1)(b) of the Code of Civil Procedure (Amendment) Act, 1950. In the first place in order to get the benefit of this provision the non-executability of the decree must be a right, and secondly it must be a right that had accrued from the provisions of the repealed law. It was difficult to consider the non-executability of the decree in Madhya Bharat as a vested right of the judgment debtors. The non-executability in question pertained to the B jurisdiction of certain courts and not to the rights of the judgment debtors. Further the relevant provision of the Code of Civil Procedure in force in Madhya Bharat did not confer the right claimed by the judgment-debtors. All that had happened in view of the extension of the Code to the whole of India in 1951 was that the decrees which could have been executed only by courts in British India were made executable in the whole of India. The change made was one relating to procedure and juri diction. By the extension of the Code to Madhya Bharat, want C of jurisdiction on the part of the Morena Court was remedied and that court was now competent to execute the decree [825 A-E]

*Hamilton Gell* v. *White* [1922] 2 K.B. 422, *Abbot* v. *Minister for Lands*, [1895] A.C. 425 and *G. Ogden Industries Pvt. Ltd.* v. *Lucas*, [1969] 1 All E.R. 121, applied.

D (ii) The execution was also not barred by s. 48 of the Code. For considering the true impact of cl. (b) of sub-s. 2 of s. 48 of the Code provisions of Arts. 181 and 182 of the Limitation Act, 1908 have also to be taken into consideration. These provisions clearly go to indicate that the period prescribed under s. 48(1) of the Code is a period of limitation. This interpretation is strengthened by the subsequent history of the legislation. By the Limitation Act, 1963 s. 48 of the Code is E deleted. Its place has not been taken by Art. 136 of the Limitation Act of 1963 The High Courts also are now unanimous that s. 48 of the Code is controlled by the provisions of the Limitation Act, 1908. [828 A-C]

*Kandaswami Pillai* v. *Kamappa Chetty*, A.I.R. 1952 Mad. 186 (F.B.), *Durg* v. *Poncham*, I.L.R. [1939] All. 647, *Sitaram* v. *Chunnilalsa*, I.L.R. [1944] Nag. 250, *Amarendra* v. *Manindra*, A.I.R. 1955 Cal. 269, *Krishna Chandra* v *Paravatamma*, A.I.R. 1953 Orissa 13 and *Ramgopal* v. *Sidram*, F A.I.R. 1943 Bom. 164 referred to.

*Per* Jaganmohan Reddy, J.—(Concurring) No question of a vested right or privilege arose to entitle the respondent to challenge execution proceedings in Morena Court. The decree granted by the Bankura Court was executable by the Courts governed by the same Code, by the Court which passed it or by the Court to which it was transferred. Once the Code was made applicable to the whole of India by Amendment Act II G of 1951 the decree was no longer a foreign decree *qua* the Morena Court which was a court under the Code to which the Bankura Court could transfer the decree for execution. No doubt in *Shitole's* case it was observed that s. 13 of the Code creates substantive rights and not merely procedural and therefore defences that were open to the respondents were not taken away by any constitutional changes, but the ratio of the decision was that the Gwalior Court not being a court that passed the decree after the coming into force of Act II of 1951 the Allahabad Court could H not execute it. The impediment did not exist now in that the Bankura Court had transferred the decree to a court under the Code. The plea that s. 48 Civil Procedure Code presents a bar of limitation was also not tenable. [831 E-H]

*Kishendas* v. *Indo-Carnatic Bank Ltd.* A.I.R. 1958 A.P. 407 *Sardar Gurdayal Singh* v. *Raja of Faridkote,* 21 I.A. 171, *Raj Rajendra Sardar Maloji Narsingh Rao Shitole* v. *Shri Shankar Saran,* [1963] 2 S.C.R. 577 and *Hansraj Nathuram* v. *Lalji Raja & Sons Bankura,* [1963] 2 S.C.R. 619, discussed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2427 of 1966.

Appeal by special leave from the judgment and order dated August 27, 1964 of the Madhya Pradesh High Court in Misc. Appeal No. 20 of 1964.

