

*Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Ghose.*  
**JHABAR MAHOMED (PLAINTIFF) v. MODAN SONAHAR (DEFENDANT.)\***

1885

June 28.

*Civil Procedure Code (Act XIV of 1882), ss. 257a, 258—Adjustment of  
 decrees out of Court—Instalment bond—Consideration.*

The provisions of s. 257a of Act XIV of 1882 are intended to prevent binding agreements between judgment-debtors and judgment-creditors for extending the time for enforcing decrees by execution, without consideration and without the sanction of the Court; and are not intended to prevent the parties from entering into a fresh contract for the payment of the judgment debt by instalments or otherwise.

THIS was a reference under s. 617 of the Civil Procedure Code made by the Judge of the Court of Small Causes at Dinagapore.

It appeared from the proceedings that the plaintiff had some time in 1881 obtained a decree against the defendant, in execution of which the latter was arrested and brought up before the Court; on the 9th February 1882, a compromise was, however, effected between the parties out of Court, by which it was arranged that the defendant judgment-debtor should execute an instalment bond to the effect that, should he make default in payment of any instalment payable under the bond, the whole amount of the bond should become payable with interest. This instalment bond was duly executed, but the fact of the decree having been satisfied was not certified to the Court. The defendant, however, failed to pay an instalment at the due date, and the plaintiff, therefore, brought this present suit to recover the sum due under the bond. The defendant did not appear; the Judge of the Small Cause Court in deciding the case stated that the questions for his consideration were whether the plaintiff could recover under the bond, satisfaction of the judgment debt not having been certified to the Court; and whether the failure to pay a judgment debt was a valid consideration for the bond. On these points, after considering the following cases—*Pandurang Ramchandra Chowghule v. Narayan* (1); *Ganesh Shivram v. Abdullabeg* (2); *Dawlatasing v. Pandu* (3);

\* Small Cause Court Reference No. 24 of 1885 made by Baboo Jagabandhu Gangooly, Judge of the Court of Small Causes, Dinagapore, dated the 24th of April 1885.

(1) I. L. R., 8 Bom., 300.

(2) I. L. R., 8 Bom., 538.

(3) I. L. R., 9 Bom., 176.

1885

JHABAR  
MAHOMED  
v.  
MODAN  
SONAHAR.

and *Poromanand Khasnabish v. Khepoo Paramanick* (1)—he came to the following conclusions: (1) that an agreement made under s. 257*a* of the Civil Procedure Code without the sanction of the Court, or an adjustment uncertified to the Court under s. 258, was invalid; (2), that there was nothing in s. 257*a* or 258 which would prevent plaintiff from bringing a suit on such an agreement or adjustment; (3), that non-satisfaction of a judgment debt for which a bond had been executed was a valid consideration for such bond; he therefore gave the plaintiff a decree contingent on the opinion of the High Court on the following questions; (1), whether s. 257*a* of the Civil Procedure Code would bar the institution of a separate suit on the instalment bond, the bond not having been executed with the sanction of the Court; and (2), whether non-satisfaction of the judgment debt, for which the said bond had been executed, constituted a valid consideration for the bond?

No one appeared on the reference for either party.

The opinion of the High Court (GARTH, C.J., and GHOSE, J.) was as follows:—

In our opinion the instalment bond, upon which this suit is brought, is not “an agreement to give time for the satisfaction of a judgment debt,” within the meaning of s. 257*a* of the Code.

We agree with the Allahabad High Court, that the provisions of that section are only intended to prevent any binding agreements between judgment-debtors and judgment-creditors for extending the time for *enforcing decrees by execution* without consideration, and without the sanction of the Court.

Those provisions are not intended to prevent the parties from entering into a fresh contract for the payment of the judgment debt by instalments or in any other way; and any such fresh contract of course could only be enforced by a fresh suit.

We cannot agree with the view which the Bombay High Court has taken of this question, and we think that the law as laid down by the Full Bench of the Calcutta High Court, *viz.*, *Gumani Dasi v. Prankishori Dasi* (2), virtually remains unaltered.

(1) I. L. R., 10 Cal., 354.

(2) 5 B. L. R., 223.