

the five judgment-debtors who took advantage of the Act. It appears to us that the respondents cannot treat the provisions of this section as a nullity and seek to enforce a judgment debt which has by the provisions of the law been *pro tanto* duly discharged. If the appellant had to satisfy the whole of the debt, we are of opinion he could not enforce any right of contribution against his co-judgment-debtors, as they could rely on the terms of the Act and plead in answer to a suit for contribution that their share of the judgment debt must be deemed for all purposes to have been discharged. This result would be owing, not to any fault on the part of the appellant, but to the laches of the respondents in not having put forward their claim before the Special Judge within the time allowed by law. We think, therefore, that the order of the Court below disallowing the appellant's objection was wrong. We allow the appeal, and, setting aside the order of the Court below, remand the case to that Court with directions to proceed with the execution on the basis that the appellant is not liable for the whole of the judgment-debt but only for his proportionate share thereof. The appellant will recover from the respondent $\frac{1}{2}$ of the costs incurred by him in this Court. The respondents will recover from the appellant $\frac{1}{2}$ of the costs incurred by them in this Court. The costs in the Court below will abide the result.

Appeal decreed.

Before Mr. Justice Aikman and Mr. Justice Karamat Hussain.

FIROZI BEGAM (PLAINTIFF) v. ABDUL LATIF KHAN AND ANOTHER
(DEFENDANT).*

Civil Procedure Code, section 549—Security for costs—Non-compliance with order for security—Appeal rejected—Application to restore appeal—Application refused.

Held that no appeal will lie from an order refusing to readmit an appeal which had been rejected under section 549 of the Code of Civil Procedure on account of non-compliance with an order to furnish security for costs. *Lekha v. Bhauma* (1) followed. *Kuar Balwant Singh v. Kuar Doulat Singh* (2) distinguished.

In this case one Musammât Firozi Begam, a lady residing in the Rampur State, instituted a suit in the Court of the

* First Appeal No. 24 of 1907, from an order of D. R. Lyle, District Judge of Moradabad, dated the 16th of February 1907.

(1) (1895) I. L. R., 18 All., 101. (2) (1886) L. R., 13 I. A., 57.

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Subordinate Judge of Moradabad to recover a sum of money on account of her dower. The suit was based upon a judgment which the plaintiff had obtained from a Court in Rampur against her husband Abdul Latif Khan. The suit was dismissed. The plaintiff appealed. On the 3rd of November 1906, on an application by the respondent, the appellant was ordered to find security for costs under the provisions of section 549 of the Code of Civil Procedure, and the 15th of December 1906 was fixed as the time within which the security was to be furnished. The security was not furnished within time. On the 19th of December the appellant applied for extension of time, but her application was not allowed, and on the following day the appeal was rejected under the provisions of section 549. On the 15th of February 1907 the appellant again applied to the Court asking that the security might be accepted and the appeal restored to the file. This application also was rejected. The appellant appealed to the High Court against the order of the Subordinate Judge rejecting her application for readmission of her appeal in the Court below.

Mr. *Abdul Majid* and *Maulvi Muhammad Ishaq*, for the appellant.

Dr. *Tej Bahadur Sapru*, for the respondents.

AIKMAN and KARAMAT HUSEIN, JJ.—The appellant is a lady residing in the Rampur State, that is, out of British India. She brought a suit in the Court of Subordinate Judge of Moradabad to recover a sum of money on account of her dower. The suit was based on a judgment which she had obtained from a Court in Rampur against her husband, the respondent Abdul Latif Khan. Her suit was dismissed. She appealed. On the application of the respondent, she was on the 3rd of November 1906 ordered by the appellate Court to furnish security for costs under the provisions of section 549 of the Code of Civil Procedure. The 15th of December 1906 was the time fixed within which the security had to be furnished. The appellant did not furnish the security within that time. On the 19th of December 1906, she asked for an extension of time within which to file the security. Although the time had expired, the learned Judge had authority to extend the time, *vide* decision of the Privy Council in *Budri*.

