

1934

KALI
CHARAN
v.
KING-
EMPEROR

Nanavutty,
J.

Kali Charan's financial position was unsound. If, on the other hand, Kali Charan made a *bona fide* bid at the time of the auction sale and had no intention of shirking his obligations, then his subsequent failure to deposit the earnest-money due from him cannot be made a penal offence punishable under section 185 of the Indian Penal Code. In fact the Excise authorities of Lucknow were prepared to drop the prosecution of Kali Charan if he made good the loss of Rs.900, and it was only on the failure of Kali Charan to deposit this deficiency that his prosecution under section 185 of the Indian Penal Code was sanctioned. The learned counsel for the applicant has some colourable ground for asserting that his client was prosecuted for an offence under section 185 of the Indian Penal Code only as a means for the recovery of the amount of Rs.900 due from him.

In my opinion upon the facts found proved by the learned trying Magistrate no offence under section 185 of the Indian Penal Code appears to have been committed by the applicant Kali Charan.

For the reasons given above, I allow this application for revision, set aside the conviction and sentence passed upon the applicant Kali Charan, acquit him of the offence charged, and direct that the fine, if paid by him, be refunded to him.

Application allowed.

APPELLATE CIVIL

Before Mr. Justice Rachhpal Singh

1934
February 27

LAL BAHADUR (JUDGMENT-DEBTOR-APPELLANT) v. MATHURA PRASAD (DECREE-HOLDER-RESPONDENT)*

Limitation Act (IX of 1908), article 182(7)—“Such date”, meaning of—Decree payable by instalments—Decree providing that entire money will be recoverable in default of any

*Execution of Decree Appeal No. 49 of 1933, against the order of Saiyid Qadir Hasan, Subordinate Judge of Bara Banki, dated the 2nd of August, 1933.

instalment—Default in instalment—Limitation for entire amount, when begins to run.

1934

LAL
BAHADUR
v.
MATHURA
PRASAD

Where in a compromise decree it is agreed between the parties that the decretal amount would be paid in instalments and it is also stipulated that in case of default in payment of any instalment on the due date, the decree-holder may realize the entire decree money, the decree-holder becomes entitled under the terms of the compromise to apply for the recovery of the entire amount on each occasion whenever there is a default in payment of any of the instalments and the case is governed by article 182, clause (7), of the Indian Limitation Act. The words "such date" in that clause refer to the date on which a default is made in payment of any of the instalments and on the occasion of each default the decree-holder is entitled to enforce his claim for the payment of the entire amount due, except in respect of which the claim has become barred. *Braham Kishun Narain Deo v. Harihar Munder* (1), *Manindra Nath Roy v. Kanhai Ram Marwari* (2), *Joti Prasad v. Sri Chand* (3), and *Ram Prasad Ram v. Jadunandan* (4), referred to.

Mr. *Akhtar Husain*, for the appellant.

Mr. *Bhawani Shankar*, for the respondent.

RACHHPAL SINGH, J.:—This is an appeal by the judgment-debtor arising out of execution proceedings.

Mathura Prasad, decree-holder, instituted a suit against Lal Bahadur, judgment-debtor, to recover a sum of Rs.290 on foot of a simple money bond and on the 24th of September, 1927, obtained a decree on the basis of a compromise. It was agreed between the parties that the decretal amount would be paid in instalments yearly. It was also stipulated that in case of default in payment of any instalment on the due date, the decree-holder may realize the entire decree money. The words used are "*dar surat adam adai kisi kist ke muddai kull rupiya wasul kar lewae.*" The court below found that the first and the second instalments had not been paid by the judgment-debtor. It, therefore, passed an order directing execution to issue for the recovery of the balance of Rs.190, together with costs. The judgment-debtor raised the plea that the application for execution

(1) (1931) I.L.R., 11 Pat., 440.

(2) (1918) 4 P.L.J., 365.

(3) (1928) I.L.R., 51 All., 237.

(4) (1934) 32 A.L.J., 6.

1934

LAL
BAHADUR
v.
MATHURA
PRASAD

was not within limitation, but the learned Munsif rejected this plea. The judgment-debtor has come up in appeal.

Rachhpal
Singh, J.

The sole question for determination in this appeal is as to whether or not the application of the decree-holder is within limitation. The first instalment fell due on the 23rd of April, 1929. The present application for execution was made on the 30th of March, 1933, that is to say, more than three years after the date on which there had been a default in payment of the first instalment. The contention raised by the learned counsel appearing for the appellant is that the decree-holder became entitled, under the terms of the compromise, to recover the entire amount due on the date on which there was a default in payment of the first instalment, and no application for execution having been made within three years from that date, his present application for execution was barred by limitation. In my opinion this contention cannot be accepted. The question for consideration is, whether under the terms of the compromise there was no option left to the decree-holder but to execute the decree for the entire sum due on non-payment of the first instalment. If the decree-holder was not compelled, under the terms of the compromise, to ask for the recovery of the entire amount due on account of the instalments, I do not see any reason why he should not be permitted to execute his decree for the instalments which still remain due. The view taken in *Braham Kishun Narain Deo v. Harihar Munder* (1) is opposed to the contentions raised by the learned counsel for the appellant. A Bench of two learned Judges of that Court held in that case that "unless a decree, which provides for the payment of the decretal amount by instalments, clearly leaves the decree-holder no option on the happening of the default but to execute the decree once for all for the whole amount due under it, the decree-holder may

