Hari Singh v. *Director of Panchayats, Punjab,* (7) wherein it was observed:—

> "* * * The order for the suspension of the petitioner was passed during the pendency of the enquiry which had been ordered by the Director of Panchayats under section 102(2) of the Act by means of his letter dated November 30, 1971. It was not necessary for the Deputy Commissioner to issue notice to the petitioner before passing the order of suspension to show cause against the proposed order."

(11) It is, therefore, plain that the view expressed in both *Shadipur Co-operative Credit Society and Angrej Singh's cases* (supra) is not sustainable on a close analysis of the relevant provisions, on an examination on principle, and on the weight of authority within this Court. We are, therefore, constrained to overrule both the judgments as not laying down the law correctly.

(12) The only contention raised on behalf of the petitioners having been negatived, there is no merit in this writ petition which is consequently dismissed. However, we would leave the parties to bear their own costs.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., S. C. Mital, D. S. Tewatia, K. S. Tiwana and S. P. Goyal, JJ.

RAM SARUP and another, *Appellants.*

versus

SHER SINGH and others,—*Respondents.*

Execution Second Appeal No. 1306 *of* 1971

September 25, 1978.

Code of Civil Procedure (*V of* 1908)—*Section* 48—*Indian Limitation Act* (*IX of* 1908)—*First Schedule, Article* 182—*Section* 48 *of the Code—Whether controlled by Article* 182.

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(7) 1974 P.L.R. 789.

Held, that section 48 of the Code of Civil Procedure 1908 was not a self contained code. It in fact merely prescribed a period of limitation and was not an insuperable or a final bar. The subsequent history of the legislation is again a pointer to the same effect. Section 48 has now been repealed by the provisions of Section 28 of the Indian Limitation Act 1963 and partially its place has been taken by Article 136 of the Schedule to the Limitation Act, 1963. This change, therefore, must be construed as declaratory of the law and once it is held that section 48 of the Code prescribed a period of limitation, it would well follow that the same would be controlled by the provisions of the Limitation Act, 1908. On principle also the aforesaid view commends itself for acceptance. If a party has a right to get the decree amended and has been successfully able to do so then he cannot be denied the fruits of his success by the mere fact that more than twelve years have passed from the date of the original decree. (Paras 6 and 7).

Amar Nath and others v. *Mul Raj*, *A.I.R.* 1975 *Pb. & Hy.* 246 OVERRULED.

Dulhin v. *Harihar Gir*, A.I.R. 1939 Pat. 607.

Faqir Chand v. *Kundan Singh*, A.I.R. 1932 All. 351.

Ganesh Das v. *Vishan Das*, A.I.R. 1935 Lah. 292.

Ganeshmal Pasmal v. *Nandlal Tulsiram*, *A.I.R.* 1954 *Bom.* 104.

Krishna Pillai Narayana Pillai v. *Neelakanta Pillai Velayudhan Pillai*, A.I.R. 1957 Trav-Cochin 293.

Ramachandra Rao v. *Parasuramayya*, A.I.R. 1940 Mad. 127.

Shyam Sunder Prasad v. *Ramdas Singh*, A.I.R. 1946 Pat. 392.

HELD TO BE NO LONGER GOOD LAW.

Execution Second Appeal from the order of Shri P. L. Sanghi, H.C.S. Senior Sub-Judge with Enhanced Appellate Powers Rohtak, dated 17th May, 1971 reversing that of Shri S. Tarlochan Singh Sub-Judge 1st Class Sonepat, dated 25th January, 1968, accepting the appeal and setting aside the decree and judgment of the trial Court and leaving the parties to bear their own costs.

S. C. Kapur, Advocate, *for the appellants.*

S. P. Jain, Advocate, *for the respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.—(1) Whether section 48 of the Code of Civil Procedure, 1908 (now repealed with effect from the 1st of January, 1964, by section 28 of the Indian Limitation Act, 1963) was controlled by article 182 of the First Schedule of the Indian Limitation Act, 1908, is the significant question which falls for determination by this Full Bench.

2. This reference to the larger Bench has been necessitated by a forceful challenge to the correctness of the judgment reported as *Amar Nath and others* v. *Mul Raj* (1), wherein it has been held that section 48 aforesaid laid down a bar which was final and which could not be extended by the amendment of the decree, whether that amendment was made before or after the expiry of the said period of twelve years, and that the date of the decree within the meaning of section 48 of the Code is always the date of the original decree and not the date of the amended decree.

3. The case in hand is a glaring example of the occasional tardiness of judicial procedure. In the suit originally filed by the decreeholder for partition of the joint property, the preliminary decree was passed by the trial Court more than four decades earlier on the 27th of March, 1938. For the purposes of this reference, it is unnecessary to follow in detail the chequered history of the case thereafter. It suffices to mention that in the tortuous course of proceedings that ensued, the decree aforesaid was allowed to be amended on the material date of the 16th of July, 1966. The crucial question that now arises is whether the terminus for the execution of the decree is the date of its amendment (16th of July, 1966), as provided for in clauses (4) in column 3 of the article 182 of the First Schedule of the Limitation Act 1908 or the date of the original decree, namely, the 27th of March, 1938.

(4) As the controversy must inevitably revolve around the provisions of the now repealed section 48 and article 182 of the First Schedule of the Indian Limitation Act, 1908, these may first be set down for facility of reference:—

> "48(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 twelve 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

(1) I.L.R. 1975 Pb. & Hry. 246.

