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the affixation of a seal to the judgment of the court in order to make that judgment final so far as the disposal of the appeal is concerned. We think there is some force in this contention.

In these circumstances with great respect we are unable to accede to the view taken in the Allahabad High Court (as also in the Calcutta High Court in *Bhibhuti Mohan Roy* v. *Dasi Money Dasi* (1) that a judgment, which within the terms of the Code of Criminal Procedure is a final judgment, is not so by reason of the fact that a ministerial officer of the court has failed to carry out the duty imposed upon him by the rules of the court, even if his failure to carry out that duty is due to his compliance with an administrative order of the court.

*Ziaul Hasan and Yorke, JJ.*

We accordingly hold that as Mst. Raj Kumari's jail appeal has been summarily dismissed on the 26th January, 1940, the present represented appeal is not maintainable. It accordingly fails and is dismissed.

We would add one word as to the question of hardship but only to remark that that question has been dealt with by another Bench of this Court in Criminal Appeal No. 539 of 1939.

*Appeal dismissed.*

## REVISIONAL CIVIL

*Before Mr. Justice Ziaul Hasan and Mr. Justice R. L. Yorke*

BAIJ NATH AND ANOTHER (APPLICANTS) *v.* BISHWA NATH AND ANOTHER (OPPOSITE-PARTY)*

1940 APRIL 26

*Civil Procedure Code (Act V of 1908), order 21, rule 2, and section 115—Adjustment of decree—Application to have adjustment recorded—Inquiry regarding adjustment, if can be made under order 21, rule 2—Revision against order refusing to make inquiry, if lies.*

In view of the wording of sub-rule 3 of rule 2 of order 21, Civil Procedure Code, it is clear that an execution court is

*Section 115 Application No. 146 of 1937, for revision of the order of Mr. Pratap Shankar, Civil Judge of Lucknow, dated the 11th September, 1937.

(1) (1902) 7 C.W.N., Law Notes p. vii.

debarred from recognizing a payment not certified or an adjustment not recorded. If this is the case, it would also follow that an executing court must necessarily be equally debarred from inquiring into such a payment or adjustment. Order 21, rule 2, does contemplate an inquiry into such payment or adjustment and if a court refuses to make such inquiry it declines to exercise a jurisdiction vested in it by law and its order is open to revision. *Rung Lall* v. *Hem Narain* (1), relied on. *Baga Mal* v. *Shib Parshad* (2), *Ganga Dihal* v. *Ram Oudh* (3), *Maung Tin* v. *Ma Mi* (4), and *David Rowther* v. *Paramaswami Pillai* (5), referred to.

Messrs. *L. S. Misra* and *Rameshwar Dayal*, for the applicants.

Mr. *Murli Manohar Lal*, for the opposite-party.

ZIAUL HASAN and YORKE, JJ.:—This is an application in revision under section 115, Civil Procedure Code against the order of the Civil Judge of Lucknow ordering an application for recording an adjustment of a decree to be filed on the view that no inquiry is contemplated under the provisions of order 21, rule 2 of the Code. Bishwa Nath and Bhola Nath, minor, under the guardianship of Bishwa Nath, obtained a compromise money decree against the present applicants Baij Nath and Onkar Nath. On the 11th March, 1937, the judgment-debtors made an application to the lower court under the provisions of order 21, rule 2 stating therein that they had on various occasions paid part of the principal amount and interest to the plaintiff No. 1 and further that on the 11th December, 1936, accounting had taken place between the parties and the said decree had been adjusted in this way that out of the entire demand the principal amount remaining was only Rs.3,500 and that out of the interest only Rs.111 was payable up to the year 1937 and that in future interest would be payable at 12 annas per cent. per mensem instead of 14 annas per cent. Notice was

(1) (1885) I.L.R., 11 Cal., 166. (2) (1930) A.I.R., Lah., 334.
(3) (1929) A.I.R., All., 79. (4) (1928) A.I.R., Rang., 62.
(5) (1917) A.I.R., Mad., 409.

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*Ziaul Hasan and Yorke, JJ.*

served on the decree-holders as required by the provisions of order 21, rule 2. In reply the decree-holders entered an oral denial of the adjustment. The matter then came up for consideration before the learned Civil Judge who held that order 21, rule 2(2) did not contemplate an inquiry by the court to which an application was made under that rule into the question whether the payment or adjustment had actually taken place as alleged. Order 21, rule 2(2) provides that the judgment-debtor also may inform the court of such payment or adjustment and apply to the court to issue notice to the decree-holder to show cause on a day to be fixed by the court why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record the same accordingly. Sub-rule 3 provides that a payment or adjustment which has not been certified or recorded as subsisting shall not be recognized by any court executing the decree.