(1) (1931) I.L.R., 11 Pat., 446.

execute it on the happening of the first, second, or any subsequent default; and limitation will run against him only in respect of each instalment separately from the time when each such instalment may become due and payable. The failure to exercise the option when the decree-holder had the power of doing it does not take away from him the right of exercising it on any subsequent occasion." In another case reported in *Manindra Nath Roy v. Kanhai Ram Marwari* (1) it was decided that where a decree provides for the payment of the decretal amount by instalments, and states that each instalment will be payable on a specified date and that on default in the payment of any instalment the whole amount will become due, the decree-holder is entitled to apply for execution of each instalment as it becomes payable, and the period of limitation continues for three years from the date when default is made in the payment of any instalment. In *Joti Prasad v. Sri Chand* (2) a Full Bench of the Allahabad High Court held that if the application for execution is one for the remaining unpaid balance of the decretal amount under the second unpaid amount, it is not governed by article 182 at all but by article 181, and limitation will run from the date of the default, the decree-holder being entitled to recover the whole balance due less by any individual instalments which, regarded as individual instalments, are barred by limitation. In a very recent case *Ram Prasad Ram v. Jadunandan* (3). (Notes and Summary of recent cases) a case similar to one before me, a Bench of two learned Judges of that Court have held that the decree-holder had two distinct rights, viz. (1) to receive instalments as and when they fell due; (2) to enforce the payment of all the instalments that might remain unpaid. They held that as the application for the recovery of the entire amount due on all instalments was not made within a period of three years from the date of

1934

 LAL
BAHADUR
v.
MATHURA
PRASAD

*Rachhpal
Singh, J.*

(1) (1918) 4 P.L.J., 365.

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1934

LAL
BAHADUR
v.
MATHURA
PRASAD

Rachhpal
Singh, J.

default, the decree-holder's remedy to make an application to recover the entire amount was time-barred; article 181 of the Indian Limitation Act being applicable. But they also held that if this right was time-barred it does not follow that the first right was also time-barred and that the decree-holder was entitled to recover such of the instalments as had fallen due on the date of the application for execution and article 182(7) of the Limitation Act was applicable. After a consideration of these cases I am of opinion that the view taken by a Bench of two learned Judges of the Patna High Court in *Braham Kishun Narain Deo v. Harihar Munder* (1) should be followed. Under the terms of the compromise before me, the judgment-debtor agreed to pay the decree money in yearly instalments. The decree-holder was given the option to execute the decree for the whole amount if there was a default in payment of any of the instalments. I see nothing in the terms of the compromise which compelled the decree-holder to enforce his decree for the recovery of the entire amount in case of default of payment of any instalment immediately. It appears to me that two courses were open to him in case of non-payment of any instalment. One was to execute his decree for the instalment which had fallen due, and the other was to apply for the recovery of the entire amount due on account of the decree money. If the decree-holder did not apply within three years of the date of default of any particular instalment he would lose his right to recover the same, but I do not see any justification for holding that if he does not apply within three years of the date of default for the recovery of the entire amount, then his claim to recover the remaining instalments would be barred. I agree with the view taken in the ruling reported in I. L. R., 11 Pat., 440, that in a case like this, the decree-holder may execute his decree on

(1) (1931) I.L.R., 11 Pat., 440

the happening of the first, second, or any subsequent default; and limitation will run against him only in respect of each instalment separately from the time when each such instalment may become due and payable and that failure to exercise the option when the decree-holder had the power of doing it does not take away from him the right of exercising it on any subsequent occasion. In my opinion the decree-holder becomes entitled under the terms of the compromise to apply for the recovery of the entire amount on each occasion whenever there is a default in payment of any of the instalments. In my opinion the case is governed by article 182, clause (7) of the Indian Limitation Act. The words "such date" in this clause refer to the date on which a default is made in payment of any of the instalments. On the occasion of each default the decree-holder is entitled to enforce his claim for the payment of the entire amount due, except in respect of which the claim has become barred.

For these reasons I am of opinion that the application of the decree-holder for the recovery of the balance due was within limitation and the view taken by the court below is correct. The appeal, therefore, stands dismissed with costs.

Appeal dismissed.

APPELLATE CRIMINAL

Before Mr. Justice E. M. Nanavutty

LAKHAN SINGH AND OTHERS (APPELLANTS) v. KING-
EMPEROR (COMPLAINANT-RESPONDENT)*

1934
February, 26

Criminal Procedure Code (Act V of 1898), sections 423(1)(b) and 531—Indian Penal Code (Act XLV of 1860), sections 399 and 402—Indian Arms Act (XI of 1878), section 19(f)—Accused charged under section 399 and alternatively under section 402—Acquittal under section 402 but conviction under

*Criminal Appeal No. 513 of 1933, against the order of Babu Gulab Chand Srimal, Assistant Sessions Judge of Hardoi, dated the 7th of November, 1933.