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much doubt whether in that case I should have come to the same conclusion. It might possibly be said that this was a suit to prohibit an act or breach mentioned in cl. (*cc*) of s. 93 of the Rent Act. The suit, however, is one to obtain a mandatory injunction not to prohibit a person from planting trees, but to uproot trees which have already been planted. Without expressing any view on the merits, I would remand the case to the first Court under s. 562 of the Code.

The defendant must bear the costs of the litigation hitherto, for he has prevented the plaintiff from having had his suit tried, and has put him to the cost of going to the Judge and coming to this Court.

OLDFIELD, J.—I am entirely of the same opinion.

Case remanded.

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September 13.

Before Sir John Edge, Kt., Chief Justice.

AMIR HASAN (DECREE-HOLDER) *v.* AHMAD ALI (JUDGMENT-DEBTOR).*

Civil Procedure Code, ss. 545, 546, 647—*Execution of decree—Review of judgment—Stay of execution pending application for review—Jurisdiction—Civil Procedure Code, s.* 623—"*Any other sufficient reason.*"

S. 647 of the Civil Procedure Code provides for the procedure to be followed in miscellaneous matters other than suits and appeals, and its provisions, read with ss. 545 and 546, give no power to the Court or a Judge, after the passing of a final unappealable decree, and before the granting of an application for review of judgment, to order a stay of execution of the decree. No such power exists under the Code.

S. 623 gives a more extensive right of review than existed in England, where a review could only be obtained by showing that there was apparent on the record error in law, or that new and relevant matter had been discovered after the judgment which could not possibly have been used when the judgment was given, or that judgment was obtained by fraud. The words "or for any other sufficient reason" mean that the reason must be one sufficient to the Court or Judge to whom the application for review is made, and they cannot be held to be limited to the discovery of new and important matter or evidence, or the occurring of a mistake or error apparent on the record. Whether or not there is in such cases "any other sufficient reason" may depend on a question of law, or a question of fact, or a mixed question of law and fact. *Reasut Hosein* v. *Hadjee Abdoollah* (1) referred to.

In cases where a stay of execution or an injunction is granted on an *ex-parte* application, liberty to apply to the Judge to vary or set aside his order must be implied, if not expressed. *Fritz* v. *Hobson* (2) referred to.

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* Application for review of an order of Sir John Edge, Kt., Chief Justice, dated the 28th August, 1886.

(1) L. R., 3 Ind. Ap. 221. (2) L. R., 14 Ch. Div. 542.

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On the 29th July, 1886, an application was made by a party against whom the High Court, on second appeal, had passed a decree dated the 18th March, 1886, for review of judgment. On the 28th August, the applicant made a further application that execution of the decree might be stayed pending the determination of the application for review, and an order was passed *ex-parte* granting this application. Subsequently, the opposite party applied under s. 623 of the Civil Procedure Code for a review of the *ex-parte* order on the grounds (i) that the Court had no jurisdiction to make it, and (ii) that the application of the 29th July was beyond time, and therefore there could be no review of judgment, and no order for stay of execution pending such review.

Held that the Court had power, under s. 623 of the Code, to review the *ex-parte* order of the 28th August, and that such order had been made without jurisdiction, and ought to be reviewed.

Held that the decree of the 18th March being final and unappealable, and no application for review of judgment having been granted within the meaning of s. 630 of the Code, the application for stay of execution did not fall within s. 545 or s. 546, nor did s. 647 apply to it, nor any other provision of the Code.

Held that, having regard to the circumstances that the order of the 28th August was made without jurisdiction, and upon an *ex-parte* application of which the opposite party had no notice, and interfered perhaps indefinitely with his right to obtain the money in Court under the final and unappealable decree in his favour, as to which no application for review had been granted, and that the application for review of judgment was made after the statutory period of ninety days had expired, and contained no explanation of the delay, sufficient reason for reviewing the order of the 28th August had been shown.

The facts of this case are sufficiently stated in the judgment of the Court.

Pandit *Sundar Lal*, for the applicant.

Mr. *Amiruddin*, for the opposite party.

EDGE, C. J.—This is an application to me, under s. 623 of the Civil Procedure Code, for a review of an order made by me on the 28th of August last, staying the execution of a decree in the Court of the Subordinate Judge, Allahabad, in the case of *Ahmad Ali* v. *Amir Hasan Khan*.

