

1892 not held in that case, nor was it any part of that case, that it was not an application amounting to some step taken in aid of execution of the decree. Consequently, that case is no authority for the order passed by the District Judge. There are cases on the other hand in which an application for the transfer of a decree for the purpose of execution has been considered to be a step in aid of the execution [see the cases of *Latchman Pundeh v. Maddan Mohun Shye* (1), *Collins v. Maula Bakhs* (2), and *Krishnagayyar v. Venkayyar* (3)].\*

RAJBULLUHH  
SAHAI  
2.  
JOY KISHEN  
PERSHAD.

We would also observe that under any circumstances the execution of the decree in this case was not barred by limitation, for the case clearly comes within section 14, para. 3 of the Law of Limitation, and the decree-holder is entitled to a deduction of all the time occupied in executing the decree in the Court having no jurisdiction, it being manifest that such application was made in good faith to the Court, which only in second appeal to this Court was found not to have jurisdiction. The order of the first Court must therefore be restored, and the appellant will be entitled to his costs in this Court and also in the lower Appellate Court.

*Appeal allowed.*

C. D. P.

*Before Sir W. Comer Petheram, Knight, Chief Justice, and  
Mr. Justice Ghose.*

1892  
August 1.

RAM DOYAL BANERJEE (DECREE-HOLDER) *v.* RAM HARI  
PAL (JUDGMENT-DEBTOR).†

*Civil Procedure Code (Act XIV of 1852), ss. 244(c), 257A, 258—Adjustment of decree out of Court—Instalment bond.*

A kistbundi or instalment bond was executed by way of adjustment of a decree, but this was not certified to the Court in accordance with the provisions of sections 257A and 258 of the Code of Civil Procedure: *Held*

\* See also the case of *Vellaya v. Jaganatha*, I. L. R., 7 Mad., 307—*Ed. Note.*

† Appeal from order No. 329 of 1891, against the order of R. R. Pope, Esq., District Judge of Hooghly, dated the 26th of June 1891, affirming the order of Babu Loke Nath Nundi, Munsiff of Serampore, dated the 1st of April 1891.

(1) I. L. R., 6 Calc., 513.

(2) I. L. R., 2 All., 284.

(3) I. L. R., 6 Mad., 81.

that a Court executing the decree was not competent to take cognizance of the kistbundi under section 244 of the Code, and that the decree must be executed, notwithstanding the adjustment.

1892

RAM DOYAL  
BANERJEE  
v.  
RAM HARI  
PAL.

*Jhabar Mahomed v. Modan Sonahar* (1) explained and distinguished.

RAM DOYAL BANERJEE, the appellant, applied in the Court of the Munsiff for execution of a money-decree against the judgment-debtor Ram Hari Pal. The latter filed a petition of objection, stating that he had executed a registered kistbundi or instalment bond in favour of the decree-holder for the amount of his claim together with costs, and claimed to be absolved from all liability under the decree. The kistbundi was not certified to the Court.

The decree-holder denied all knowledge of the kistbundi, but admitted that he had authorised his gomastah Kunj Behari, who had since absconded, to take steps to recover the amounts due on decrees. The Munsiff held that the instalment bond had been executed by the judgment-debtor, and that the decree was thereby satisfied. He held accordingly that the decree-holder could not be allowed to proceed with the execution of the decree.

The decree-holder on appeal contended that the kistbundi, not having been made with the sanction of the Court, was void under section 257A. of the Code of Civil Procedure. The Judge held, upon the authority of *Jhabar Mahomed v. Modan Sonahar* (1), that this contention must fail, and upheld the order of the lower Court. From this decision the decree-holder appealed to the High Court.

Baboo *Kishori Lal Gossain* appeared for the appellant.

Baboo *Jadub Chundra Seal* appeared for the respondent.

The judgment of the Court (PETHERAM, C.J., and GHOSE, J.) was as follows :—

This appeal arises out of an application for execution of a decree for money. Upon the application being made, the judgment-debtor put in an objection to the effect that he had executed a kistbundi in favour of the decree-holder for the amount of his claim, and that therefore the decree could not be executed. It

1892  
 RAM DOYAL  
 BANERJEE  
 v.  
 RAM HARI  
 PAL.

appears that this satisfaction or adjustment of the decree, whatever it may be called, was not certified to the Court, but, notwithstanding this, both the Courts below have held that, by reason of the kistbundi having been executed, it is not open to the decree-holder to execute the decree.

It seems to have been contended before the Judge of the lower Court that the instalment bond, not having been made with the sanction of the Court, was void under section 257A of the Code of Civil Procedure, and the learned Judge overruled that contention, relying upon a decision of this Court in *Jhabar Mahomed v. Modan Sonahar* (1). It appears upon the proceedings in this case that the arrangement which resulted in the execution of the kistbundi in question was come to, not between the plaintiff and the defendant, but between his servant Kunj Behari and the defendant, and there was some discussion before the Court of first instance whether the act of Kunj Behari was binding upon the decree-holder.

