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limitation. Accordingly we allow this appeal and set aside the decree of the lower court, and we dismiss the suit of the plaintiff with costs throughout.

REVISIONAL CIVIL.

Before Sir Grimwood Mears, Chief Justice, and Mr. Justice Sen.

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January, 20.

SIDH NATH TEWARI (APPLICANT) *v.* TEGH BAHADUR SINGH AND OTHERS (OPPOSITE PARTIES).*

Civil Procedure Code, section 73—"Assets are held by a court" —Assets not confined to sale proceeds—Part payment by a judgment-debtor to obtain time—Rateable distribution among other decree-holders—Civil Procedure Code, section 115—Revision against refusal of rateable distribution.

The word "assets" in section 73 of the Civil Procedure Code is not to be confined to assets realised by sale or otherwise in execution of a decree. So, where the property of a judgment-debtor was about to be sold in execution of a decree and he deposited a certain sum of money in part payment in order to obtain a postponement of the sale, it was held that the sum so deposited in court was available for rateable distribution to other decree-holders who had also applied for execution before the deposit was made.

It is not a condition required by section 73 that the other decree-holders should apply for rateable distribution before the assets have come to the hands of the court.

Where the court refused an application for rateable distribution owing to its taking a wrong view of the meaning and scope of the word "assets", a revision against his order was entertained by the High Court.

Mr. *A. P. Pandey*, for the applicant.

Mr. *Bankey Behari Lal*, for the opposite parties.

MEARS, C.J., and SEN, J. :—On the civil revision being opened Mr. *Bankey Behari Lal* referred the Court to the decision in *Lachmi Dayal* v. *Sri Kishan Das* (1) and also to section 295 of the Code of Civil Procedure of 1882 and contended that as there was an undoubted remedy by suit in respect of matters on which Mr. *Pandey* sought revision, the proper practice for

*Civil Revision No. 38 of 1931.

(1) (1905) 2 A.L.J., 370.

this Court is not to hear the revision. Mr. *Pandey* brought to our notice the Full Bench case of *Lila* v. *Mahange* (1). The position today with regard to revisions is that there is no hard and fast rule about the matter and when it manifestly appears to be right and convenient and proper that this Court should decide a revisional application in preference to allowing the parties to embark on long and expensive litigation, it is within the competence of the court so to decide the revisional application. In each case it is a matter for the Judge to exercise his discretion, but it is undesirable that there should be a flood of revisions or that there should be a general departure from the rule of long standing. We, however, regard this as a case which raises in a very neat form a point of law which has not come before the Allahabad Court since 1908, at which date the legislature made what we regard as important alterations in section 73 of the Civil Procedure Code. The facts of the case from which this application arises are that a debtor by name Sarju Prasad Narain Singh had three decrees against him, one of the 14th of December, 1923, being Moti Lal's decree, the second of the 18th of August, 1925, being Tegh Bahadur Singh's decree, and the last of the 30th of August, 1927, being the decree of Pandit Sidh Nath. All of the decree-holders were seeking recourse to the property of the judgment-debtor and execution proceedings were taken on the 20th of November, 1928, by Tegh Bahadur Singh, on the 1st of July, 1929, by Sidh Nath and on the 8th of July, 1930, by Moti Lal. The property was about to be put up for sale at the instance of Tegh Bahadur Singh when on the 10th of April, 1930, the judgment-debtor deposited Rs. 500 in order to secure the postponement of the sale. Thereupon, on the 9th of May, 1930, Sidh Nath asked that he might be allowed to have rateable distribution of that money as between himself

(1) (1931) I.L.R., 54 All., 183.

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the hands of a rival decree-holder. The third point, that the application made on the 9th of May, 1930, was presented on a date subsequent to the deposit and payment, can only, we think, have arisen from a misreading of section 73. Section 73 does not say that before the receipt of such assets an application must be made to the court. The first step that is necessary in these cases is that there must be assets held by the court. The next step is that there must be a decree-holder who has a decree for the payment of money passed against the same judgment-debtor. That decree-holder must not have obtained satisfaction and he must have made an application to the court for the execution of his decree before the receipt of the aforesaid assets. Having satisfied all those conditions he can then claim to come in and have a rateable distribution of assets held by the court. We agree that Sidh Nath had fulfilled all these conditions at the date when he made the application. We are of opinion that the application should have been granted and that the Judge should have exercised the jurisdiction vested in him and have made the order. We therefore set aside the decision of the Subordinate Judge and declare that in respect of the Rs. 500 deposited by the judgment-debtor in favour of Tegh Bahadur Singh on the 10th of April, 1930, Sidh Nath is entitled to rateable distribution. As it was extremely doubtful whether this revisional application was likely to be heard, we think that the proper order to make is that no costs to either party shall be given.