*S. C. Majumdar* and *R. K. Jain,* for the appellant.

*W. S. Barlingay, Ramesh Mali* and *Ganpat Rai,* for the respondent.

The Judgment of S. M. SIKRI, C.J., G. K. MITTER, K. S. HEGDE *and* V. BHARGAVA, JJ. was delivered by HEGDE, J. P. JAGANMOHAN REDDY, J. gave a separate Opinion :

**Hegde, J.** This is an execution appeal. The decree-holders are the appellants herein. This case has a long and chequered history. The decree-holders obtained a decree against the respondents in the court of Sub-Judge, Bankura (West Bengal) for a sum of over Rs. 12,000/-, on December 3, 1949. On March 28, 1950 they applied to the court which passed the decree to transfer the decree together with a certificate of non-satisfaction to the court at Morena in the then Madhya Bharat State for execution. It was ordered accordingly. The execution proceedings commenced in the court of Additional District Judge at Morena on September 21, 1950 (Money Execution Case No. 8 of 1950). The judgment-debtors resisted the execution on the ground that the court had no jurisdiction to execute the same as the decree was that of a foreign court and that the same had been passed *ex-parte.* The court accepted that contention and dismissed the execution petition on December 29, 1950. On April 1, 1951 the Code of Civil Procedure (Amendment) Act, (Act II of 1951) came into force. As a result of that the Code of Civil Procedure (in short the 'Code') was extended to the former State of Madhya Bharat as well as as to various other places. Meanwhile the decree-holders appealed against the order of the learned Additional District Judge, Morena dismissing the execution petition, to the High Court of Madhya Pradesh. The Madhya Pradesh High Court allowed their appeal. As against that the judgment-debtors appealed to this Court. This Court allowed the appeal of the judgment-debtors and restored the order of the learned Additional District Judge, Morena. The decision of this Court is reported in *Hansraj Nathu Ram* v. *Lalji Raja and sons of Bankura*(1). Therein this Court ruled that the transfer ordered by

(1) [1963] 2 S.C.R. 619.

A the Bankura court was without jurisdiction as on that date 'the Code' did not apply to the Morena court. This Court held that Morena court not being a court to which 'the Code' applied, the decree could not have been transferred to it. It further held that ss. 38 and 39 of 'the Code' did not afford jurisdiction for such a transfer. It may be noted that at the time the Bankura Court B ordered the transfer of the decree, the Morena court was governed by the Indian Code of Civil Procedure as adapted by the Madhya Bharat Adaptation Order, 1948. In other words it was governed by a law passed by the then Madhya Bharat State. In the course of its judgment this Court observed that under 'the Code' "a decree can be executed by a court which passed the decree C or to which it was transferred for execution and the decree which could be transferred has to be a decree passed under the Code and the court to which it could be transferred has to be a court which was governed by the Indian Code of Civil Procedure". The first stage of the execution proceedings came to an end by the decision of this Court rendered on April 30, 1962.

D On February 15, 1963, the decree-holders filed another execution case before the Bankura court. Therein they prayed for the transfer of the decree again to the Morena court for execution. As noticed earlier, by that time 'the Code' had been extended to the Madhya Bharat State which had become a part of the State of Madhya Pradesh. The Bankura court again ordered the transfer of the decree to the Morena court. The execution proceed- E ings were started afresh in the Morena court on August 31, 1963 (Execution Case No. 1 of 1963). The judgment-debtors resisted the execution on various grounds viz. (a) that it is barred by *res-judicata* in view of the decision of this Court referred to earlier; (b) that it is barred by s. 48 of 'the Code'; (c) that it is barred by limitation; and (d) that the decree is not executable as F it is a decree of a foreign court.

The learned Additional District Judge rejected the objections raised by the judgment-debtors. The judgment-debtors appealed against that order to the High Court of Madhya Pradesh. The High Court agreed with the executing court that the execution petition is neither barred by *res-judicata* nor by s. 48 of 'the G Code', nor is there any bar of limitation but it disagreed with that court and held that the decree was not executable as the court which passed the decree was a foreign court. In arriving at that conclusion it purported to rely on the decision of this Court in *Raj Rajendra Sardar Maloji Narsingh Rao Shitole* v. *Sri Shankar Saran and Ors.*(1). Aggrieved by that decision, the H decree-holders have brought this appeal by special leave.

