1898
December 16.

REVISIONAL CIVIL.

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Knox.

ABDUL SADIQ AND OTHERS (DEFENDANTS) *v.* ABDUL AZIZ (PLAINTIFF).*

Civil Procedure Code, section 622—*Revision—Discretion of Court in exercising revisional powers—Civil Procedure Code, sections* 623 *et seqq—Review of judgment.*

A Munsif granted a review of judgment on a ground which was no ground in law for granting a review, but his order in review had the effect of making the decree in the suit a right decree instead of a wrong decree. The District Judge allowed an appeal from that order on grounds which, having regard to section 629 of the Code of Civil Procedure, were not open to him. On an application for revision of the Judge's appellate order it was *held* that the proper course was to set aside only the District Judge's order and to leave standing the order of the Munsif granting a review of judgment, which order, though wrong in principle, was, it appeared, right in its results.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Baldeo Ram Dave* for the applicants.

Pandit *Moti Lal Nehru* for the opposite party.

STRACHEY, C. J.—The suit out of which this application has arisen was originally heard by a Munsif and one of the pleas taken by the defendants was that the suit was barred by limitation. The Munsif, holding that a period of twelve years' limitation applied; overruled this plea, and on the merits decreed the suit. The defendants subsequently applied to the Munsif for review of judgment on the ground that there had not been brought to the notice of the Court a certain decision of the Full Bench of this Court, according to which a period of six years', and not twelve years', limitation was applicable to the suit. This decision of the Full Bench had been pronounced previously to the passing of the original decree, but, either because it had not then been published, or for some other reason, had not been brought to the notice of the Munsif. The Munsif considered the Full Bench ruling, thought it applicable, reviewed his decree, and dismissed the suit as barred by limitation.

* Civil Revision, No. 37 of 1898.

In giving his reasons for granting the review the Munsif refers to that portion of section 623 of the Code of Civil Procedure which speaks of the discovery of new and important matter or evidence, and to the question whether, at the original hearing, the applicant or his pleader knew, or had means of knowing, of the existence of the Full Bench ruling. That portion of section 623 can have no application. The words "new and important matter or evidence, which after the exercise of due diligence was not within his knowledge, or could not be produced by him at the time when the decree was passed," have never been held to apply to the non-production of a ruling in force when the decree was passed. They refer to evidence or other matter in the nature of evidence, and not to legal authority in existence, but not brought to the Court's notice. Apparently the Munsif himself had misgivings on this point, for he did not rest his decision on this ground alone, but also expressly referred to the other words in section 623 of the Code, which allow a review of judgment "for any other sufficient reason." Although he does refer to the earlier part of the section about the discovery of new matter, still the real meaning and substance of his judgment on the review is, in our opinion, that by reason of his having been unaware of the Full Bench ruling, his original decision was based on a mistake in law; whether that was a proper ground for review of judgment we need not consider.

The plaintiff appealed to the District Judge, not from the decree dismissing the suit, but from the order granting the review. The Judge had no power to entertain an appeal from that order except under section 629 of the Code of Civil Procedure. The only part of section 629 which, it has been suggested, would have been applicable in this case is cl. (*b*), namely, if the admission of the application for review is in contravention of the provisions of section 626. The only part of section 626 of which any contravention was suggested was cl. (*b*). If section 626, cl. (*b*), had no application, section 629, cl. (*b*), also could not apply. In our opinion section 626, cl. (*b*), had no application to the appeal

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before the Judge. What it says is, in effect, that an application for review on the ground of discovery of new matter or evidence must not be granted without strict proof of the allegation that the applicant was ignorant of the matter or could not have adduced the evidence when the decree or order was passed. But that could no more apply to the discovery of a Full Bench ruling, than could the corresponding words of section 623 about the discovery of new and important matter or evidence; and hence it was impossible to say that there was any contravention of section 626, cl. (*b*), or that the Munsif ought to have put the applicant to strict proof of his allegation that, when the decree was passed, he and his pleader were ignorant of the ruling. Nor does the District Judge express any such view. He does not in his judgment make any reference to section 626, cl. (*b*), or discuss the question whether there has been any contravention of it. The only question which he discusses is whether the Munsif was right in holding that the discovery of a High Court ruling was a sufficient ground for review: he comes to the conclusion that the Munsif was wrong in so holding, and he accordingly sets aside the order as passed on insufficient grounds. Whether the Judge's view was correct, is a question upon which we need express no opinion. It is sufficient to say that he overlooked the provisions of section 629, and that he had no power to set aside the order on the ground that he thought it unreasonable, or on any ground not mentioned in the section.

Now, a Judge who, in contravention of section 629, entertains an appeal from an order admitting a review undoubtedly acts with material irregularity within the meaning of section 622 of the Code. But orders for revision under section 622 are discretionary, and Mr. *Moti Lal* contends that here we ought not to interfere. He contends that, although the Judge may have acted irregularly in setting aside the Munsif's order, still he was right in his objections to that order, and in holding that if a review might be granted whenever a ruling was overlooked or afterwards discovered, applications for review would be endless. Mr. *Moti*

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Lal therefore argued that the result arrived at by the learned Judge was substantially right and ought not to be disturbed in revision. But in deciding whether or not we should interfere with the Judge's irregular order, we must look a little further into the matter and consider what would be the consequences of interfering or not interfering. If we refuse to interfere, the result is that the suit stands decreed. If we interfere, the result is that the suit stands dismissed. The reason why the Munsif ultimately dismissed the suit was that, according to the Full Bench ruling, it was barred by limitation. The Judge does not hold that the Munsif was wrong in this view. It has not been disputed that, assuming the Full Bench ruling to be applicable, the suit was barred. Although the question whether the Full Bench ruling was applicable has not been argued before us, it seems at least probable that it did apply. The Judge appears to assume that it did, but says that it is to the same effect as earlier rulings, and that its discovery was no ground for review. In one of the two memoranda of appeal to the Judge from the two connected orders of the Munsif there was no plea that the ruling was inapplicable. The result of our refusing to interfere with the Judge's order would therefore be that a suit which the Munsif dismissed is barred by limitation, which has not been shown to be within time, and which was probably beyond time, would stand decreed. We allow this application for revision, set aside the order of the Judge, and restore that of the Munsif with costs. *Application allowed.*

APPELLATE CIVIL.

1898
December 21.

Before Mr. Justice Blair and Mr. Justice Aikman.

JIT MAL AND OTHERS (DECREE-HOLDERS) *v.* JWALA PRASAD (JUDGMENT-DEBTOR).*

Execution of decree—Limitation—Civil Procedure Code, section 230*—Warrant of arrest—Warrant not exhausted if on one occasion the serving officer is unable to find the judgment-debtor.*

The holders of a decree for money, dated the 2nd of December, 1885, after various infructuous applications for execution, applied, on the 4th of August,

*First Appeal No. 85 of 1898, from an order of Maulvi Ahmad Ali Khan, Subordinate Judge of Aligarh, dated the 15th January 1898.