

## APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan and Mr. Justice  
Muhammad Raza.

ADITYA PRASAD (DECREE-HOLDER-APPELLANT) v.  
CHAUDHARI HARGOVIND SINGH AND ANOTHER  
(JUDGMENT-DEBTORS-RESPONDENTS).\*

1928.  
January, 5.

*Civil Procedure Code (Act V of 1908), order XXXIV, rule 6*  
—Compromise decree for recovery of balance if sale proceeds be insufficient—Decree in terms of order XXXIV, rule 6 of the Code of Civil Procedure, necessity of.

Where a decree was not in terms of the rules of order XXXIV of the Code of Civil Procedure, but in terms of agreement between the parties according to which provision for recovery of any sum of money, which might be found to be due to the decree-holder if the sale-proceeds be insufficient, had already been made in the decree passed on the basis of the compromise, no further decree is required to be made under rule 6 of order XXXIV of the Code of Civil Procedure. The decree may provide for the relief of a sale as well as of further execution in case the sale proceeds are found to be insufficient to satisfy the whole of the decretal amount. *Jeuna Bahu v. Parmeshwar Narain Mahta* (1), followed.

Mr. *Haidar Husain*, for the appellant.

HASAN and RAZA, JJ. :—This is an appeal, by the holder of a decree which is being sought to be executed against the respondents, who are the judgment-debtors under the same decree, from the order of the Subordinate Judge of Gonda, dated the 16th of August, 1927.

The circumstances are as follows. In a suit for foreclosure founded on a mortgage the appellant obtained a decree against the respondents in terms of a compromise, dated the 22nd of February, 1923. The compromise which was incorporated in the decree is made up of several provisions, but the provisions with which we are

\* Execution of Decree Appeal No. 50 of 1927, against the decree of Zia Uddin Ahmad, Subordinate Judge of Gonda, dated the 16th of August, 1927, rejecting the application for execution.

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concerned at present were that certain specified property was ordered to be sold in the event of the judgment-debtors failing to deposit within six months of the date of the decree a sum of Rs. 68,000, together with costs and future interest. It was further provided that, in the event of sale proceeds being found to be insufficient, to satisfy the amount of the decree, the decree-holder will be entitled to recover the balance from the judgment-debtors' person and other properties. Subsequently the decree-holder obtained a final decree, and sale of the property specified in the decree did take place in pursuance thereof. The result has been that a large balance was found to remain due to the decree-holder. The decree-holder then made an application for a decree under rule 6 of order XXXIV of the Code of Civil Procedure. For some reason or another that application was rejected. Then was made the application out of which this appeal has arisen. The court below has rejected the present application on the ground that the previous application had been rejected.

In appeal it is argued that the previous application was a superfluous application and not required by law. The contention is, that having regard to the terms of the compromise decree there is no need in law for the decree-holder to obtain a separate decree under rule 6 of order XXXIV of the Code of Civil Procedure.

We are of opinion that the contention is sound, and must be accepted. We have already stated that the decree which is now being sought to be executed was a decree not in terms of the rules of order XXXIV of the Code, but in terms of the agreement between the parties. Clearly according to that agreement provision for recovery of that sum of money which might be found to be due to the decree-holder, if the sale proceeds be insufficient, has already been made in the decree passed on the basis of the compromise and consequently no further decree is required to be made under rule 6 of order

XXXIV of the Code of Civil Procedure. That a decree may provide for the relief of a sale as well as of further execution in case the sale proceeds were found to be insufficient to satisfy the whole of the decretal amount is borne out by the decision of their Lordships of the Judicial Committee in the case of *Jeena Bahu v. Parmeshwar Narayan Mahta* (1). We regret that the respondents are not present, but we are indebted to the learned Counsel for the appellant that every thing that could be said on behalf of the respondents has been placed by him before us for consideration, and we have delivered our judgment after anxious thought as to the point involved in this appeal.

We accordingly allow the appeal, set aside the order of the court below, and direct that the application be restored to its original number in the appropriate register and proceeded with according to law and in the light of the observation made in this judgment. No order as to costs.

*Appeal allowed.*

## REVISIONAL CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge.*

KASHI NATH RAI (PLAINTIFF-APPLICANT) v. THAKUR  
NAND BEHARI SINGH (DEFENDANT-OPPOSITE-  
PARTY).\*

1928  
January, 5.

*Provincial Small Cause Courts Act (IX of 1887), second schedule, article 41—One of joint executants of a bond discharging the whole debt—Suit against the other to make good the loss—Contribution suit—Cognizance of suit by a court of small causes.*

Where two persons share in the benefit derived from the joint execution of a bond and one of them leaves the other

\* Section 25, Application No. 54 of 1927, against the decree of G. C. Chatterji, Subordinate Judge of Fyzabad, dated the 17th of September, 1927, dismissing the plaintiff-appellant's suit.

(1) (1919) L.R., 46 I.A., 294.

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Hasan and  
Raza, JJ.