From the contentions advanced before us, two questions arise

1. [1963] 2 S.C.R. 577.

for decision. They are (1) whether the decree under execution is not executable by courts situate in the area comprised in the former State of Madhya Bharat and (2) whether the decree is barred by s. 48 of 'the Code'. A

The contention of the judgment-debtors is that the decree under execution being a decree of a foreign court is a nullity *qua* the courts in the former State of Madhya Bharat and therefore the same is not executable in the Morena court. According to the decree-holders the decree in question is not a decree of a foreign court as contemplated by 'the Code' and the court to which the decree is transferred for execution namely the Morena court is a 'court' as contemplated by ss. 38 and 39 of 'the Code' and therefore there can be no valid objection to its execution in the Morena court. Before referring to the decided cases on the point it is necessary to read the relevant provisions of 'the Code' as the execution is sought in accordance with the provisions therein. B C

'Foreign Court' is defined in s. 2(5) of 'the Code'. That definition as it stood on the date the decree under execution was passed read thus : D

> " "foreign court" means a Court situate beyond the limits of British India which has no authority in British India and is not established or continued by the Central Government." E

A new definition of 'foreign court" was substituted by the Code of Civil Procedure (Amendment) Act II of 1951. That definition reads :

> " "foreign court" means a court situate outside India and not established or continued by the authority of the Central Government". F

Whether we take the earlier definition or the present definition into consideration the Bankura court cannot be considered as a "foreign court" within the meaning of that expression in 'the Code'. Foreign judgment is defined in 'the Code' as the judgment of 'a foreign court'. (s. 2(6) of 'the Code'). Hence the decree under execution cannot be considered as a foreign decree for the purpose of the Code. G

Section 13 of 'the Code' provides that "A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except H

. . . . . .

(b) where it has not been given on the merits of the case."

A The judgment with which we are concerned in this case was an *ex-parte* judgment. The Bankura court had no jurisdiction over the judgment-debtors. The Judgment-debtors did not submit themselves to the jurisdiction of that court though they were served with a notice of the suit. Hence if the Bankura court can be considered as a foreign court then s. 13(b) would have B come to the rescue of the Judgment-debtors and it would have enabled them to plead that the judgment in question was not conclusive and consequently the decree is not binding against them. But as the judgment in question cannot be considered as a judgment of a foreign court, they can take no assistance from s. 13(b). But assistance was sought to be taken from s. 13(d) C which says that the foreign judgments are not conclusive "where the proceedings in which the judgment was obtained are opposed to natural justice". It was urged on behalf of the judgment-debtors that as the decree under execution was an *ex-parte* decree, we must hold that the proceedings in which the judgment was obtained were opposed to natural justice. We are unable to accede to this contention. As mentioned earlier, the judg- D ment-debtors were served with the notice of the suit. They did not choose to appear before the court. Hence there is no basis for the contention that any principle of natural justice had been contravened. Further as held earlier the judgment in question is not a foreign judgment.

E Reliance was placed on Private International Law in support of the contention that in a personal action, a decree pronounced in *absentem* by a foreign court, to the jurisdiction of which the defendant had not in any way submitted himself is an absolute nullity. It was urged that the Bankura court had no jurisdiction over the judgment-debtors and therefore the decree F passed being one pronounced *in absentem* is a nullity. In support of this contention reliance was placed on the decision of the Judicial Committee in *Sirdar Gurdval Singh* v. *The Rajah of Faridkote*(1). Therein the Judicial Committee observed :

> "In a personal action, to which none of these causes of jurisdiction apply, a decree pronounced in G *absentem* by a foreign Court, to the jurisdiction of which the Defendant has not in any way submitted himself, is by international law an absolute nullity."

But the Board qualified those observations by the following words :

H "He is under no obligation of any kind to obey it; and it must be regarded as a mere nullity by the Courts

(1). 21 I.A. 171.

of every nation except (when authorised by special local legislation) in the country of the forum by which it was pronounced."