The Munsiff determined this question in favour of the defendant, and it does not appear that any question of that sort was raised before the Appellate Court. The only question therefore that we have to determine in this appeal is, whether by reason of the execution of the kistbundi the decree-holder is precluded from executing his decree.

Section 257A of the Code provides that "every agreement to give time for the satisfaction of a judgment-debt shall be void, unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable.

"Every agreement for the satisfaction of a judgment-debt which provides for the payment, directly or indirectly, of any sum in excess of the sum due, or to accrue due under the decree, shall be void unless it is made with the like sanction."

Section 258 provides :—"If any money payable under a decree is paid out of Court, \* \* or if any payment is made in pursuance of an agreement of the nature mentioned in section 257A, the decree-holder shall certify such payment or adjustment

to the Court whose duty is to execute the decree.

‘Unless such a payment or adjustment has been certified as aforesaid, it shall not be recognized as a payment or adjustment of the decree by any Court executing the decree.’

1892

RAM DOYAL  
BANERJEE  
v.  
RAM HARI  
PAL.

In the case quoted by the learned Judge, *Jhabar Mahomed v. Modan Sonahar* (1) it would appear that after the plaintiff had obtained his decree, a compromise was come to by the parties out of Court, and in accordance with this compromise an instalment bond was executed in favour of the plaintiff; but the fact of the decree having been thus satisfied was not certified to the Court, and subsequently the plaintiff brought a suit to recover the money due on the bond, and the questions that were referred to the High Court were, *first*, whether section 257A would bar the institution of a separate suit on the instalment bond; and *second*, whether the non-satisfaction of the judgment-debt constituted a valid consideration for the bond, and the opinion of the High Court was that the instalment bond upon which the suit was brought was not an agreement to give time for the satisfaction of the judgment-debt within the meaning of section 257A, and that the provisions of that section were only intended to prevent any binding agreement between the judgment-debtor and creditor for extending the time for enforcing the decree without the sanction of the Court, and that these provisions were not intended to prevent parties from entering into a fresh contract for payment of the judgment-debt by instalments, and that any such fresh contract could only be enforced by a fresh suit.

There is no question before us as to whether a fresh suit would lie upon this instalment bond. The only question that we have to determine is whether the adjustment of the decree (for we think we ought to take it that the execution of the instalment bond was in fact an adjustment of the decree) not having been certified to the Court in accordance with section 258, it is open to the judgment-debtor to contest the right of the decree-holder to execute the decree in accordance with the Procedure Code.

The last paragraph of section 258 provides that “unless such payment or adjustment has been certified as aforesaid, it shall not

(1) I. L. R., 11 Calc., 671.

1892  
 RAM DOYAL  
 BANERJEE  
 v.  
 RAM HARI  
 PAL.

be recognized as a payment or adjustment of the decree by any Court executing the decree." This paragraph was in substitution of the last paragraph of section 258 as it stood in Act XII of 1879: "No such payment or adjustment shall be recognized by any Court unless it has been certified as aforesaid."

With reference to the expression "any Court" which was used in the old Act, there were many conflicting rulings of the different High Courts upon the effect to be given to payment or adjustment of decrees, which had not been certified to the Court charged with the execution of decrees,—see *Poromanand Khasnabish v. Khepoo Paramanick* (1), *Hormasji Dorabji Vania v. Burjorji Jamsetji Vania* (2), *Haji Abdul Rahiman v. Khoja Khaki Aruth* (3). It was in consequence of these conflicting rulings that the Legislature found it necessary to alter the last paragraph of section 258 and to substitute in its place the paragraph as it now stands.

This alteration was made by section 27 of Act VII of 1888.

It was argued before us that under section 244(c) of the Code of Civil Procedure, the Court executing the decree is bound to take cognizance of the adjustment of the decree by the kistbundi bond as a question relating to the execution, discharge, and satisfaction of the decree; but it will be observed that the last paragraph of section 258 expressly declares that *any Court executing the decree* shall not recognize any payment or adjustment out of Court which has not been certified to the Court. Reading therefore section 244 with the last paragraph of section 258, it seems to us that the Court executing the decree is not competent to take any cognizance of the kistbundi said to have been executed by the defendant by way of adjustment of the decree.

That being so, we think that the order of the Court below must be set aside, and the case remanded to the Court of first instance, with a direction that that Court should execute the decree in accordance with law. The costs will abide the result.

*Case remanded.*

A. A. C.

(1) I. L. R., 10 Calc., 364.

(2) I. L. R., 10 Bom., 155.

(3) I. L. R., 11 Bom., 6.