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than the District Court itself to entertain, apart from any transfer by the District Court, an application by a judgment-creditor to have his judgment-debtor declared an insolvent. This appears clear from the language of the section itself; and the same view has been taken by the Madras and Bombay High Courts. See *In re Waller* (1), and *Purbhudas Velji v. Ohugun Rai-chand* (2). It follows therefore that there was no jurisdiction in the Deputy Commissioner to make the order he has made. On that ground we set his order aside.

We find that this objection to jurisdiction was never taken in the first Court. It was not taken in the grounds of appeal to this Court, and indeed it was raised by the Court itself, and not by either of the parties. Under these circumstances, we may fairly set the order aside without costs.

Then an application was made to us by the Advocate-General to order the return of the petition presented to the lower Court, in order that it might be presented again to the Court which has jurisdiction. That is a matter with which we think we ought not to interfere. It should be dealt with by the lower Court.

J. V. W.

*Appeal allowed.*

*Before Mr. Justice Wilson and Mr. Justice Rampini.*

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JOGOBUNDEOO DASS AND ANOTHER (JUDGMENT-DEBTORS) v. HORI  
 RAWOOT AND ANOTHER (DECREE-HOLDERS).\*

*Civil Procedure Code, 1882, s. 230, cl. (b)—Limitation—Execution of decrees—  
 Order directing payment of money at a certain date.*

A judgment-debtor on being arrested in execution of a decree presented a petition asking for fifteen days' time to pay the amount of the decree, and the decree-holders consenting, the Court made an order in the terms, "let the petition be filed." *Held*, that this order did not amount to one directing payment of money to be made at a certain date within the meaning of s. 230, cl. (b) of the Civil Procedure Code.

*Bal Chand v. Raghunath Das* (3) followed.

\* Appeal from Order No. 7 of 1888, against the order of J. B. Worgan, Esq., Judge of Outack, dated the 8th of September 1887, reversing the order of Baboo Mati Lal Singh, Munsiff of that district, dated the 29th of March 1887.

(1) L. L. R., 1 Mad., 430.

(2) I. L. R., 8 Bom., 196.

(3) I. L. R., 4 All., 155.

THIS was an application made on the 18th November 1886 for execution of a decree dated 9th January 1874. It appeared that on the 21st August 1882 one of the judgment-debtors, on his being arrested in execution of the decree, had presented a petition to the Court for fifteen days' time to pay up the amount of the decree, which petition (the decree-holder consenting) was ordered to be filed, and the time was allowed, the judgment-debtor being released from arrest. He failed, however, to pay the amount of the decree. The only question material to this report was whether the order made on this petition amounted to a direction by the Court for "the payment of money on a certain date" within the meaning of s. 230, sub-section (b).

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The decree-holder contended that it did, and that he was therefore entitled to reckon the twelve years' limitation from the expiration of the fifteen days' time when default was made in paying the amount of the decree. The judgment-debtor contended that execution of the decree was barred by limitation which was to be reckoned from the date of the decree, and that the order made on the petition did not create a new starting point from which the time could run.

The lower Appellate Court (reversing the decision of the Munsiff, before whom however the point as to the effect of the order on the petition was not raised) held that the order was virtually one under s. 230, cl. (b), and that execution of the decree was therefore not barred.

From this decision the judgment-debtors appealed to the High Court.

Baboo *Mon Mohun Dutt* for the appellants.

Dr. *Guru Dass Banerji* for the respondents.

For the appellants, the case of *Bal Chand v. Raghunath Das* (1) was relied on, and for the respondents the case of *Jhoti Sahni v. Bhubun Gir* (2) was referred to.

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

WILSON, J.—In this case we think that the lower Appellate Court is in error in the view it has taken of the law.

(1) I. L. R., 4 All., 155.

(2) I. L. R., 11 Calc., 143.

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The application was one for execution, and was made more than twelve years after the date of the decree. In the first Court the Munsiff dismissed the application on that ground, the application being, in his opinion, too late under s. 230 of the Code of Civil Procedure. The lower Appellate Court has considered that the application is saved from the bar of limitation by reason of sub-section (b) of s. 230, which says: "Where the decree or any subsequent order directs any payment of money, or the delivery of any property, to be made at a certain date, 'the twelve years is to run from the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.'"

Now it is sought to show that there was a subsequent order directing payment to be made on a certain date by reason of these circumstances: A prior application for execution by attachment of the person of one of the judgment-debtors was made within twelve years of the date of the decree and within twelve years previous to the date of the present application. When that judgment-debtor had been arrested he put in a petition asking that he might have fifteen days' time within which to pay up the amount of the decree and so escape committal to prison. That petition was consented to, and the order made on it was, "let the petition be filed." The lower Appellate Court has considered that that order amounts to an order to pay on or before the 15th day. We think that *that* is a very considerable extension of the order. In form certainly it is nothing of the kind; and even if we could suppose that the order adopts the terms of the petition, and can be read as embodying what appears in the petition, still it would not be an order for payment. The petition contains no new promise to pay; it simply asks for a stay of proceedings for fifteen days to enable the petitioner to pay up the amount of the decree—the alternative obviously being that on expiry of the fifteen days, if the money was not paid, the execution proceedings should go on. This case therefore differs materially from the case of *Jhoti Sahu v. Bhubun Gir* (1). In that case there was not a mere petition for time, but an actual agreement by way of compromise entered

(1) I. L. R., 11 Calc., 143.

into between the parties for payment in certain ways; and the order was, that it should be recorded. The learned Judges in that case considered that the order there might be regarded as one embodying the compromise, and that, the compromise being an actual undertaking to pay, the order was an order to pay. On the other hand in the case of *Bal Chand v. Raghunath Das* (1) the facts are precisely similar to those of the present case; and the learned Judges there took the same view as we have taken here. For these reasons we think that the view taken by the lower Appellate Court cannot be supported.

The result is that the order of the lower Appellate Court must be set aside, and the order of the first Court, the Munsiff, affirmed, with costs.

J. V. W.

*Appeal allowed.*

*Before Mr. Justice Tottenham and Mr. Justice Ghose.*

HORENDRANARAIN AOHARJI CHOWDHRY (PLAINTIFF) v. CHAN-  
DRAKANTA LAHIRI AND ANOTHER (DEFENDANTS).\*

*Will—Attestation of will—Purda nashin lady—“In the presence of”—  
Succession Act (X of 1865), s. 50.*

After execution of her will by a testatrix, a *purda nashin* lady, and its attestation in her presence by a witness who had seen her execute it, it was presented for registration, the testatrix sitting behind one fold of a door which was closed, the other fold being open, and the registrar and another person who identified the testatrix being in the verandah outside the room behind the door of which the testatrix sat, all that the registrar actually saw of her being her hand. The testatrix admitted her execution of the will, and her admission was endorsed on the will and witnessed by the registrar and the person who identified her at the same time. *Held*, that the witness was “in the presence of” the testatrix within the meaning of s. 50 of the Succession Act (X of 1865).

THIS appeal was brought in the matter of an application for probate of the will of one Rudramani Debya, a *purda nashin* lady, widow of one Kalichundra Lahiri. The will was executed on the 24th Kartick 1291 (8th November 1884), and the testatrix died on the 24th Aughran 1291 (8th December 1884).

\* Appeal from Original Decree No. 67 of 1887, against the decree of J. R. Hallett, Esq., Judge of Rungpore, dated the 5th of February 1887.

(1) I. L. R., 4 All. 155.

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