

accordingly allow the preliminary objection and dismiss the appeal with costs.

Appeal dismissed.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

AMTUL HABIB (DECREE-HOLDER) v. MUHAMMAD YUSUF
(JUDGMENT-DEBTOR).*

Civil Procedure Code (1908), order XXIV, rules 1, 2 and 3—Execution of decree—Payment of part of decretal amount into court—Effect of payment as regards running of interest on the decree.

Where money is paid into court by the judgment-debtor in satisfaction of a decree, interest on the decree will cease from the date of payment in proportion to the amount paid, although such amount may not in fact be the whole amount due under the decree.

THE facts of this case were as follows:—

A decree was obtained for dower for a sum of Rs. 5,000 with interest and costs, to be recovered from the estate of the plaintiff's deceased husband in the hands of the heirs. The decree-holder sought to execute her decree and was met with an objection that she herself being one of the heirs and entitled to one-fourth of the estate, the decree could only be executed for three-fourths of the amount. When making this objection the judgment-debtors deposited three-fourths of the amount of the decree, principal, interest and costs. This objection was allowed in the court of first instance. There was an appeal to the District Judge, who held that the decree being for Rs. 5,000, it must be executed for that amount. The High Court upheld this ruling. The execution proceedings then continued; but the decree-holder claimed interest on the full amount of the decree up to the 14th of August, 1915, that is, until three months after the decision of the High Court. The judgment-debtors claimed that interest should not be charged save on the difference between the amount which they had deposited in court and the full amount of the decree, that is to say, that they should be relieved from paying interest on so much as they had deposited from the date of the deposit. This contention

* Second Appeal No. 1433 of 1916, from a decree of J. H. Cuming, District Judge of Saharanpur, dated the 16th of August, 1916, confirming a decree of Kalka Singh, Subordinate Judge of Saharanpur, dated the 18th of December, 1915.

1917

SHEO
PRASAD
SINGH
v.
PREMNA
KUNWAR.

1917
December, 4.

found favour with both the courts below. The decree-holder appealed to the High Court.

Mr. *M. L. Agarwala* (with whom Mr. *S. M. Yusuf Hasar*) for the appellant.

Mr. *Nihal Chand*, for the respondent.

RICHARDS, C. J., and BANERJI, J. :—This is an appeal arising out of execution proceedings. A decree was obtained for dower for a sum of Rs. 5,000 with interest and costs, to be recovered from the estate of the plaintiff's deceased husband in the hands of the heirs. The decree-holder sought to execute her decree and was met with an objection that she herself being one of the heirs and entitled to one-fourth of the estate, the decree could only be executed for three-fourths of the amount. When making this objection the judgment-debtors deposited three-fourths of the amount of the decree, principal, interest and costs. This objection was allowed in the court of first instance. There was an appeal to the District Judge, who held that the decree being for Rs. 5,000, it must be executed for that amount. The High Court upheld this ruling. The execution proceedings then continued; but the decree-holder claimed interest on the full amount of the decree up to the 14th of August, 1915, that is, until three months after the decision of the High Court. The judgment-debtors claimed that interest should not be charged save on the difference between the amount which they had deposited in court and the full amount of the decree, that is to say, that they should be relieved from paying interest on so much as they had deposited from the date of the deposit. This contention found favour with both the courts below. The decree-holder comes here in second appeal. The matter is not altogether free from difficulty. Order XXIV, rules (1), (2) and (3), provide that in the case of a suit the defendant may pay into court such sum of money as he considers as satisfaction in full of the claim. Notice of the deposit is given to the plaintiff, who is entitled to draw the money out, whether he takes it in full discharge or not, and no interest is allowed to the plaintiff upon the amount of the deposit. There is no corresponding provision as to payment out of court and the cessation of interest in execution matters, but there does not seem to be any reason why the same thing should not happen in execution

1917

AMTUL HABIB
v.
MUHAMMAD
YUSUF.

proceedings as in the case of suits. In the present case the plaintiff had admittedly a decree which could be executed for at least the sum which had been deposited by the judgement-debtors. We think that there can be very little doubt that if the decree-holder had asked the court executing the decree, and in which the money had been deposited, to pay out this money, at the same time stating that the taking of the money out was without prejudice to the questions raised by the pending appeal, the court would have allowed the decree-holder to withdraw the money, just as the court would have allowed a plaintiff in a suit to withdraw money deposited by the defendant, although the plaintiff does not take it in full discharge. We are borne out in this view by a circumstance which happened in this very case. After the money had been deposited a third party who had a decree against the decree-holder attached a portion of the money which had been deposited in court and the sum was paid out without objection. To hold that the court is not entitled to pay money out to a decree-holder in part discharge of his claim in a case like the present would mean that the money deposited should lie in court of no use to either party, while all the time interest would be running up against the judgement-debtor in the event of the court deciding that there was a greater liability on foot of the decree. Even the decree-holder would not profit, because, if the case was eventually decided against him, he would not have had the benefit of the money which had been deposited by the judgement-debtor. We think that in this case we ought to apply the analogy of the rules which relate to payment into court of money by the defendant in a suit, and that in this view the decisions of the courts below were correct and should be affirmed.

We accordingly dismiss the appeal with costs in all courts.

Appeal dismissed.

1917

AMTUL HABI
V.
MUHAMMAD
YUSUF.