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But the whole charge of immorality against the mother falls to the ground when it is found, as the Magistrate has found, that even if there was any legal defect in the marriage, this was unknown to the mother and Radhakissen, both of whom believed that a valid marriage had taken place.

With the religious aspect of the case we have, of course, nothing whatever to do. It matters not whether the case is one of a Hindu child leaving her parents and being received and detained against their will in a Christian institution in order that she may become Christian, or of a Christian child leaving her parents and being received and detained against their will in a Mahomedan institution in order that she may become a Mahomedan.

There are no circumstances which would justify us in ordering that the child should be made over to the petitioner, and the rule must, so far as it relates to this, be discharged.

H. T. H. *Rule made absolute in part.*

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

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HUKUM CHAND OSWAL (PLAINTIFF) *v.* TAHARUNNESSA BIBI AND OTHERS (DEFENDANTS).*

Civil Procedure Code, 1882, s. 257A—Agreement for, or to give, time for satisfaction of judgment-debt—Agreement without sanction of Court—Illegal contract—Contract Act (IX of 1872), s. 23—Consideration.

The plaintiff obtained a decree against the defendant under which the judgment-debtor was liable to pay the amount by instalments with interest at 4 per cent. Eventually, the defendant failing to pay, the plaintiff accepted a bond executed jointly by the defendant and *T* his father, by which they both became liable for the amount of the decree with interest at 18¾ per cent. In a suit on the bond, it was contended that the bond was void under s. 257A of the Civil Procedure Code, as being an agreement to give time for the satisfaction of the judgment-debt made for no consideration and without the sanction of the Court, and also without such sanction providing,

*Appeal from Appellate Decree, No. 2510 of 1887, against the decree of J. R. Hallet, Esq., Judge of Rungpore, dated the 1st of September 1887, affirming the decree of G. Dalton, Esq., Subordinate Judge of Julpaigooree, dated the 11th of February 1887.

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for payment of a sum in excess of the amount due under the decree; that it was void within the meaning of s. 23 of the Contract Act as being forbidden by, or of a nature to defeat the provisions of, s. 257A of the Civil Procedure Code; and that, consequently, the suit on it was not maintainable.

Held, that s. 257A of the Code was not applicable. That section was framed to prohibit the enforcement of an agreement of the kind mentioned therein, if made without the sanction of the Court, *in execution of the decree*, but was not intended to take away the right of parties, of entering into a fresh contract, either for payment of the judgment-debt, to give time for such payment, or for the payment of a larger sum than may be covered by the decree, if it be for a proper consideration. In this case the consideration for the bond was a lawful consideration: it could not be said that, because satisfaction of the decree was not certified to the Court, there was no consideration.

Held, also, the bond was not void under s. 23 of the Contract Act. *Semble*: The words "any law" in that section refer to some *substantive* law, and not to an adjective law, such as the Procedure Code is.

THE plaintiff obtained a decree against defendant No. 1, as widow of one Munshi Darwar Buksh, and, under that decree, the judgment-debtor was liable to pay the decretal amount by certain instalments specified in the decree, and interest was given by the decree at 4 per cent. per annum. She failed to pay, and the decree-holder then accepted a bond executed by Munshi Tarikulla, the father of the judgment-debtor, under which he became security for the ultimate payment of the amount of the decree. The decree was not satisfied, and in lieu of enforcing the bond against Munshi Tarikulla, the decree-holder eventually, on the 18th Bhadro 1289 (2nd September 1882), accepted a fresh bond executed by Munshi Tarikulla and his daughter, defendant No. 1, jointly, under which both became liable for the balance of the decree remaining unpaid and for interest at the rate of Rs. 1-9 per mensem or of Rs. 18-12 per cent. per annum. The defendants Nos. 2 to 10 were the other heirs of Tarikulla who was dead.

The main defence was that the bond of the 18th Bhadro 1289 was contrary to the provisions of s. 257A of the Civil Procedure Code, and that the suit to enforce it was not maintainable; and on this ground the suit was dismissed by both the lower Courts.

The plaintiff appealed to the High Court.

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Baboo *Rash Behari Ghose* and Baboo *Bhubun Mohun Dass* for the appellant.

Baboo *Mohesh Chunder Chowdhry* and Munshi *Seraj-ul-Islam* for the respondents.

The judgment of the Court (PRINSEP and GHOSE, JJ.) was as follows:—

A decree was obtained by the plaintiff against the defendant No. 1, as the legal representative of one Darwar Buksh, in respect of a certain sum of money. The decree provided that the amount was payable in instalments with interest at a certain rate. The defendant No. 1, however, failed to pay in accordance with the terms of the decree; and the plaintiff thereupon accepted a bond executed by the father of defendant No. 1, *viz.*, Tarikulla, as surety for the debt. But nothing apparently came out of this transaction, and eventually a bond was executed on the 18th Bhadro 1289, both by defendant No. 1 and Tarikulla, making themselves jointly liable for the balance of the decretal money with interest at Rs. 18-12 per cent. per annum. The original decree is not forthcoming, but there does not seem to have been any dispute between the parties in the lower Courts as regards its terms, excepting however in one particular, *viz.*, as to the rate of interest decreed. The Lower Appellate Court, upon the evidence, has found that the interest payable under the decree was Rs. 4 per cent. per annum, whereas that covenanted to be paid under the bond of the 18th Bhadro 1289 was, as already mentioned, Rs. 18-12.