The above remarks of the Board indicate that even a decree which is pronounced *in absentem* by a foreign court is valid and executable in the country of the forum by which it was pronounced when authorised by special local legislation. A decree passed by a foreign court to whose jurisdiction a judgment-debtor had not submitted is an absolute nullity only if the local legislature had not conferred upon jurisdiction on the domestic courts over the foreigners either generally or under specified circumstances. Section 20(c) of 'the Code' confers jurisdiction on a court in India over the foreigners if the cause of action arises within the jurisdiction of that court. Hence the observation of the Board quoted in some of the decisions of the courts in India including the decision of this Court in *Shitole's* case(1) that such a decree is an 'absolute nullity' may not be apposite. It may be more appropriate to say that the decree in question is not executable in courts outside this country. The board itself had noticed that this rule of Private International law is subject to special local legislation. Clause (c) of s. 20 of 'the Code' provided at the relevant time and still provides that subject to the limitations mentioned in the earlier sections of 'the Code', a suit can be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises. There is no dispute in this case that the cause of action for the suit which led up to the decree under execution arose within the jurisdiction of Bankura court. Hence it must be held that the suit in question was a properly instituted suit. From that it follows that the decree in question is a valid decree though it might not have been executable at one stage in courts in the former Indian States.

This takes us to ss. 38 and 39 of 'the Code'. Section 38 provides that a decree may be executed either by the court which passed it, or by the court to which it is sent for execution. Section 39(1) to the extent it is material for our present purpose prescribes :

"The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court—

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain within the local limits of the jurisdiction of such other Court....."

(1) [1963] 2 S.C.R. 577.

A Section 40 prescribes :

> "Where a decree is sent for execution in another State, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that State."

B Rules are defined in s. 2(12) as meaning Rules and Forms contained in the 1st Schedule or made under s. 122 or s. 125 of 'the Code'. On a combined reading of ss. 2(12), 38, 39 and 40, it follows that a decree can be transferred for execution only to a court to which 'the Code' applies. This is what was ruled by this Court in *Hansraj Nathu Ram* v. *Lalji Raja and sons of Bankura*(1). But by the date the impugned transfer was C made, 'the Code' had been extended to the whole of India. In fact the court to which the decree was transferred is now an entirely new court in the eye of the law—see the decision of this Court in *Shitole's* case(2).

From the foregoing discussion, it follows that the decree under execution is not a foreign decree and its transfer to the D Morena court is in accordance with the provisions of 'the Code'. That being so, the decree under execution satisfies the dictum of this Court in *Hansraj Nathu Ram* v. *Lalji Raja and sons*(1) that "a decree can be executed by a court which passed the decree or to which it was transferred for execution and the decree which could be transferred has to be a decree passed under the Code E and the Court to which it could be transferred has to be a Court which was governed by the Indian Code of Civil Procedure."

It was next urged on behalf of the judgment-debtor that in view of the decision of this Court in *Shitole's case* (supra) we must hold that the decree is a nullity and that it cannot be executed at all in the courts situate in the former State of Madhya F Bharat. In *Shitole's* case (supra) this Court was called upon to consider a converse case. Therein the decree under execution was one passed by a court in Gwalior State in a suit instituted in May 1947. The defendants were the residents of U.P. They did not appeal before the Gwalior court though served with the notice. An *ex-parte* decree was passed against them in G November, 1948. On September, 1951, the Gwalior court transferred the decree for execution to Allahabad and on October 16, 1951, the decree-holder filed an application for execution of the decree before the Allahabad Court. The judgment-debtors contended that the decree being a decree of foreign court to whose jurisdiction they had not submitted, was a nullity and the execution application in respect thereof was not maintainable. H That contention was accepted by this Court. It may be noted that the Gwalior Court was not a court constituted under the

(1) [1963] 2 S.C.R. 619. (2) [1963] 2 S.C.R. 577.

provisions of 'the Code'. It was admittedly a foreign court for the purpose of any proceedings under 'the Code'. The ratio of that decision is wholly inapplicable to the present case. The question whether a decree is a foreign decree or whether it can be transferred to another court for execution has to be judged by the provisions of 'the Code'.