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Narain v. Mussummat Sheo Koer (1). Unfortunately for the appellant the learned Judge refused to extend the time. He sets out in his order of the 19th December 1906 that the appellant had been allowed six weeks within which to furnish the security. This he considered ample time, and he remarks that no attempt was made to have that time extended, meaning clearly, no attempt within the time allowed. He adds:—"I see no sufficient reason for allowing this application or for extending the time allowed and consequently refuse the application." On the following day he rejected the appeal under the provisions of section 549 of the Code of Civil Procedure. On the 15th February the appellant presented another petition asking to be allowed to deposit security and that the appeal might be restored to its original number. In support of her application she relied on a decision of the Privy Council in *Kuar Balwant Singh v. Kuar Doulut Singh* (2). The learned Judge held that that case was very different from the one with which he had to deal and refused to restore the appeal. It is against that order that the present appeal has been preferred. For the respondents a preliminary objection is raised that no appeal lies. It is noticeable that there is no provision in the Code similar to that contained in the second paragraph of section 381 which allows a plaintiff, whose suit has been dismissed for failure to furnish security for costs, to apply for an order to set the dismissal aside. Nor can we find in the Code any right of appeal given from an order refusing to readmit an appeal under the circumstances set forth above. In reply to the preliminary objection the learned vakil for the appellant relies on the Privy Council decision cited above. The facts of that case were of a peculiar nature and in our opinion the learned Judge is right in holding that it is distinguishable from the present case. We are compelled therefore to sustain the preliminary objection. At the same time we take the opportunity of expressing our opinion that, considering the serious consequences entailed by an order under section 549, it would be well if the Legislature should consider whether it is not advisable to embody in the new Code of Civil Procedure some provision analogous to that contained in the second paragraph of section 381 and to

(1) (1889) L. R., 17 I. A., 1. (2) (1886) L. R., 13 I. A., 57.

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give a right of appeal from orders passed under section 549. But as the law at present stands we can find no provision in it under which this appeal can be brought. We may mention that a Full Bench of this Court has held in *Lekha v. Bhanna* (1) that an order rejecting an appeal under section 549 is not appealable either as an order or as a decree. The case may be a hard one, but under the circumstances we have no alternative but to sustain the respondent's preliminary objection and dismiss the appeal, which we hereby do. Under the circumstances of the case we make no order as to costs.

Appeal dismissed.

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Before Mr. Justice Aikman and Mr. Justice Karamat Hussain.

KISHAN LAL (DECREE-HOLDER) v. UMRAO SINGH (JUDGMENT-DEBTOR).
Act No. IV of 1882 (Transfer of Property Act), section 99—Civil Procedure Code, section 316—Mortgage—Simple money decree accepted by mortgagee—Sale of mortgaged property in execution of such decree.

Even though the mortgagee disclaims all interest in his mortgage and asks for and obtains a simple money decree he is precluded by section 99 of the Transfer of Property Act, 1882, from bringing the mortgaged property to sale in execution of the simple money decree. *Madho Prasad Singh v. Baijnath* (2) followed. But if such a sale does in fact take place and is confirmed and a certificate is granted to the auction purchaser the sale cannot afterwards be impeached upon the ground that it was in violation of section 99 of the Transfer of Property Act. *Madan Makund Lal v. Jamna Kaulapuri* (3), *Raj Kishore De Sarkar v. Dina Nath Chandra* (4), *Thaleri Pathumma v. Thanāora Mammad* (5), *Durga Charan Mandal v. Kali Prasanna Sarkar* (6) and *Umed v. Jas Ram* (7) referred to. *Sonu Singh v. Bihari Singh* (8) dissented from.

THE facts of this case are as follows :—

One Umrao Singh on the 13th of November 1895 mortgaged certain property to one Kishan Lal. The mortgagee brought a suit against the mortgagor. In that suit he abandoned his rights under the mortgage and obtained a simple money decree on the 25th of March 1901. This decree he assigned to another Kishan Lal, who applied on the 22nd of November 1902 for attachment

* First Appeal No. 22 of 1907, from an order of K. M. Ghosh, Additional District Judge of Aligarh, dated the 17th of January 1907.

(1) (1895) I. L. R., 18 All., 101.

(2) Weekly Notes, 1905, p. 152.

(3) Weekly Notes, 1907, p. 48.

(4) (1908) 12 C. W. N., 1x.

(5) (1899) 10 M. L. J., 110.

(6) (1899) I. L. R., 26 Calc., 727.

(7) (1907) I. L. R., 29 All., 612.

(8) (1905) I. L. R., 33 Calc., 288.