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the court discretion to dismiss an objection if it was designedly or unnecessarily delayed. It is true that the exercise of such discretion is not open to revision under section 115 of the Code of Civil Procedure but as held by a Bench of the Allahabad High Court in *Musammat Rajeshuri Bibi* v. *B. Hari Ram* (1), a court cannot dismiss an objection filed under order XXI, rule 58 summarily on the supposed ground that there is an unnecessary delay without giving an opportunity to the objector or his counsel to explain the delay. In the present case no such opportunity was allowed to the objector. We are therefore of opinion that the court acted with material irregularity in dismissing the objection in the way it did. We accordingly allow the application, set aside the order of the lower court and send the case back to the learned Munsif to determine whether there was any intentional or unnecessary delay after hearing the parties and in case it is found that there was no such delay then to dispose of the objection on the merits. Costs will abide the result.

Application allowed.

REVISIONAL CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge and Mr. Justice Ziaul Hasan

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BRIJ KISHORE AND ANOTHER (PLAINTIFFS-APPLICANTS) *v.* LACHHMI NATH AND OTHERS (DEFENDANTS-OPPOSITE PARTY)*

Civil Procedure Code (Act V of 1908), order XLVII, rule 2—Review—Redemption suit—Trial court allowing interest not claimed by defendant—Error apparent not on face of decree but on face of record—Application for review to successor of trial Judge, whether competent.

An application for review based on an error apparent on the face of the decree can be presented to the successor of the

*Section 115 Application No. 103 of 1935, against the order of Babu Hari Krishna Sinha, Munsif, North Hardoi, dated the 22nd of July, 1935.

(1) (1933) A.I.R., All., 751.

Judge who passed the decree, but one based on an error apparent on the face of the record and not on the face of the decree, can only be made to the Judge who passed the decree.

Where an error on the part of the Judge to allow interest on a certain sum without its being claimed by the defendant, in a redemption suit, is an error which would appear from a perusal of the written statement and is not an error which can be said to be apparent on the face of the decree, the application for review presented not to the officer who passed the decree but to his successor is incompetent under order XLVII, rule 2 of the Code of Civil Procedure.

Mr. *K. P. Misra,* for the applicants.

Mr. *K. N. Tandon,* for the opposite party.

SRIVASTAVA, C.J. and ZIAUL HASAN, J.:—This is an application in revision against an order of the learned Munsif of North Hardoi dismissing in part an application of the applicants for review of a judgment.

The facts of the case are as follows:

On the 10th of August, 1893, Jarawan, predecessor-in-interest of the applicants executed a deed of simple mortgage for Rs.800 in favour of Badri Prasad, predecessor-in-interest of the opposite parties. It was stipulated in the deed that interest would be paid every year in the month of Jeth and in case of default interest would run on the unpaid interest also and further that if at the end of six years the property be not redeemed, the mortgagee would be entitled either to recover the amount due to him by suit or take possession of the mortgaged property and appropriate profits of half of the property towards interest. On the 5th of May, 1896, there was an agreement between the mortgagor and the mortgagee by which the mortgagee was put into possession of the mortgaged property in lieu of the principal sum of Rs.800 and Rs.135 which had accrued due on account of interest up to that time. In 1934 the present applicants brought a suit for redemption of the mort-

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gage against the opposite parties and it was decreed in the following terms:

"The suit of the plaintiffs is decreed for redemption on payment of Rs.800 and Rs.135 plus interest on Rs.135 at the rate stipulated in the deed from the date of possession of the mortgaged property till the date of suit"

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An application for review of judgment was brought by the plaintiffs-applicants on three grounds with two of which we are not concerned. On one of these grounds the learned Munsif amended the decree. The ground on which their application was rejected by him was that the defendants-mortgagees were not entitled to interest on Rs.135, the amount of interest due from the date of the mortgage up to the date of the agreement, exhibit A-10. The learned Munsif said that his predecessor in office who had tried and decided the suit had allowed interest on Rs.135 and that it seemed to him to be warranted by the terms of the mortgage deed. It is against the order rejecting the applicants' application about the interest on Rs.135 that the present application for revision has been brought.

Our attention was invited by the learned counsel for the opposite parties to the fact that the application for review was presented not to the officer who passed the decree but to his successor and it was contended that under order XLVII, rule 2 of the Code of Civil Procedue the application for review was incompetent. We are of opinion that this argument must prevail. According to order XLVII, rule 2, an application for review of a decree or order upon any ground other than the discovery of new and important matter or evidence or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree could only be made to the Judge who passed the decree but the present application is not based on any of the grounds enumerated in order XLVII, rule 2. It was contended that as the defendants to the suit did not themselves claim

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any interest on the sum of Rs.135, the trial Judge was wrong in awarding interest on that amount to the defendants and that this error was apparent on the face of the record; but unlike rule 1 of order XLVII, the words in rule 2 are "apparent on the face of the decree". This means that an application for review based on an error apparent on the face of the decrees can be presented to the successor of the Judge who passed the decree, but one based on an error apparent on the face of the record, but not on the face of the decree, can only be made to the Judge who passed the decree. In the present case it might be said that it was an error on the part of the Judge to allow interest on Rs.135 without its being claimed by the defendants and that this error would appear from a perusal of the written statement of the defendants but this is not an error which can be said to be apparent on the face of the decree.

We uphold the objection of the opposite parties and reject this application with costs.

Application dismissed.

APPELLATE CRIMINAL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge and Mr. Justice Ziaul Hasan

KING-EMPEROR (COMPLAINANT-APPELLANT) *v.* KALLOO (ACCUSED-RESPONDENT)*

1936 *December*, 8

Evidence of accessory after the event without corroboration in material particulars, value of—Murderer committing murder in presence of his wife—Wife not divulging crime, if accessory after the fact—Conviction on her solitary evidence in absence of independent corroboration, whether justified.

The evidence of an accessory after the event suffers more or less from the same taint as the evidence given by an accomplice. It would be very unsafe to accept the solitary evidence of such a person as proving the gilt of an accused without independent corroboration in material particulars.

*Criminal Appeal No. 300 of 1936, against the order of K. N. Wanchoo, Esq., I.C.S., Sessions Judge of Rae Bareli, dated the 5th of June, 1936.