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inconsistent orders of the same High Court. If on the other hand each of the eleven Judges successively and independently rejects the application, then much public time and money would have been wasted. Procedure leading to such consequences does not seem so unquestionably reasonable and desirable that we should feel inclined to adopt it as a special rule of procedure for cases under section 491. Although the High Courts in India are empowered to make rules governing the procedure in cases under section 491, and although it is therefore apparently open to them to make special rules permitting successive identical applications, it has not been shown to us that any High Court in India has made any such rule. Certainly this High Court has not made any such rule, and in the absence of such special rule we hold that we are bound to give effect to the general rule (rule 8, chapter I) regarding applications. Under this rule the presentation of this second application, to the same effect and with the same object as the previous application which has been rejected by Mr. Justice BENNET, is expressly prohibited.

We hold, therefore, that this second application is not maintainable and we reject it.

MISCELLANEOUS CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Bennet

IQBAL BAHADUR (DEFENDANT) *v.* RAM SREE (PLAINTIFF)* 1933 *September*, 22

Civil Procedure Code, section 109(*a*)—*Appeal to Privy Council* —"*Final order*"—*Order of remand reversing an order returning a plaint for presentation to the proper court.*

Where a revenue court returned a plaint for presentation to the civil court, and on appeal from that order the High Court reversed it and passed an order remanding the suit for trial by the revenue court, it was *held* that the order of remand was not a "final order" within the meaning of section 109(*a*) of the Civil Procedure Code and no appeal lay to the Privy Council.

*Application No. 32 of 1933, for leave to appeal to His Majesty in Council.

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In order to have finality it is not sufficient that a question of jurisdiction of the court to entertain the suit has been decided. The finality must be a finality in relation to the suit itself, and if, after the order, the suit is still a live suit in which the rights of the parties have still to be determined, there is yet no final order and no appeal can lie against it under section 109(*a*) of the Code.

Mr. *Ambika Prasad,* for the applicant.

Dr. *M. L. Agarwala,* for the opposite party.

SULAIMAN, C. J., and BENNET, J.:—This is an application for leave to appeal before their Lordships of the Privy Council from an order of remand passed by this Court under which an order of the revenue court returning the plaint for presentation to the civil court was set aside. The suit was brought for the arrears of rent under a theka or lease of the year 1924. The document, which was a registered deed, covered both the zamindari and house properties. An objection was taken that the revenue court had no jurisdiction to entertain the suit inasmuch as the lease related to house properties as well. The revenue court upheld the contention and ordered that the plaint should be returned for presentation to the civil court. A Bench of this Court on appeal came to the conclusion that on a proper interpretation of the lease the two properties could be easily separated, inasmuch as there was no specified sum fixed as a lump sum, but only the lessee was to retain 7 per cent. of the profits and pay the balance, whatever it might be, to the lessor; that accordingly the suit for the recovery of the arrears of the balance of profits as regards the zamindari property could be entertained by the revenue court.

The first point to consider is whether the applicant is entitled to go in appeal to their Lordships of the Privy Council as of right. Obviously the order of remand is not a decree, and an appeal would lie only if it amounts to a final order. The main test as to the finality of the order of remand is whether it finally decides the rights of the parties and the decision can never be challenged again. In *Ramchand Manjimal*

v. *Goverdhandas Vishandas* (1) the appellate court in India had held that inasmuch as the order staying the proceedings passed under section 19 of the Indian Arbitration Act went to the root of the case, namely the jurisdiction of the court to entertain it, the case fell under section 109(*a*) of the Code. Their Lordships of the Privy Council did not agree with this view and held that inasmuch as the suit was a live suit the order was not a final one, inasmuch as it had not finally disposed of the rights of the parties. The appellate court's order had merely left those rights to be determined by the courts in the ordinary way. In the recent case of *Abdul Rahman* v. *Cassim and Sons* (2) their Lordships of the Privy Council have again drawn attention to the observations made by Lord CAVE in the case quoted above. At page 247 their Lordships have remarked: "It should be noted that the appellate court in India was of opinion that the order it had made 'went to the root of the suit, namely the jurisdiction of the court to entertain it', and it was for this reason that the order was thought to be final and the certificate granted. But this was not sufficient. The finality must be a finality in relation to the suit. If, after the order, the suit is still a live suit in which the rights of the parties have still to be determined, no appeal lies against it under section 109(*a*) of the Code." Their Lordships have accordingly emphasised that in order to have finality it is not sufficient that a question of jurisdiction of the court to entertain the suit has been decided. The finality must be a finality in relation to the suit itself, and if the suit is still a live suit in which the rights of the parties have still to be determined, there is yet no final order.

