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was obliged to pay the amount of the subsequent mortgages in order to save the property from sale in satisfaction of those mortgages. We think that in justice and equity the plaintiff is entitled to be reimbursed the money which he paid in discharge of the subsequent mortgages and for which the defendants were primarily liable. In this view we think the decision of the court below is erroneous. We accordingly allow the appeal, set aside the decree of the court below and decree the plaintiff's claim with costs in both courts. The plaintiff will get future interest at 6 per cent. per annum from the date of the suit to the date of payment.

*Appeal allowed.*

*Before Mr. Justice Piggott and Mr. Justice Walsh.*

MAHADEO PRASAD (DEFENDANT) v. DRIGBIJAI SINGH (PLAINTIFF  
AND HABIB-ULLAH (DEFENDANT).\*

*Act No. IX of 1872 (Indian Contract Act), section 72—Civil Procedure Code (1908), order XXI, rules 46, 58 and 63—Suit to recover money paid into court under order for attachment of a debt—Payment made under compulsion, but money admitted to be due to creditor.*

D owed money to a contractor. The amount was uncertain, but, whatever it was, the debt due by D was attached by a creditor of the contractor. D, under pressure from the Court, paid into Court a sum of Rs. 975, admitting at the time that this amount, if not more, was due to the contractor, and the amount so paid was withdrawn by the attaching creditor and by another creditor of the contractor who had applied to be paid his rateable share.

*Held*, on suit brought by D to recover the amount so paid from the creditors of the contractor, that the suit must fail. Section 72 of the Indian Contract Act, 1872, implies that money paid by mistake or coercion was not really due to the person to whom it was paid, and clause (3) of order XXI, rule 46, of the Code of Civil Procedure operates quite independently of any question as to the circumstances under which the payment was made or the motives which may have influenced the making of it.

THE facts of this case are fully stated in the judgment of the Court.

Dr. *Surendra Nath Sen* and *Munshi Kanhaiya Lal*, for the appellants.

Mr. *A. P. Dube* and *Pandit Lalli Prasad Zutshi*, for the respondents.

\* Second Appeal No. 1399 of 1917, from a decree of F. D. Simpson, District Judge of Allahabad, dated the 6th of July, 1917, confirming a decree of Kunwar Sen, Subordinate Judge of Allahabad, dated the 23rd of August, 1916.

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PIGGOTT, J. :—The facts out of which these two connected second appeals arise may conveniently be stated as follows :— Raja Drigbijai Singh, the plaintiff respondent in this Court, employed one Lala Manni Lal as a contractor to build a house for him. It has never been denied that on a settlement of accounts some money would be found due to Manni Lal from the Raja in consequence of the performance of this contract, but there was a very decided difference of opinion between the parties concerned as to the amount so due. In the meantime Manni Lal seems to have got into financial difficulties. At any rate we know that more than one decree was in execution against him and that he was not prepared to pay up even the small amounts involved in the two decrees which will be presently referred to. The holder of one of these decrees was Mahadeo Prasad, the appellant in Second Appeal No. 1399 of 1917. He took out execution and applied to the execution court, that of the Munsif of Allahabad, to attach for his benefit any debt which might be due to Manni Lal from Raja Drigbijai Singh. This attachment was made under the provisions of order XXI, rule 46, of the Code of Civil Procedure, and so far the proceedings of the execution court were admittedly correct. The learned Munsif, however, went on to pass an order directing the Raja to pay into court a sum of money, apparently Rs 1,000, for the benefit of the decree-holder, Mahadeo Prasad. It is not denied now that under the Code of Civil Procedure the Munsif had no right to make any such order. The Raja presented a petition of objection on the 11th of February, 1914, in which he put forward various reasons why the execution court should not require him to pay in this money; but in this petition he made the important admission that, although the accounts between himself and Manni Lal were still unsettled, he had no doubt that a sum of, at any rate, Rs. 1,000 or thereabouts, would be found due from him to Manni Lal upon proper settlement. The learned Munsif acting on this admission overruled all the objections preferred by the Raja and passed a positive order that the money should be paid into court by a fixed date. This date was postponed from time to time and, in the month of July, 1914, we find the Raja petitioning the court for two months' further time within which