The present suit is brought upon the bond of the 18th Bhadro 1289 both against defendant No. 1 and the heirs of Tarikulla, he having in the meantime died.

The suit has been dismissed by both the Courts below, upon the ground that under s. 257A of the Code of Civil Procedure the agreement entered into by the bond, providing for the payment of a larger interest than that payable under the decree, is void, the bond having been executed without the sanction of the Court which passed the decree.

We think that the lower Courts have not taken a right view of the law. It seems to us that it is only in the event of an application

being made to enforce the agreement entered into between the parties under the bond, in the course of the *execution of the decree*, that an objection like that now raised, could have been successfully made. Section 257A finds its place in the Procedure Code in the Chapter headed "Of the execution of decrees" under division E "Of the mode of executing decrees," and there can, therefore, be no reasonable doubt that what the Legislature had in view in framing that section was simply to prohibit the enforcement of an agreement of the kind mentioned therein, if made without the sanction of the Court, in execution of the decree; but it could never have been intended to take away a right which parties certainly possess of entering into a fresh contract, either for the payment of the judgment-debt, to give time for such payment, or for the payment of a larger sum than what may be covered by the decree, if it be for a proper consideration. In the present case the creditor agreed to give to the debtor more time for the payment of the decretal money than what the decree actually allowed; and the larger rate of interest agreed to be paid was evidently the consideration for the giving of such time. This consideration was certainly lawful and there can, therefore, be no valid objection to the agreement being enforced.

It was however contended, on the part of the respondent, that, under s. 23 of the Contract Act, the consideration for the agreement was not lawful, because it was forbidden by law, or was of such a nature that, if permitted, it would defeat the provisions of s. 257A of the Code of Civil Procedure. We are unable to accept this contention. In the first place, we are not aware of any law by which such a consideration, as there was for the bond in this case, is forbidden; and, in the second place, we do not think that "if permitted" it would defeat the provisions of s. 257A. The words "any law" as mentioned in s. 23 of the Contract Act, we are inclined to think, refer to some *substantive* law, and not to an adjective law such as the Procedure Code is. But whether this is so or not, we fail to see how the object, with which s. 257A was framed, would be defeated, if the contract in question were enforced, that object being, as it seems to us, simply to avoid the inconvenience

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and delay which would arise if parties were allowed to bring, before the Court executing a decree, matters not covered by it and which had not become part of the decree itself by express sanction of the Court.

It was further contended on behalf of the respondent that, inasmuch as the satisfaction of the decree was not certified to the Court, there was no consideration for the bond, and it would still be open to the decree-holder to enforce the decree. There is nothing on the record showing whether satisfaction of the decree was certified or not; but assuming that it was not, we do not think that it can be rightly said that there was no consideration for the contract; and it seems to us that if, notwithstanding the acceptance of the bond by the creditor in lieu of the decree, he enforces the decree, there is a remedy in the hands of the debtor to recover back from the creditor the money realized in execution of the decree with such damages as he might have sustained by reason of the wrongful act of the creditor.

The view that we take of this case is supported by the cases *of Jhabar Mahomed* v. *Modan Sonahar* (1), *Sellamayyan* v. *Muthan*, (2), *Ramghulam* v. *Janki Rai* (3), and *Gunamani Dasi* v. *Prankishori Dasi* (4), and we may say that we are not prepared to follow the view which the Bombay High Court has laid down on the subject.*

We accordingly are of opinion that the suit will lie, and that, therefore, it must be returned to the Court of first instance to be tried on the merits. The plaintiff is entitled to his costs in this Court and the Lower Appellate Court, and he is entitled also to a refund of the stamp-fee on the petitions of appeal to this Court and to the District Judge.

J. V. W. *Appeal allowed.*

* See *Pandurang Ramchandra Chowghule* v. *Narayan*, I. L. R., 8 Bom. 300; *Ganesh Shivram* v. *Abdullabeg*, I. L. R., 8 Bom., 538; *Daulat Sing* v. *Pandu*, I. L. R., 9 Bom., 176; and *Vishnu Vishwanath* v. *Hur Patel*, I. L. R., 12 Bom., 499.

(1) I. L. R., 11 Calc., 671.
(2) I. L. R. 12 Mad., 61.
(3) I. L. R., 7 All., 124.
(4) 5 B. L. R., 223.