It was next contended that in view of s. 20 cl. (b) of 'the Code' of Civil Procedure (Amendment) Act, 1951 by which the Code is extneded to Madhya Bharat and other areas, the judgment-debtors' right to resist the execution of the decree is protected. Section 20(1) of the Act deals with Repeals and Savings. That section to the extent relevant for our present purpose reads :

> "If, immediately before the date on which the said Code comes into force in any part B State corresponding to the said Code, that law shall on that date stand repea'ed.

Provided that the repeal shall not affect—

> (b) any right, privilege, ob'igation or liability acquired, accrued or incurred under any law so repealed.....as if this Act had not been passed."

This provisions undoubtedly protects the rights acquired and privileges accrued under the law repealed by the amending Act. Therefore the question for decision is whether the non-executability of the decree in the Morena court under the law in force in Madhya Bharat before the extension of 'the Code' can be said to be a right accrued under the repealed law. We do not think that even by straining the language of the provision it can be said that the non-executability of a decree within a particular territory can be considered as a privilege. Therefore the only question that we have to consider is whether it can be considered as a 'right accrued' within the meaning of s. 20(1)(b) of the Code of Civil Procedure (Amendment) Act, 1950. In the first place, in order to get the benefit of that provision, the non-executability of the decree must be a right and secondly it must be a right that had accrued from the provisions of the repealed law. It is contended on behalf of the judgment-debtors that when the decree was passed, they had a right to resist the execution of the decree in Madhya Bharat in view of the provisions of the Indian Code of Civil Procedure (as adapted) which was in force in the Madhya Bharat at that time and the same is a vested right. It was further urged on their behalf that that right was preserved by s. 20(1)(b) of the Code of Civil Procedure Amendment Act,

A 1950. It is difficult to consider the non-executability of the decree in Madhya Bharat as a vested right of the judgment-debtors. The non-executability in question pertains to the jurisdiction of certain courts and not to the rights of the judgment-debtors. Further the relevant provisions of the Civil Procedure Code in force in Madhya Bharat did not confer the right claimed B by the judgment-debtors. All that has happened in view of the extension of 'the Code' to the whole of India in 1951 is that the decree which could have been executed only by courts in British India are now made executable in the whole of India. The change made is one relating to procedure and jurisdiction. Even before 'the Code' was extended to Madhya Bharat the decree in C question could have been executed either against the person of the judgment-debtors if they had happened to come to British India or against any of their properties situate in British India. The execution of the decree within the State of Madhya Bharat was not permissible because the arm of 'the Code' did not reach Madhya Bharat. It was the invalidity of the order transferring the decree to the Morena court that stood in D the way of the decree-holders in executing their decree in that court on the earlier occasion and not because of any vested rights of the judgment-debtors. Even if the judgment-debtors had not objected to the execution of the decree, the same could not have been executed by the court at Morena on the previous occasion as that court was not properly seized of the execution proceed-E ings. By the extension of 'the Code' to Madhya Bharat, want of jurisdiction on the part of the Morena court was remedied and that court is now made competent to execute the decree.

That a provision to preserve the right accrued under a repealed Act "was not intended to preserve the abstract rights conferred by the repealed Act....It only applies to specific rights F given to an individual upon happening of one or the other of the events specified in statute"—see Lord Atkin's observations in *Hamilton Gell* v. *White*(1). The mere right, existing at the date of repealing statute, to take advantage of provisions of the statute repealed is not a "right accrued" within the meaning of the usual saving clause—see *Abbot* v. *Minister for Lands*(2) and *G. Ogden* G *Industries Pty. Ltd.* v. *Lucas*(3).

From what has been said above, it follows that the view taken by the High Court that the decree in question is a nullity *qua* the Morena court cannot be accepted as correct. The decree in question is neither a 'foreign decree' as contemplated by 'the Code' nor its transfer to the Morena court impermissible under 'the H Code'. By the provisions of 'the Code' the Morena court is re-

(1) [1922] 2 K.B. 422. (2) [1895] A.C. 425.
(3) [1969] 1 All E. Report 121.

quired to proceed with the execution unless there is any valid objection.

