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EMPEROR
v.
MIRI LAL

Judges of the Calcutta High Court held that "Session 215 of the Criminal Procedure Code bars the revision by the High Court of an order of commitment made under section 213 . . . except on a point of law."

The result, therefore, is that I hold that in view of the fact that the committing Magistrate had held that there was a *prima facie* case the learned Sessions Judge was not justified in making a recommendation that the commitment be quashed. The commitment could have been quashed only on a question of law and there is no law point in the present case. The result, therefore, is that the reference made by the learned Sessions Judge is rejected and I direct that the records be returned to the court of the learned Sessions Judge who made the reference.

APPELLATE CIVIL

Before Sir John Thom, Chief Justice, and Mr. Justice Ganga Nath

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April, 19

PARTAB BAHADUR SAHI (JUDGMENT-DEBTOR) v. HARI
RAM MARWARI (DECREE-HOLDER)*

Civil Procedure Code, section 48(1)(b)—"Subsequent order"—Compromise in execution proceedings—Agreement that the decretal amount was to be paid in specified annual instalments—Limitation of twelve years to be calculated from date of each instalment.

A compromise was entered into between the decree-holder and the judgment-debtor in execution proceedings, by which the decretal money was to be paid in eight yearly instalments. Default being made in payment of the fifth instalment, the decree-holder made an application for execution, the date of the application being more than twelve years after the date of the decree but within twelve years of the date fixed for payment of the fifth instalment: *Held* that the case fell under clause (b) of section 48(1) of the Civil Procedure Code and the application for execution was not barred by limitation under that section.

The view that a "subsequent order" directing payment of the decretal amount by instalments can be passed by the

*First Appeal No. 366 of 1939, from a decree of Bijai Pal Singh, Civil Judge of Gorakhpur, dated the 11th of September, 1939.

original court only, i.e. the court which passed the decree, is not good law. *Gobardhan Das v. Dau Dayal* (1), dissented from.

Dr. M. Wali-ullah, for the appellant.

This appeal was heard *ex parte*.

THOM, C.J., and GANGA NATH, J.:—This is a judgment-debtor's appeal and arises out of execution proceedings. The respondent obtained a decree against the judgment-debtor on 17th May, 1926. On the 21st April, 1928, a compromise was entered into between the parties in the execution proceedings by which the decretal money was to be paid in eight yearly instalments, each instalment payable on the 31st May. The judgment-debtor paid the first four instalments, but made a default in the payment of the fifth instalment, which fell due on 31st May, 1933. The present application for execution was made by the decree-holder on 5th July, 1938. An objection was taken by the appellant that the execution was barred by section 48 of the Code of Civil Procedure. The execution court has repelled the objection. Section 48(1) lays down: "Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from—. . . (b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree."

Under the terms of the compromise entered into between the parties referred to above, the decretal money was payable on certain dates fixed in the compromise. The case, therefore, falls under clause (b) of section 48(1). Reliance was placed by learned counsel on *Gobardhan Das v. Dau Dayal* (1). There it was observed: "An execution court has no power to alter or vary the decree under execution, and to

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substitute a new decree for it. A mere agreement or consent of the parties cannot confer such a jurisdiction on the execution court, or supersede the rule of limitation. An order under order XX, rule 11, of the Civil Procedure Code can be passed by the original court only, i.e. the court which passed the decree."

This decision cannot now be regarded as good law in view of a recent decision of the Privy Council which is against this case. In *Oudh Commercial Bank v. Thakurain Bind Basni Kuer* (1), their Lordships of the Privy Council observed: "Their Lordships are in agreement with the statement in the case of *Gobardhan Das* (2) (at page 585 of the report) that 'in numerous cases a compromise between the decree-holder and the judgment-debtor entered into in the course of execution proceedings, which was duly recorded, has been enforced', and they are not of opinion that the practice, which is both widespread and invertebrate, is contrary to the Code. They are of opinion that in the present case the compromise can and should be enforced in these execution proceedings."

There can, therefore, be no doubt that the compromise which was entered into between the parties was enforceable in execution proceedings. The period of twelve years will, accordingly, be computed from the date of the default, i.e. from 31st May, 1933. The application therefore is within time and is not barred by section 48 of the Code of Civil Procedure.

In the result the appeal is dismissed under order XLI, rule 11 of the Civil Procedure Code.

(1) (1939) I.L.R. 14 Luck. 192(210). (2) (1932) I.L.R. 54 All. 573.