Applying these principles to the facts of the case before us, it is quite clear that the present order of remand does not dispose of the rights of the parties. The suit has now been restored to the file of the revenue

(1) (1920) I.L.R., 47 Cal., 918.

(2) [1933] A.L.J., 244, I.L.R., 11 Rang., 58.

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court and has to be proceeded with and disposed of according to law. The question that has been decided was merely one of the proper forum and did not involve an adjudication of the rights of the parties *inter se*. The suit is pending and will have to be heard and decided on the merits.

We may also mention that even if the plaint had been returned for presentation to the civil court, an appeal from the decree of the civil court would have lain to the High Court, and there would in the same way be an appeal to their Lordships of the Privy Council. The question of jurisdiction which has been decided adversely to the defendant can in a future appeal from the decree passed in the suit be raised again before their Lordships of the Privy Council. The suit has, therefore, not been finally disposed of. We must accordingly hold that in view of the observations made by their Lordships in the recent case, a cardinal point has not been decided and the suit has not been finally disposed of within the meaning of section 109(*a*), and the applicant is therefore not entitled to appeal as of right.

The learned advocate for the applicant next contends that this is a case which is otherwise a fit one for appeal to their Lordships of the Privy Council under section 109(*c*). No doubt under this clause it is not necessary that the order should be final, and it is no doubt open to this Court in a proper case to grant a special certificate under this clause, but it has been laid down by their Lordships in several cases that the case should be one which raises some question of considerable importance, whether public or private, or some question which is of wide public importance, even though the subject-matter in dispute cannot be reduced into actual terms of money. A mere substantial question of law arising between the parties, which would have been sufficient if the case had fulfilled the requirements of section 110, would obviously not be sufficient for purposes of section 109(*c*).

The learned advocate for the applicant has conceded before us that if it were a lease of the zamindari rights pure and simple, a suit to recover arrears of rent would lie in a revenue court. The contention that the suit is cognizable by the civil court is based on the sole ground that the lease comprises a theka of house properties as well. But this involves the question whether the transaction in dispute can be split up into two separate leases, which depends merely on the interpretation of the document, and cannot be said to be a question of any general or wide importance. We, therefore, do not think that this is a fit case which we can certify under section 109(*c*).

The application is accordingly dismissed with costs.

APPELLATE CIVIL

Before Justice Sir Lal Gopal Mukerji and Mr. Justice Young

BAL KRISHNA AND OTHERS (DEFENDANTS) *v.* DEBI SINGH (PLAINTIFF)*

1933 *October*, 2

Acknowledgment—Promissory note acknowledged—Whether acknowledgment by itself can be basis of a suit to recover the debt.

A mere acknowledgment of a liability can not be made the basis of a suit. An acknowledgment of a debt does not amount to a supersession of the debt acknowledged. It only confirms the older debt, and, therefore, if anything has to be recovered, it is on the debt itself. A document which amounts only to an acknowledgment does not give rise to a new debt in supersession of the old one.

Dr. *K. N. Katju* and Messrs. *M. L. Chaturvedi* and *D. P. Uniyal*, for the appellants.

Mr. *R. C. Ghatak*, for the respondent.

MUKERJI and YOUNG, JJ.:—This is an appeal which arises out of a suit brought by the respondent against five persons in the following alleged circumstances. Gauri Datt and his brother Parmanand were partners and dealt in timber. On the death of Parmanand his

*First Appeal No. 261 of 1930, from a decree of Prem Lal Sah, Subordinate Judge of Garhwal, dated the 10th of April, 1930.