We now come to the question whether the execution is barred by s. 48 of 'the Code'. (That section was repealed in 1963). Both the executing court as well as the High Court have taken the view that on the facts of this case, the limitation prescribed in s. 48 of 'the Code' is extended under s. 14(2) of the Limitation Act, 1908. Both those courts have concurrently come to the conclusion that the previous execution proceedings had been prosecuted by the decree-holders with due diligence and with good faith and the same became infructuous in view of the fact that the Morena court had no jurisdiction to proceed with the execution. The finding that the previous execution proceedings were carried on with due diligence and good faith and that the same became infructuous for want of jurisdiction on the part of the Morena court was not challenged before us. But it was urged on behalf of the judgment-debtors that s. 48 prescribed a bar and not a period of limitation and consequently the decree-holders cannot take the benefit of s. 14(2) of the Limitation Act. It is necessary to examine the correctness of this contention.

Section 48 read thus :

"(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 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".

A Art. 183 of the Indian Limitation Act, 1908 read thus :

| "Description of application. | Period of Limitation | Time from which period begins to run. |
|---|---|---|
| B To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction or an order of the Supreme Court. | Twelve years | When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right. Provided that when the judgment, decree or order has been revived, or some part of the principle money secured thereby or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment or the latest of such revivors payments or acknowledgments, as the case may be. |

E At this stage it is also necessary to read Art. 181 of the Limitation Act of 1908. That Art prescribed that an application for which no period of limitation is provided elsewhere in the Sch. to the Limitation Act, 1908 or by s. 48 of the Code, the period of Limitation is three years and that period begins to run when the right to apply accrues. Art. 182 of that Act provided that for the execution of a decree or order of any Civil Court not provided for by article 183 or by s. 48 of 'the Code', the period of limitation is three years or where a certified copy of the decree or order has been registered—six years. The time from which the period was to run is set out in the 3rd column of the Sch.

G The argument advanced on behalf of the judgment-debtors is that s. 48 is a self-contained Code and the period prescribed therein is a bar and not a period of limitation and hence the decree-holders cannot take the benefit of s. 14(2). In support of this argument reliance is placed on sub-s. 2(a) of s. 48 of 'the Code'. That sub-section undoubtedly lends some support to the contention of the judgment-debtors. It indicates as to when the period prescribed under s. 48(1) can be extended. By implication it can be urged that the period prescribed under s. 48(1) of the Code can only be extended under the circumstances mentioned in that clause and not otherwise. But in assessing the correct-

ness of that contention we have to take into consideration cl. (b) of sub-s. (2) of s. 48 of the Code' as well as Arts. 181 and 182 of the Limitation Act, 1908. These provisions clearly go to indicate that the period prescribed under s. 48(1) of 'the Code' is a period of limitation. This conclusion of ours is strengthened by the subsequent history of the legislation. By the Limitation Act 1963, s. 48 of 'the Code' is deleted. Its place has now been taken by Art. 136 of the Limitation Act of 1963.

At one stage, there was considerable conflict of judicial opinion as to whether s. 48 is controlled by the provisions of the Limitation Act 1908. But the High Courts which had earlier taken the view that s. 48 prescribes a bar and not limitation have now revised their opinion. The opinion amongst the High Courts is now unanimous that s. 48 of 'the Code' is controlled by the provisions of the Limitation Act, 1908—see *Kandaswami Pillai* v. *Kamappa Chetty*(1); *Durg* v. *Panchani*(2); *Sitaram* v. *Chunnilalsa*(3); *Amarendra* v. *Manindra*(4); *Krishna Chandra* v. *Paravatamma*(5); and *Ramgopal* v. *Sidram*(6).

We are of the opinion that the ratio of the above decisions correctly lays down the law. That apart, it would not be appropriate to unsettle the settled position in law.