It appears that the suit, out of which the application on which I made the order to stay arose, was one brought by Ahmad Ali against Amir Hasan Khan for malicious prosecution. The action came on for trial before Mr. Abinash Chander Banerji, Subordinate Judge, who, on the 30th June, 1884, decreed Rs. 500 against the defendant with proportionate costs and interest at 6 per cent. per annum. Against this decree each side appealed to

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the Judge of Allahabad, with the result that on the 6th May, 1885, the defendant's appeal was dismissed with costs, and the Judge, on the plaintiff's appeal, made a decree in his favour for Rs. 2,835, with costs proportionate to that sum in both Courts. By a judgment of this Court in appeal the decrees of the Judge of Allahabad and the decree of the Subordinate Judge were set aside, and the appeal of Amir Hasan Khan to this Court decreed with costs. It appears that Amir Hasan Khan, on the 22nd August, 1884, to save execution being taken out against him on the decree of the Subordinate Judge, deposited in Court Rs. 711-3-6 (being the decretal amount with costs), praying that that amount should be kept in deposit until his appeal should be decided. Notwithstanding this prayer, that amount was paid out to Ahmad Ali. It also appears from the petition of Amir Hasan Khan in this application, that after the decree of the Judge of Allahabad on appeal Ahmad Ali took out execution for the sum of Rs. 2,883-3, in consequence of which Amir Hasan Khan deposited the latter amount in Court on the 11th July, 1885. On the 29th July, 1886, Ahmad Ali, applied to my brother Tyrrell for an order for a review of the judgment of this Court of the 18th March, 1886, and my brother Tyrrell ordered that the petition should be laid before the Bench concerned, with the office report. This application for a review of the judgment of the 18th March last has not yet been granted.

On the 23th August last Mr. *Amiruddin*, on behalf of Mr. *Reid*, counsel for Ahmad Ali, applied *ex-parte* to me, sitting as vacation Judge, for the order in question on this application. The petition on which Mr. *Amiruddin* applied was as follows:—

"Whereas the above-mentioned petitioner (that is, Ahmad Ali) has filed an application for review of the judgment of the Honourable Court in the above suit, and an order has been passed referring the application to the Bench which delivered the judgment, petitioner prays that execution of the decree now pending in the Court of the Subordinate Judge, Allahabad, be stayed pending the disposal of the application, on the ground that the decree-holder's circumstances are such that petitioner apprehends that he may be unable to recover the amount payable under the decree of the

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Honourable Court from the decree-holder, in the event of the application for review of judgment being granted."

The object of this application was to prevent Amir Hasan Khan obtaining payment out of the Court to him of the Rs. 2,883-3, which he had deposited in Court under the circumstances above mentioned.

I assumed, without asking any question on the point, that the application for review of the judgment of the 18th March last had been made within time. It appears that had I asked the question, Mr. *Aminuddin* could not have given me any information on the point. I merely mention this incidentally, as my judgment does not depend on whether or not the application for review of the judgment of the 18th March was in fact made within time. On the 3rd instant Mr. *Sundar Lal*, on behalf of Amir Hasan Khan, applied to me to review my *ex-parte* order of the 28th August, and on the 8th of this month Mr. *Aminuddin* appeared for Ahmad Ali to show cause why the application for a review of my order should not be granted, and my order reviewed and set aside. He contended that if I had not jurisdiction under s. 545 or 546 of the Civil Procedure Code to make the order in question—which at first he did not admit—I had in any event jurisdiction to make the order under s. 647 of the same Code; and in support of his contention he cited the case of *Tara Chand Ghose* v. *Anund Chander Chowdry* (1). He further argued that I had no power to review my order, contending that under s. 623 of the Civil Procedure Code, an applicant was not entitled to a review of an order unless he showed that he desired to obtain such review from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge, or could not have been produced by him at the time the order was made, or on account of some mistake or error apparent on the face of the record. In this argument he p no construction upon, and offered no explanation of, the words "or for any other sufficient reason," which are found in that section, and which cannot be held to be limited to the discovery of new or important matter or evidence, or the occurring of a mistake or error apparent on the record.

On the other side Mr. *Sundar Lal* argued that I had power to review my order; that my order was made without jurisdiction;

(1) 10 W. R. 460.

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that ss. 545, 546, and 647 of the Civil Procedure Code did not, nor did any of them, apply; and in any event that as the application for review of the judgment of the 18th March last was not made until the 29th July, that application was out of time, and consequently there could be no review and no order to stay pending such review; and also that I ought to have been informed that that application for review was out of time. Mr. *Amiruddin* stated that when he made the application to me of the 28th August, he had no information as to the date of the judgment of the Court of the 18th March, and objected that it was for the Bench to which my brother Tyrrell referred the application for review of the judgment of the 18th March, and not for me, to decide whether the application for review of the judgment was not within time, and stated that he was not sufficiently instructed as to the cause of the delay to enable him to argue that point before me. I took time to consider my judgment.