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to make the required payment. Finally, in the month of January, 1915, the Munsif passed an order that a house belonging to Raja Drigbijai Singh should be attached and sold unless the required deposit of Rs. 1,000 were made. Here again it is admitted that the execution court was wrong, the learned Munsif not having power under any provision of the Code of Civil Procedure to pass such an order. Under pressure of this order the Raja finally paid into court a sum of Rs. 975. This was accepted as sufficient and was eventually divided between Mahadeo Prasad, the original attaching creditor, and one Shaikh Habib-ullah, the holder of another decree against Lala Manni Lal, who applied for rateable distribution. The present suit was originally brought by Raja Drigbijai Singh against Mahadeo Prasad only; but Shaikh Habib-ullah was subsequently added as a defendant, and the claim was to recover from each of these defendants, with interest, the money which he had taken out of the Munsif's court from the deposit of Rs. 975. The suit was resisted on various grounds and disposed of by the learned Subordinate Judge in a very brief and summary judgment. The trial court seems to have held that it was quite sufficient to give the plaintiff a cause of action that he had paid in the sum of Rs. 975 under pressure of an attachment order which the execution court ought not to have passed. In dealing with the merits of the case he discussed one point only, and that was in connection with a plea taken by the defendants. It appears that Manni Lal made an assignment of whatever money might be due to him from the Raja to two persons, Bisheshar Das and Paras Ram, the latter of whom was his sister's husband. These persons brought a suit against the Raja as assignees, limiting their claim to a sum of Rs. 15,000. In his written statement Raja Drigbijai Singh distinctly pleaded that the sum of Rs. 975 deposited by him in the court of the Munsif of Allahabad was a good and valid discharge of his debt to Manni Lal *pro tanto* and that this payment should be taken into account in settling the amount, if any, due to the plaintiffs. As it happened, this suit was not tried out, but the Raja compromised with the plaintiffs for a sum of Rs. 4,250 and a consent decree was passed accordingly. In the suit out of which the two appeals now before us arise, the defendants made

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it part of their case, that, in settling the terms of this compromise, the Raja had in fact received credit for this sum of Rs. 975, so that he was no loser by reason of the deposit made by him in the execution court. The learned Subordinate Judge held that it was not proved by convincing evidence that credit had been given for this item to the Raja in settling the terms of the compromise and he seems to have accepted Raja Drigbijai Singh's statement, to the effect that credit was not given him. Upon this finding the suit was decreed against both defendants in proportion to their liabilities as set forth in the amended plaint. Both defendants appealed to the District Judge. In the memorandum of appeal filed by Mahadeo Prasad the point is distinctly taken that the plaintiff had failed to show that he had suffered any loss or damage and, further, that he had admitted his liability as debtor to Lala Manni Lal, to the extent of at least Rs. 1,000, before he made the payment of Rs. 975 into the execution court. These pleas obviously go direct to the merits of the case. Connected with them was a further plea of a legal nature, to the effect that the deposit in the execution court was made under the provisions of order XXI, rule 46, of the Code of Civil Procedure, without any condition whatever, and that no suit would lie to recover any sum of money so paid. The learned District Judge disposed of the two appeals in a careful judgment, the greater part of which, however, is devoted to a discussion of the supposed legal difficulties in the way of the plaintiff's maintaining the suit. On the merits of the case he says exceedingly little and what he does say is distinctly less favourable to the plaintiff than is the finding of the trial court. In dealing with the question of the compromise under which the Raja paid Rs. 4,250 to Bisheshar Das and Paras Ram as assignees of Manni Lal, the learned District Judge says that he is not prepared to find on the evidence before him, affirmatively, that this item was taken into account in settling the terms of the compromise. He does not say that the plaintiff had satisfied him, either by his own statement or by any other evidence on the record, that the item in question was not so taken into account. On the appeal of Habib-ullah the learned District Judge had to deal with one plea peculiar to this defendant. It was contended