For the reasons mentioned above this appeal is allowed and the order of the High Court is set aside and that of the trial court restored. The executing court is directed to proceed with the execution. The respondents shall pay the costs of the appellants both in this Court as well as in the High Court.

**P. Jaganmohan Reddy, J.** I agree with my learned brother Hedge J., that the Appeal should be allowed. In the case of *Kishendas* v. *Indo Carnatic Bank Ltd.*(7) I had while delivering the Judgment of the Bench expressed certain views which may appear to conflict with the view now taken. In that case the executability of a decree passed by the Madras High Court in 1940 by the City Civil Court Hyderabad on the ground of its being a foreign decree was called in question. The Respondent went into liquidation and a liquidator was appointed by the original side of Madras High Court. The liquidator filed an application under Sec. 191 of the Indian Companies Act for the recovery of a sum of Rs. 1375 from the Appellant who was a subject of H.E.H the Nizam and a resident of Hyderabad on account

(1) A.I.R. 1952 Mad.186 (F.B.). (2) I.L.R. [1930] All. 647.
(3) I.L.R. [1944] Nag.250. (4) A.I.R. 1955 Cal. 269.
(5) A.I.R. 1953 Orissa 13. (6) A.I.R. 1943 Bom. 164.
(7) A.I.R. 1958 A.P. 407.

A of unpaid calls and the Court passed an *ex-parte* decree on 15-8-1940 against the appellant. The liquidator field an execution petition in that Court praying for a transfer of the decree to the City Civil Court Hyderabad which was ordered on 15-3-1951 when the Hyderabad Civil Procedure Code was in force in the Hyderabad State, under which the decree of the Madras High
B Court would be a foreign decree and the only way in which the liquidator could recover the decreetal amount was by filing a suit on that decree. No doubt the Madras High Court could not on that date *i.e.* 15-3-1951 pass an order directing the transfer of the decree as it was to a Court which was not governed by the Indian Civil Procedure Code (hereinafter called the Code)
C nor on that date were there any reciprocal arrangements for executing those decrees in the Hyderbad State. Madras High Court could not therefore transfer a decree passed by it for execution to a Court which did not satisfy the provisions of Sections 43 to 45 on that date. It did not also appear from the facts of that case whether any notice was served on the appellant but following the decision of the majority of the High Courts in this country
D and also relying on the observations of their Lordships of the Privy Council in *Sardar Gurdayal Singh* v. *Raja of Faridkota*(1) that a decree pronounced in *absentum* by a foreign Court the Jurisdiction to which the defendant has not in any way submitted himself is by international law a nullity, I also took the view that the non-executability of the decree is to be determined as on the
E date on which it was passed and that no distinction can conceivably be made between the decree passed by British Indian Courts before the merger or before the Independence when it was a foreign decree and a decree passed by the Courts of a native State before the Independence or merger in both cases the character of the Judgment would be that of a foreign Judgment and if it
F suffers from any want of jurisdiction or otherwise it will continue to be subject to that defect. This Court had also expressed a similar view in *Raj Rajendra Sardar Malaji Marsingh Rao Shitole* v. *Sri Shankar Saran & Ors.*(2) when it held that an *ex-parte* decree passed in 1948 by the Gwalior Court against residents of U.P. who did not appear was not executable
G in Allahabad even though the Gwalior Court had transferred the decree in October 1957 after the Civil Procedure Amendment Act II of 1951 came into force after which the Gwalior Court was a Court under the Code. It was held by a majority that the decree passed by the Gwalior Court did not change its nationality in spite of subsequent constitutional changes or amendments in the Code of Civil Procedure, that if a decree was unenforceable in
H a particular Court at the time it was passed it would not become enforceable and valid simply because of the political changes that

(1) 21 I.A. 171.