I am of opinion that this is a case in which I have power to review, and in which I ought to review, my order of the 28th August last. In my opinion s. 623 of the Civil Procedure Code gives a much more extended right of review than that contended for by Mr. *Amiruddin*. If his contention were correct, parties here would not have as extended a right to claim a review as parties to actions in England had. In England an action to review a judgment could be maintained by showing that there was apparent on the record error in law, or that new and relevant matter had been discovered after the judgment, which could not possibly have been used when the judgment was made, or that judgment was obtained by fraud. Effect must be given to the words "or for any other sufficient reason" in s. 623, and by those words I understand that the reason must be one sufficient to the Court or the Judge before whom application for review is made, subject probably to an appeal. Whether or not there is in such cases "any other sufficient reason" may, in my opinion, depend on a question of law, or upon a question of fact, or upon a mixed question of law and fact. If it was intended to limit the right to a review to cases in which such a right extended in England, it would have been easy for those who framed the Civil Procedure Code (Act XIV of 1882), instead of using the words "or for any other sufficient reason,"

to have inserted some such words as "or on the ground of the judgment or order having been obtained by fraud."

In the case of *Reasut Hosein* v. *Hadjee Abdoollah* in the Privy Council (1), an appeal from the High Court of Bengal, their Lordships said, when discussing the somewhat similar provisions of Act VIII of 1859, that they were not prepared to say that there was an absolute want of jurisdiction (to review) whenever the parties failed to show that there was either positive error in law or new evidence to be brought forward which could not have been brought forward on the first hearing. Whether or not there is any sufficient reason for this application to review, I shall discuss presently, after I have dealt with the question of my jurisdiction or want of jurisdiction to make the order of the 28th of August.

The judgment in appeal of this Court of the 18th March last was final and not appealable, and at the date of my order and at present no application for a review of that judgment had or has been granted within the meaning of s. 630 of the Civil Procedure Code. This was consequently not a case of an application for a stay of execution of an appealable decree before the expiry of the time allowed for appealing therefrom under s. 545 of the Civil Procedure Code. Much less is it a case within s. 546. There is no appeal pending in this case. Now, does s. 647 of the Civil Procedure Code apply? I think it does not. I think that section was probably intended to apply to such matters as applications for the appointment of guardian, and for the custody of infants, and to proceedings under the Divorce Act, and to matters of procedure in the Revenue Courts of these Provinces not specially provided for, and to the recording of evidence in probate cases, and many other similar matters other than suits and appeals. I think that if it had been intended that the Court or a Judge should have power, after a final unappealable decree and before the granting of an application to review, to order a stay, that power would have been given by the introduction into the Civil Procedure Code of distinct, specific, and appropriate words, such as we find in ss. 545 and 546, which deal with the power to stay execution in appealable decrees. The absence of any such words in the Civil Procedure Code, and particularly in Chapter XLVII;

(1) L. R., 3 Ind. Ap. 221.

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which deals with the subject of the review of judgments and orders, leads me clearly to the conclusion that it was not intended that the Court or a Judge should have the power which I assumed to have when I made the order in question.

I consequently come to the conclusion that I had no jurisdiction to make that order. Is there, then, sufficient reason for Amir Hasan Khan desiring to obtain a review of my order? I think there is. That order I hold was made by me without jurisdiction. It was made on an *ex-parte* application, of which Amir Hasan Khan had no notice, and on which consequently he had no opportunity of being heard. That order interfered, possibly indefinitely, with his clear right to obtain the money in Court as the result of the final and unappealable decree of the Court in his favour, as to which no application for review had been granted. It is an order which I think I may say I would not have made (even if I had jurisdiction to make it) had I been aware that the decree of this Court was made on the 18th March last, and no application for a reivew made or filed until the 29th of July, and that in the petition for review, which was placed before my brother Tyrrell, no explanation of the delay was attempted to be given, and no grounds stated, showing any reason for suggesting that the statutory period of ninety days had not expired. Had Amir Hasan Khan been heard on the application for my order, all these matters would have been brought to my attention and fully discussed. For myself, until set right—if I be wrong—I am also prepared to hold that in cases where a stay of execution or an injunction is granted on an *ex-parte* application, liberty to apply to the Judge to vary or set aside his order must be implied, if not expressed, otherwise hardship, expense, and delay might result to the opposite side from the granting of an *ex-parte* application, for the granting of which, in the first instance, a *primâ facie* case was made out. I find that Mr. Justice Fry in *Fritz* v. *Hobson* (1) held that in every order of the Court in England, liberty to apply to the Court is implied without its being expressly reserved. Holding the opinions above expressed, I allow this application, and I review and set aside my order of the 23th August last with costs (2).

(1) L. R., 14 Ch. Div. 542.

(2) In reference to the construction placed by Edge, C. J., upon s. 647 of the Civil Procedure Code, see *Naigappa* v. *Gangawa*, I. L. R., 10 Bom. 433.