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that even if any tort had been committed entitling the plaintiff to relief, the responsibility for the same lay wholly on the shoulders of Mahadeo Prasad, Habib-ullah having had nothing to do with obtaining from the execution court any of the orders the validity of which was impeached in the plaint, but having merely applied for rateable distribution in respect of a sum of Rs. 975 which was lying to the credit of the judgment-debtor Lala Manni Lal in the court of the Munsif of Allahabad. With regard to this plea the learned District Judge contents himself with saying that Habib-ullah had got hold of money of the Raja's, which the Raja was under no legal obligation to pay, and that for this reason alone the Raja was entitled to get it back from him. Mahadeo Prasad and Shaikh Habib-ullah have filed separate appeals in this Court; but except as regards the last point above noticed these appeals proceed upon common grounds. There has been a good deal of argument before us with regard to certain questions of law supposed to be raised by the pleadings. On behalf of the plaintiff respondent we have been referred to a number of cases, of which it is sufficient to mention that relied upon by the District Judge, the case of *Kanhaya Lal v. National Bank of India* (1). The principle involved in these rulings I understand to be this, that if a decree-holder obtains an order for attachment of property belonging to a third person, representing the same as the property of his judgment-debtor, it is open to the third person so aggrieved to protect himself by paying into court under protest the amount of the decree, and subsequently maintaining a suit to recover the same from the decree-holder. It does not seem to me that this principle has any real application to the facts of the present case. Broadly speaking, my opinion regarding these two appeals is that the courts below have assumed in favour of the plaintiff that he is entitled to equitable relief and have then proceeded to hold that there is nothing in law to prevent him from obtaining that relief by means of a suit against the two decree-holders who divided between them the money deposited by him in the execution court. The real question, however, is whether the plaintiff, on whom the burden of proof lay, has made out any

(1) (1918) I. L. R., 40 Cal., 598.

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case for equitable relief. In argument before us it has been sought to support the claim with reference to rules 58 and 63 of order XXI of the Code of Civil Procedure, and also with reference to the equitable principle embodied in section 72 of the Indian Contract Act. I do not myself think that it would be possible, without violent straining of language, to bring this case within the provisions of rule 58 above mentioned; but, even if it were so, the only effect would be to give rise to an objection absolutely fatal to the plaintiff's suit. The order of the execution court which really prejudices the rights of Raja Drigbijai Singh was the order of the 11th of February, 1914, overruling his objection and directing him positively to deposit in court a sum of Rs. 1,000 for the benefit of Mahadeo Prasad, decree-holder. If any cause of action did accrue to the Raja under the rules to which reference has been made, it accrued to him on that date, and the present suit, having been filed on the 21st of February, 1916, is well beyond limitation from the date of the said order. It is even beyond limitation if reference be made to the date of the attachment of Raja Drigbijai Singh's house, having been brought a little over a year after the date of the said attachment. The plaintiff's suit can only succeed, if at all, with reference to the equitable principle embodied in section 72 of Act No. IX of 1872 to which reference has already been made. That section lays down that a person to whom money has been paid by mistake or under coercion must repay or return it. Obviously the section implies that the money was not really due to the person to whom it was paid and this is made clear by the illustrations. The whole point in this case is, in my opinion, that Raja Drigbijai Singh, when he made his deposit of Rs. 975 in the court of the Munsif, did so under an admission that he was in fact indebted to Lala Manni Lal at least to this extent.

When this point was made clear in the course of argument in this Court, the learned counsel for the plaintiff respondent, who argued his client's case throughout with great keenness and ability, fell back upon a contention to which no reference whatever is to be found in either of the judgments of the courts below. [His Lordship did not allow the point to be raised.]