(2) [1963]2 S.C.R. 577.

took place unless there is a specific provision to the contrary and that the decree being a nullity outside the Courts of the United States (Madhya Bharat) in the absence of any specific provision it could not be enforced in the United States (Madhya Bharat). Kapur J., speaking for himself, Rajagopala Ayyangar and Mudholker JJ., observed at pages 594—595 thus :—

> "It will not be correct to say that the decree which was a nullity before the Constitution came into force suffered only from the defect of enforcibility by execution. Sec. 13 creates substantive rights and is not merely procedural and therefore defences which were open to the Respondents were not taken away by any Constitutional changes in the absence of a specific provision to the contrary. It is erroneous to say therefore that the decree of the Gwalior Court was unenforceable when passed because of some impediment which the subsequent Constitutional changes had removed; but that decree suffered from a more fundamental defect of being a nullity and the rights and liabilities created under it remained unaffected by subsequent changes".

The contention that the decree of the Gwalior Court could be executed after its transfer on September 14, 1951 when the Civil Procedure Code came into force throughout India by virtue of Act II of 1951 and that therefore the Gwalior Court had the power to transfer the decree which the Allahabad Court had under the law authority to execute was also negatived for the reason that the "Court which made the order of transfer in September 1951 was then not the Court which passed the decree within the meaning of Sec. 39". Das Gupta J., with whom Sarkar J., as he then was, concurred, did not find it necessary to deal with the question of foreign decree which as he said the Allahabad Court rightly considered a nullity. On the second and third question he held that Allahabad had no power to execute the decree under Sec. 38 of the Civil Procedure Code as there was no valid transfer to it from the Court which passed the decree nor did Section 43 of the Civil Procedure Code as it stood applied to the execution of that decree.

Even though the observations in Kishendas's case find support in the above Judgment the ratio of the decision in that case being that the Madras Court on the date of the order could not transfer the decree to the Hyderabad Court, the facts of the case however do not warrant an application of the principles of international law or of the decree being a nullity. The earlier execution proceedings ended unsuccessfully with the decision in *Hansraj Nathu* Ram v. *Lalji Raja & Sons of Bankura*(1). It was decided in that case,

(1) [1963]2 S.C.R. 619.

A that Morena Court not being a Court to which the Code applied the decree could not have been transferred and that Section 38 and 39 of the Code did not afford jurisdiction for such transfer as the Morena Court at the time of transfer was governed by the Madhya Bharat Civil Procedure Code and not by the Code. What is relevant in the present case is that when the decree holder again B applied to the Bankura Court for execution of his decree by the Morena Court after the decision of this Court in *Hansraj's* case, both the Court that passed the decree and the Court to which it is transferred for execuption were Courts under the Code, as such no question of the Bankura decree being a foreign decree or it being a nullity could arise. The Morena Court on the date when C the order of transfer of the decree was passed by the Bankura Court is not a Court governed by the Gwalior law or Madhya Bharat law as such the impediment to executability of the Bankura decree no longer exists nor could it be considered in the light of Section 20(c) of the Amendment Act II of 1951 as having saved any right or privileges under the repealed procedure code of D Gwalior or Madhya Bharat. Whatever may be the views expressed in the several decisions a view which I was also inclined to take in the decision referred to, though on the facts of that case it may not have been necessary, on a further a fuller consideration I agree with great respect with the views of my learned brother Hegde, J., that no question of a vested right or a privilege arises to entitle the Respondent to challenge the execution pro- E ceedings in Morena Court. The decree granted by Bankura Court was executable by the Courts governed by the same Code by the Court which passed it or by the Court to which it is transferred. Once the Code is made applicable to the whole of India by the Amendment Act II of 1951 the decree is no longer a foreign decree *qua* the Morena Court which is a Court F under the Code to which the Bankura Court could transfer the decree for execution. No doubt in *Shitole's* case it was observed that Section 13 of the Code creates substantive rights and not merely procedural and therefore defence that were open to the Respondents were not taken away by any Constitutional changes but the ratio of the decision was that the Gwalior Court not being G a Court that passed the decree after the coming into force of Act II of 1951 the Allahabad Court could not execute it. That impediment does not exist now in that the Bankura Court has transferred the decree to a Court under the Code. The plea that Section 48 Civil Procedure Code presents a bar of limitation is also not tenable. In the result I agree that the appeal should be allowed as directed by my learned brother.

H

G.C. *Appeal allowed.*