APPELLATE CIVIL.

Before Mr. Justice Walsh and Mr. Justice Ryves.

1921
March, 29.

JAMIL-UN-NISSA BIBI (JUDGMENT-DEBTOR) *v.* MATHURA PRASAD (DECREE-HOLDER).*

Act No. IX of 1908 *(Indian Limitation Act), schedule I, article* 182 (5)—*Execution of decree—Limitation—Application "in accordance with law"—Application claiming interest in excess of that provided for by the decree.*

Held, that a mere mistake in calculating interest or even deliberately calculating more interest than is due does not make an application for execution of a decree one "not in accordance with law" within the meaning of article 182 (5) of the first schedule to the Indian Limitation Act, 1908. If more interest than is due is charged, it may be considered as mere surplusage and be struck out.

THE facts of this case sufficiently appear from the judgment of the Court.

Dr. *Kailas Nath Katju*, for the petitioner.

Dr. *Surendra Nath Sen* and Munshi *Kamla Kant Varma*, for the opposite party.

WALSH and RYVES, JJ. :—This is an execution appeal arising out of execution proceedings on a mortgage decree passed as long ago as the 30th of August, 1910. The suit was for sale on a mortgage, and a preliminary decree on that date directed that a sum of Rs. 8,712 representing the amount then due for principal, interest and costs was to be paid on or before the 28th of February, 1912. In default of payment it was directed that the property would be sold. The preliminary decree directed that after that date, namely, the 30th of August, 1910, interest would run at 6 per cent. per annum up to the date of realization. The final decree for sale of the property was made on the 1st of February, 1913, and the amount then due was declared to be Rs. 9,973-2-0. The decree was against two brothers Shah Junaid Alam and Shah Badre Alam. Shah Junaid Alam died and his heirs were brought on the record. One of them, his daughter, is the appellant before us. The first application for execution was made on the 18th of March, 1913, and was dismissed for reasons which we need not now consider. The second applica-

*First Appeal No. 344 of 1919 from a decree of Kameshwar Nath, Subordinate Judge of Ghazipur, dated the 19th of November, 1919.

tion was made on the 16th of March, 1914, and was dismissed in 1914. The third application, out of which this appeal arises, was made on the 15th of March, 1917. Objections were taken piecemeal against this application which resulted in the matter being hung up for a long time. The objections were dismissed by the court executing the decree, and this Court dismissed the appeals from those orders. The objector now before us is Musammat Jamil-un-nissa Bibi, and she complains, first, that the second application of the 16th of March, 1914, was not "in accordance with law" within the meaning of article 182, clause 5, of the second schedule to the Indian Limitation Act. The ground on which this objection was based was as follows:— It is stated that the amount of interest calculated in the application for execution was compound interest whereas the decree in the suit gave simple interest only at 6 per cent. after the date of the decision, and that therefore this was not an application in accordance with law. Reliance has been placed on three cases of this Court, namely *Chattar* v. *Newal Singh* (1), *Munawar Husain* v. *Jani Bijai Shankar* (2) and *Nathu Ram* v. *Tufail Ahmad* (3). The facts in all these cases were quite different and the two earlier ones have been considered and distinguished in the case of *Monorath Das* v. *Ambika Kanta Bose* (4). It seems to us that a mere mistake in calculating interest or even deliberately calculating more interest than was due, does not make the application one not in accordance with law. If more interest than was due is charged, it may, we think, be considered as a mere surplusage and be struck out. In the first case in I. L. R., 12 Allahabad, the court was asked to do something which it was incompetent to do under the law, and this was also the case in I. L. R., 27 Allahabad. In the Weekly Notes case the application was struck out apparently because the applicant refused to amend his application as directed by the court. To give an example, we think that if the applicant in this case asked the court to sell property not included in the decree, then it might well be said that such an application was not in accordance with law in the execution of that decree, but

(1) (1889) I. L. R., 12 All., 64.
(2) (1905) I. L. R., 27 All., 619.
(3) Weekly Notes, 1890, p. 93.
(4) (1909) 9 C. L. J., 443.

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if the applicant merely added some other property, we think it might be competent to the court to cut out the added property and hold that there was a proper application before the court to be executed, although the relief sought had been exaggerated. It seems to us that there is no force in this first ground and this view is strengthened by the second objection, because it is not yet decided that the prayer was in fact or law extravagant and beyond what the decree-holder was entitled to ask or get. The second ground taken is that the interest charged was excessive and beyond what was provided in the decree. It appears that this point, although noted by the court below, was not decided. It is argued that the applicant asks for compound interest after the final decree. It is quite clear that if compound interest has been charged, as alleged, the applicant is not entitled to get it. The decree quite clearly stated the principal amount on which compound interest had been charged and which sum including such interest and costs was Rs. 8,712, and that was on the 30th of August, 1910. From that date the decree-holder is only entitled to 6 per cent. interest, and if he has claimed more than that, the court should not allow it.

The third objection taken is that the application of the 15th of March, 1917, was not duly verified. The suggestion is that the verification was affixed to a piece of blank paper on which subsequently the particulars of the application were filled in. The verification was made on the 10th of March, 1917, at Delhi, whereas the application was filed on the 14th of March, 1917, and interest was calculated up to that date. We do not think that it is proved that the application was not duly verified. In our opinion there is no force in this appeal and we dismiss it with costs.

Appeal dismissed.