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As the record stands, I think the defendants are clearly entitled to hold the Raja to the admission made by him in his pleading before the execution court, to the effect that there was a debt of at least Rs. 1,000 due from him to Manni Lal, and to no one else. If this view is correct, it follows beyond all question that the 3rd clause of rule 46 of order XXI of the Code of Civil Procedure came into operation and that the payment made into court by Raja Drigbijai Singh discharged him from liability towards Manni Lal to the extent of Rs. 975, as effectively as if he had made the payment direct to Manni Lal and obtained a receipt from the latter. The courts below seem to me to have wholly overlooked the effect of this provision. It operates quite independently of any question as to the circumstances under which the payment was made, or the motive which may have influenced Raja Drigbijai Singh in making it. If he really owed Rs. 975 to Manni Lal, and paid it into court and thereby obtained a valid discharge to this extent, he has no claim in equity to recover that money from Mahadeo Prasad or Habib-ullah, who got possession of it under the orders of a competent court as money belonging to their judgment-debtor Manni Lal and lying to his credit in the execution court. I have said enough to dispose of these appeals and I do not think it necessary to discuss in detail the special plea taken by Habib-ullah; but I feel bound to say that I do not see what cause of action against Habib-ullah is disclosed by the plaint or made out by the evidence produced in the two courts below. For these reasons I would allow both these appeals, set aside the decrees of both the courts below and dismiss the plaintiff's suit with costs throughout.

WALSH, J.:—I entirely agree. Having regard to the way in which the case was fought, both parties treated Manni Lal and his transferees as being in substance the same person, and the transfer as making no difference to the real merits which had to be decided. In my opinion at the time when the compromise was entered into, the Raja could not have been ignorant of or have forgotten the sum of money which had been paid into court. Either he intended to treat it as a good payment to Manni Lal or his transferees, or he intended to keep it up his sleeve and,

when the compromise was carried out, to bring a suit to get the money back. He must have known that Manni Lal regarded the money as having been paid *pro tanto* as a discharge of his debt to Mahadeo Prasad. In my opinion the Raja could not in equity enter into the compromise with the intention of bringing a suit to recover this sum of money, without making it one of the terms of the compromise, that the compromise was entered into without prejudice to his right to recover the Rs. 975. In other words, the compromise undoubtedly involved on the part of the creditors the payment of a sum of Rs. 4,975, and the Raja was perfectly well aware of that fact when he entered into the compromise. That being so this action is an abuse of the process of the court and therefore ought to be dismissed..

BY THE COURT.—The order of the Court is that we allow both these appeals, set aside the decrees of both the courts below and dismiss the plaintiff's suit with costs throughout.

*Appeal decreed.*

*Before Mr. Justice Piggott and Mr. Justice Walsh.*

STRAUSS AND COMPANY (DEFENDANT) v. RAGHUBAR DAYAL,  
DURGA PRASAD (PLAINTIFFS).\*

*Act No. IX of 1899 (Indian Arbitration Act), section 19—Subject matter of pending suit referred to arbitration—Order under section 19 staying suit—Arbitration ending in an award—Formal order (revoking stay and dismissing suit unnecessary.*

Ordinarily, a stay order passed by a court under section 19 of the Indian Arbitration Act, 1899, when the matters in dispute in a suit before it have been referred to arbitration is permanent, and when the arbitration is completed there is no necessity for the court to revoke the stay order and pass a formal order dismissing the suit. *Sheo Babu v. Udit Narain* (1) referred to.

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

Mr. B. E. O'Connor, and Munshi Durya Prasad, for the appellant.

Munshi Gulzari Lal, for the respondent.

PIGGOTT and WALSH, JJ.:—This appeal and the connected revision No 49 of 1920, are brought against an order of the District Judge of Cawnpore, dated the 21st of February, 1920.

\* First Appeal No. 67 of 1920, from an order of L. S. White, District Judge of Cawnpore, dated the 21st of February, 1920.

(1) (1914) 12 A. L. J., 757.