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APPELLATE CIVIL

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

KASTORI SINGH AND OTHERS (DECREE-HOLDERS) *v.* PATI  
RAM (OBJECTOR)\*

1939  
*September,*  
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*Civil Procedure Code, order XXXII, rule 7—Compromise on behalf of a minor without the leave of the court—Compromise after decree and before execution—Permission of court necessary for the compromise to be binding on a minor.*

Where a decree is adjusted before execution by means of a compromise and one of the parties to the litigation is a minor, the consent of the court is necessary if the minor is to be bound thereby. The provisions of order XXXII, rule 7, of the Civil Procedure Code apply not only to a compromise during the pendency of the suit and during the pendency of execution proceedings, but also to a compromise during the period between the passing of the decree and the launching of execution proceedings.

Mr. *A. M. Khwaja*, for the appellants.

Mr. *B. Malik*, for the respondent.

THOM, C.J., and GANGA NATH, J.:—This is a decree-holders' appeal against the decision of a learned single Judge of this Court.

The decree-holders filed a suit in which they claimed an order for the demolition of a house. They obtained decree but on the 18th of July, 1934, they entered into a compromise with the judgment-debtor. Under the terms of the compromise the judgment-debtor was to be allowed to retain the house in suit and in consideration

\*Appeal No. 48 of 1938, under section 10 of the Letters Patent.

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of giving up their rights under the decree the decree-holders were given a sum of money.

The decree-holders, three days after entering into the compromise, applied for the execution of their decree. The judgment-debtor objected and pleaded the compromise. The court of first instance and the lower appellate court disallowed the objection. In second appeal, however, the objection has been upheld and the application for execution has been dismissed.

It was contended for the appellants that in fact no compromise had been concluded. The appellants are not entitled to take this plea at this stage. The trial court found that the compromise had been concluded. The decision of the trial court does not appear to have been challenged in the lower appellate court; it was not challenged before the learned single Judge nor is there any reference to it in the grounds of objection in the present appeal.

It was contended in the second place for the appellants that inasmuch as one of the appellants was a minor at the time when the compromise of the 18th of July, 1934, was concluded, that compromise is not binding upon him and he is entitled to execute the decree. In our judgment this contention is sound. Under order XXXII, rule 7, of the Civil Procedure Code it was essential to obtain the permission of the court before the compromise on behalf of the minor could be concluded. It is a matter of admission that no such permission was taken.

It was maintained for the respondent that as the compromise had been concluded after the passing of the decree and before the execution application was presented the provisions of order XXXII, rule 7 did not apply. Learned counsel for the respondent was unable to refer to any authority in support of this proposition. The provisions of order XXXII, rule 7 are applicable to miscellaneous proceedings in virtue of section 141 of the Civil Procedure Code. If for the protection of the

minor it is essential to obtain the permission of the court for a compromise during the pendency of the suit and during the pendency of the execution proceedings, in our opinion it is just as essential in the interests of the minor that the court's consent should be taken during the period between the passing of the decree and the execution proceedings. There is nothing in the wording of order XXXII, rule 7 which justifies the proposition which learned counsel for the respondent has advanced. If the proposition be sound then clearly it would be a matter of no difficulty to defeat the provisions of order XXXII, rule 7 and deprive the minor of the protection thereby provided; all that would be necessary would be to delay *formally* concluding the compromise till the decree in a suit had been passed. We are satisfied that where a decree is adjusted before execution by means of a compromise and one of the parties to the litigation is a minor, the consent of the court is necessary if the minor is to be bound thereby.

Learned counsel for the respondent urged that although the compromise may not be binding so far as the minor is concerned it is binding so far as the other appellants are concerned. No doubt this is so, but the decree is one for the demolition of the house and it cannot be split up. In our judgment, therefore, in these circumstances the objection falls to be dismissed.

In the result the appeal is allowed. The order of the learned single Judge is set aside and the respondent's objection is dismissed. Parties will bear their own costs throughout.

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