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; and

Art. 182—

For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908.	Three years, or where a certified copy of the decree or order has been registered, six years.	1. The date of the decree or order; or 2. (where there has been an appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal, or 3. (where there has been a review of judgment) the date of the decision passed on the review; or 4. (where the decree has been amended) the date of amendment; or 5. * * * 6. * * * 7 * * * ".

5. On the vexed question whether section 48 of the Code of Civil Procedure, 1908, laid down an absolute bar of twelve years for the execution of a decree or whether it was controlled or overridden by the provisions of the Limitation Act, there has been a wide ranging conflict of judicial opinion in the various High Courts for nearly half a century. I do not, however, propose to further contribute to the volume of this judicial literature because it appears to me that the matter has now been finally set at rest by the binding precedent of the final Court. It suffices to mention that the learned Judge in *Amar Nath's case* (1 supra) rested their view on a string of precedent including *Faqir Chand* v. *Kundan Singh* (2), *Ganesh Das* v. *Vishan Das* (3), *Mt. Dulhin* v. *Harihar Gir*, (4), *Ramachandra Rao* v. *Parasuramayya* (5), *Shyam Sunder Prasad* v. *Ramdas Singh* (6), *Ganeshmal Pasmal* v. *Nandlal Tulsiram* (7), *and Krishna Pillai Narayana Pillai* v. *Neelakanta Pillai Velayudhan Pillai* (8). However, it now appears manifest that the aforesaid view and the authorities mentioned above can no longer be held as good law in view of the categoric observations made by their Lordships in *Lalji Raja and Sons* v. *Firm Hansraj Nathuram* (9).

6. Since I take the view that the matter is concluded by a binding precedent it is wasteful to launch on an examination of the issue on principle. It suffices to mention that the argument that section 48 of the Code of Civil Procedure was a self-contained Code in which the period prescribed laid down was an absolute bar has been negatived in no uncertain terms by their Lordships and it has been consequently held that section 48 in effect also merely prescribed a period of limitation and not an insuperable or a final bar. The subsequent history of the legislation is again a pointer to the same effect. This is manifest in the fact that section 48, as already noticed, has now been repealed by the provisions of section 28 of the Indian Limitation Act, 1963. Particularly its place has now been taken by article 136 of the Schedule to the Limitation Act, 1963.

(2) A.I.R. 1932 All. 351.
(3) A.I.R. 1935 Lah. 292.
(4) A.I.R. 1939 Patna 507.
(5) A.I.R. 1940 Mad. 127.
(6) A.I.R. 1946 Pat. 392.
(7) A.I.R. 1956 Bom. 104.
(8) A.I.R. 1957 Trav-Cochin 293.
(9) A.I.R. 1971 S.C. 974.

This change, therefore, must be construed as declaratory of the law and once it is held that section 48 of the Code also prescribed a period of limitation, it would well follow that the same would be controlled by the provisions of the Limitation Act, 1908.

7. On principle also the aforesaid view commends itself for acceptance. If a party has a right to get the decree amended and has been successfully able to do so then he cannot be denied the fruits of his success by the mere fact that more than twelve years have passed from the date of the original decree and the same on that ground should become unexecutable. The present case is an apt example of such a situation. The decreeholder secured his original decree on the 27th of March, 1938, and in a long drawn out legal battle, amendment of the decree was secured nearly 28 years thereafter on the 16th of July, 1966. To deny him the execution of the decree merely because the tardy Court processes had been stretched beyond a period of twelve years would in my opinion be uncalled for unless the statute in mandatory terms were to lay down otherwise.

8. As I said earlier, apart from principle, it appears to me that despite the earlier conflict the controversy now fortunately seems to have been set at rest by the following categoric observations of their Lordships *in Lalji Raja's case* (7 supra):—

> "25. The argument advanced on behalf of the judgment-debtors is that section 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 section 14(2). In support of this argument reliance is placed on sub-section 2(a) of section 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 section 48(1) can be extended. By implication it can be urged that the period prescribed under section 48(1) of the Code can only be extended under the circumstances mentioned in that clause and not otherwise. But in assessing the correctness of that contention we have to take into consideration clause (b) of sub-section (2) of section 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 section 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, Section 48 of the Code is deleted. Its place has now ben taken by Article 136 of the Limitation Act of 1963.

26. At one stage, there was considerable conflict of judicial opinion as to whether section 48 is controlled by the provisions of the Limitation Act, 1908. But the High Courts which had earlier taken the view that section 48 prescribes a bar and not limitation have now revised their opinion. The opinion amongst the High Courts is now unanimous that section 48 of the Code is controlled by the provisions of the Limitation Act, 1908 — see *Kandaswami Pillai* v. *Kannappa Chetty* (10), *Durg* v. *Pancham* (11), *Sitaram* v. *Chunnilalsa* (12), *Amarendra* v. *Manindra* (13), *Krishna Chandra* v. *Parayatamma* (14), and *Ramgopal* v. *Sidram* (15).

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

In the light of the aforesaid enunciation, I would return an answer in the affirmative to the question formulated at the very outset. As a necessary consequence it has to be held that the observations in *Amar Nath's case* (supra) on this point are no longer good law and are hereby overruled.

9. The case shall now go back to the learned Single Judge for determination in accordance with the answer to the refrrred question.

S. C. Mital, J.—I agree.

D. S. Tewatia, J.

K. S. Tewana, J.—I agree.

S. P. Goyal, J.

N.K.S.

(10) A.I.R. 1952 Mad. 186 (FB).
(11) I.L.R. (1939) All. 647.
(12) A.I.R. 1944 Nag. 155.
(13) A.I.R. 1955 Cal. 269.
(14) A.I.R. 1953 Orissa 13.
(15) A.I.R. 1943 Bom. 164.

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