

That section forbids the guardian to mortgage or charge the immoveable property of his ward without the previous permission of the District Judge. Therefore, in any case, if the guardian sought to mortgage the property of his ward, the permission of the District Judge was absolutely necessary. As such permission was asked for, the learned District Judge ought to have proceeded under section 29 of Act No. VIII of 1890, to decide whether or not he would grant it. We think the learned Judge was wrong in refusing to entertain the application of the guardian. We accordingly allow the appeal and setting aside the order of the court below send back the case to that court, with directions to restore the appellant's application to the file of pending cases and dispose of it according to law.

1909.]

SARJU
v.
DISTRICT
JUDGE OF
BENARES.

Appeal decreed.

Before Mr. Justice Banerji and Mr. Justice Tudball.

GHANSHYAM LAL (JUDGMENT-DEBTOR) v. RAM NARAIN (DECREE-HOLDER).*

1909
April 30.

Evacuation of decree—Conditional decree—Smaller sum payable if payment made within a time fixed by court—Decree of first court fixing time for deposit of money—Decree affirmed by High Court and by Privy Council—Money not paid in within time fixed by first Court—No extension allowed.

A plaintiff claimed the principal sum of money due on a bond with interest at 30 per cent. per annum and the decree of the court of first instance directed that if the defendant deposited the money within three months from the date of its decree, he would be liable to pay interest at the rate of 12 per cent. per annum and would be exempted from further liability. This decree was affirmed by the High Court and finally by the Privy Council but the time for payment was not extended. *Held* that the defendant having made default in the payment of the money within the time allowed by the first court, he could not claim exemption from further liability and could not be allowed to pay the principal with interest at the rate of 12 per cent. from the date of the Privy Council decree.

THE facts of this case are as follows:—

One Ram Narain brought a suit for Rs. 5,600 principal and Rs. 4,938-12-0, interest, in the court of the Subordinate Judge, Agra, against Ghanshyam Lal. That suit was decreed on the 2nd June 1900, with full costs and future interest at 6 per cent. per annum subject to the condition that if the judgment-debtor paid the principal amount (Rs. 5,600) with full

* First Appeal No. 215 of 1907, from a decree of Jagat Narayan, B. A., Subordinate Judge of Agra, dated the 15th of April 1907.

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costs and interest at 1 per cent. per month till the date of payment within three months of the date of the decree, he would be exempted from further liability, otherwise he would have to pay the whole amount claimed with costs. The decree was in the following terms:—

It is ordered and decreed that the plaintiff's claim for Rs. 10,538-12-0 together with the entire costs of the Court and future interest at the rate of Rs. 6 per cent. per annum be decreed on condition that if the defendant will within three months from to-day pay the entire principal amount (Rs. 5,600) and costs and interest at the rate of Re. 1 per cent. per month up to the date of realization, he shall be exempt from further liability, otherwise he shall have to pay (to the plaintiff) the entire amount claimed and costs.

Instead, however, of complying with the decree of the Court within three months, the judgment-debtor appealed to the High Court but his appeal was dismissed. The judgment-debtor then appealed to the Privy Council; but the appeal also failed. When the decree-holder applied for execution of his decree, the judgment-debtor claimed the benefit of the decree of the Subordinate Judge by depositing the principal amount with interest at 1 per cent. per month within three months from the decree of the Privy Council and prayed that satisfaction of the decree be entered. The Court disallowed the judgment-debtor's objection. The judgment-debtor appealed to the High Court.

Mr. *C. Dillon* (with him *Munshi Gulzari Lal*), for the appellant, submitted that the judgment-debtor could pay the principal amount with interest at Re. 1 per cent. per month within three months of the date of the decree of the Privy Council as the original decree and that of the High Court had merged in the decree of the Privy Council. He cited *Nur Ali v. Koni Meah* (1), *Luchmun Persad v. Kishun Prasad* (2).

Dr. *Satish Chandra Banerji*, for the respondent.

BANERJI and TUDBALL, JJ.—This is a judgment-debtor's appeal and arises out of proceedings relating to the execution of a decree passed by the court of first instance on 2nd June 1900, which was affirmed by the High Court on 19th January 1903, and by the Privy Council on the 16th November, 1906. The

(1) (1886) I. L. R., 13 Calc., 13. (2) (1882) I. L. R., 8 Calc., 218.

decree of the court of first instance awarded to the plaintiff the amount claimed by him with costs and future interest, but declared that if the appellant, within three months of the date of the decree, paid the principal sum claimed by the respondent, together with costs and interest at the rate of 12 per cent. per annum he would be exempted from further liability. The plaintiff, it appears, had claimed interest at the rate of 30 per cent. per annum, so that according to the decree of the court of first instance if the judgment-debtor paid the principal amount with interest at 12 per cent. per annum within three months from the date of the decree of that court, *i.e.*, on or before the 2nd September 1900, he would be exempted from further liability under the decree, and would not have to pay interest at the higher rate. He did not make any payment and he now contends that he can pay the principal amount with interest at 12 per cent. per annum within three months from the date of the decree of the Privy Council. It is no doubt true that the decree of the Privy Council is the final decree in the cause of which execution should be taken out, but that decree does not extend the time for payment of the decretal amount. It affirms the decree of the High Court which again affirmed the decree of the court of first instance, including that part of the operative portion of the decree which directs payment of the principal amount with interest at 12 per cent. per annum within three months from 2nd June 1900, the date of the decree. We think the court below was right in holding that the judgment-debtor, having allowed the three months granted to him by the court of first instance to elapse, is not entitled to claim a further period of three months from the date of the decree of the Privy Council. The case of *Nur Ali Chowdhuri v. Koni Meah* (1), relied on by the learned counsel for the appellant depended on the terms of section 52 of Bengal Act VIII of 1869 and does not, in our opinion, help the appellant. We dismiss the appeal with costs.

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Appeal dismissed.

(1) (1886) I. L. R., 13 Cal., 13.