The learned Civil Judge did not refer to any case law on the point but merely remarked that he had read rule 2 of order 21 and had come to the conclusion that no inquiry is contemplated under this rule. He went on to remark:

> "So far as an adjustment is concerned, section 47 of the Code of Civil Procedure is wide (enough) to cover the present case."

In our opinion this remark made by the learned Civil Judge is not based on sound grounds. It is true that the bulk of cases in which applications under order 21, rule 2 have been inquired into have also been cases in execution so that they give the appearance that the inquiry was made under section 47 but in view of the wording of sub-rule 3 of rule 2 of order 21 it is clear that an execution court is debarred from recognizing a payment not certified or an adjustment not recorded. If this is the case, it would also follow that an executing

court must necessarily be equally debarred from inquiring into such a payment or adjustment.

The learned counsel has put before us a number of cases to support the proposition that an inquiry is contemplated by order 21, rule 2 but as we have pointed out in many cases as for example *Baga Mal* v. *Shib Parshad* (1), *Ganga Dihal* v. *Ram Oudh* (2) and *Maung Tin* v. *Ma Mi* (3), the issue is confused. On the other hand the point has been clearly stated in *Rung Lall* v. *Hem Narain* (4) in which it has been held that in determining under section 258 of Act 14 of 1882 (the section which under the old Act corresponded to order 21, rule 2) whether or no the cause shown by the decree-holder is sufficient, it is incumbent upon the court to investigate and decide any question of fact upon which the parties may not be agreed and that in such investigation the evidence may be given either orally or by affidavit. It was further held that the term "to show cause" does not mean merely to allege causes, nor even to make out that there is room for argument but both to allege cause and to prove it to the satisfaction of the court. This view was accepted and followed in the Madras High Court in *David Rowther* v. *Paramaswami Pillai* (5) in which case however the proceedings were actually in execution. In our opinion in view of the decision in the Calcutta case and of the considerations to which we have drawn attention earlier, there is no room for doubt that order 21, rule 2, Civil Procedure Code does contemplate an inquiry and the lower court should have entered upon such inquiry.

The learned counsel for the respondent has urged some points in regard to the adjustment by compromise which the lower court was asked to record but this argument merely raises a question which it will be the duty of the lower court to inquire into when the case go back to it. We are quite satisfied that by the

(1) (1930) A.I.R., Lah., 334. (2) (1929) A.I.R., All., 79.
(3) (1928) A.I.R., Ran., 62. (4) (1885) I.L.R., 11 Cal., 166.
(5) (1917) A.I.R., Mad., 409.

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order against which this application is made, the learned Civil Judge declined to exercise jurisdiction vested in him by law. We accordingly set aside the order and direct that the file be sent back to the lower court to dispose of the application according to law. The applicants will get their costs of this application.

*Application allowed.*

## APPELLATE CIVIL

*Before Mr. Justice G. H. Thomas, Chief Judge and Mr. Justice R. L. Yorke*

1940 APRIL 30

MUSAHEB KHAN AND OTHERS (PLAINTIFFS-APPLICANTS) v. PUNDIT RAJ KUMAR BAKHSHI AND ANOTHER (DEFENDANTS-OPPOSITE-PARTY)*

*Civil Procedure Code (Act V of 1908), section 109(c)—Appeal to His Majesty-in-Council—Leave to appeal under section 109(c), when to be granted.*

Ordinarily none but the parties to a litigation are concerned with the result of a case. In every such case, where the valuation is less than the prescribed limit, there is no right of appeal to His Majesty in Council. It is only when a case is of larger importance and the principle, when finally decided by their Lordships of the Privy Council, will be of benefit, not only to the people who are directly involved in the litigation, but to a considerable body of other people, that leave to appeal should be granted. *Raghunath Prasad Singh and another* v. *Deputy Commissioner of Partabgarh and others* (1), distinguished. *Bhaiya Hari Saran Das* v. *Har Kishen Das,* (2), and *Ruchcha Saithwar and another* v. *Hansrani and others* (3), relied on. *Musaheb Khan and others* v. *Raj Kumar Bakhshi, Pt., and another* (4), *Sheopujan Upadhiya and others* v. *Bhagwat Prasad Singh and others* (5), and *Subhan and another* v. *Baburam Singh and others* (6), referred to.

Mr. *M. Wasim,* for the appellants.

Mr. *L. S. Misra,* for the respondents.

THOMAS, C.J., and YORKE, J.:—This is an application under the provisions of order XLV, rules 2 and 3

*Privy Council Appeal No. 13 of 1938, for leave to appeal to His Majesty-in-Council.

(1) (1927) I.L.R., 2 Luck., 93.
(2) (1939) I.L.R., 14 Luck., 675.
(3) (1928) I.L.R., 50 All., 640.
(4) (1938) O.W.N., 937.
(5) (1931) I.L.R., 54 All., 459.
(6) (1929) I.L.R., 52 All., 329.