APPELLATE CIVIL.

1939.

February, 14, 15.

Before Fazl Ali and Manohar Lall, JJ.

SATNARAIN PRASAD CHOUDHURY

v.

MAHABIR PRASAD CHOUDHURY.*

Code of Civil Procedure, 1908 (*Act V of* 1908), *section* 73 *and Order XXI, rule* 55—*money deposited by judgment-debtor under rule* 55 *for satisfaction of a particular decree, whether is asset available for rateable distribution among other creditors.*

A sum of money paid into Court by a judgment-debtor, under Order XXI, rule 55, Code of Civil Procedure, 1908, to satisfy the decree of certain creditors at whose instance his property has been attached is an asset available for rateable distribution among his other creditors under section 73 of the Code.

Where there are several decrees outstanding against a judgment-debtor, and all the requirements of section 73 are complied with, the judgment-debtor cannot prevent rateable distribution by merely earmarking his payments for the benefit of one of the decree-holders.

Bhattoo Singh v. *Raja Raghunandan Prasad Singh*(1), *Noor Mahomed Dawood* v. *Bilasiram Thakursidass*(2), *Chisulal Agarwala* v. *Todermall Agarwala*(3) *Hari Charan Roy Chaudhury* v. *Birendra Nath Saha*(4), *Chittagong Urban Co-operative Bank, Ltd.* v. *The Indo Burma Trades Bank, Ltd.*(5), *Thireviyam Pillai* v. *Lakshmana Pillai*(6), *Sidhnath Tewari* v. *Tegh Bahadur Singh*(7), *Nathmal Chamirmal* v.

*Appeal from Appellate Order no. 252 of 1938 with Civil Revision no. 582 of 1938, from a decision of R. B. Beevor, Esq., I.C.S., District Judge of Muzaffarpur, dated the 20th June, 1938, affirming a decision of Babu Ram Anugrah Narayan, Subordinate Judge of Muzaffarpur, dated the 28th May, 1938.

(1) (1933) I. L. R. 12 Pat. 772.
(2) (1919) I. L. R. 47 Cal. 515.
(3) (1921) 70 Ind. Cas. 539.
(4) (1921) 70 Ind. Cas. 541.
(5) (1938) 42 Cal. W. N. 840.
(6) (1917) I. L. R. 41 Mad. 616.
(7) (1932) I. L. R. 54 All. 516.

Maniram Radhakisson(1) and *Indaji Majaji* v. *Coovarji Nowroji Gamadia*(2), followed.

Sorabji Coovarji v. Kala Raghunath(3), *Firm of Haji Umar Sharif* v. *Rodba*(4) and *Administrator-General of Burma* v. *M. E. Moolla*(5), not followed.

Radha Mohan v. *Musammat Wahidan*(6), referred to.

Per MANOHAR LALL, J.—It is a well-known rule of construction that each part of a statute should be endeavoured to be construed in such a way that there may be no conflict with any part, if it can be done without doing any violence to the plain meaning of the language adopted by the legislature. If rule 55(*a*) is so read along with section 73 it seems clear that the decree can only be satisfied if the amount is available to the decree-holder in full satisfaction of his decree.

Appeal by the judgment-debtors.

The facts of the case material to this report are set out in the judgment of Fazl Ali, J.

S. K. Mitter, for the appellants.

A. K. Mitter, for the respondents.

FAZL ALI, J.—The question to be decided in this appeal is whether a certain sum of money paid in Court by a judgment-debtor to satisfy the decree of certain creditors at whose instance his property has been attached is an asset available for rateable distribution among his other creditors under section 73 of the Code of Civil Procedure. This question arises upon the following undisputed facts :—

The appellants being judgment-debtors under several decrees for money, one of the decree-holders, namely, Mahabir Choudhury, proceeded to attach some of their properties in execution of his decree.

(1) (1919) 21 Bom. L. R. 975.
(2) (1925) 28 Bom. L. R. 237.
(3) (1911) I. L. R. 36 Bom. 156.
(4) (1925) A. I. R. (Nag.) 157.
(5) (1927) I. L. R. 5 Rang. 573.
(6) (1934) I. L. R. 13 Pat. 446.

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The appellants in order to pay up the decree deposited in Court on various dates several sums of money aggregating to Rs. 2,472-12-0 which, if there had been no other dues outstanding against them, would have fully satisfied this particular decree. All these deposits, however, were made after two other creditors of the appellants, who had also obtained decrees against them, had applied for rateable distribution under section 73 of the Code of Civil Procedure. The learned Munsif rateably distributed the amount deposited by the appellants among their three creditors and overruled their contention that as their payments had been ear-marked for the purpose of satisfying the dues of Mahabir Choudhury, their property had to be automatically released under Order XXI, rule 55. This rule provides, among other things, that where the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court the attachment shall be deemed to be withdrawn. The learned Munsif held that the entire decree of Mahabir Choudhury had not been satisfied and so the attachment must continue. The appellants after unsuccessfully appealing against the decision of the Munsif to the District Judge have now preferred this second appeal.

Now, if the case had to be decided under the Code of Civil Procedure as it stood before it was amended in 1908, there would not have been much difficulty in upholding the contention of the appellants. Indeed it appears that the precise point which has been raised in this case by the appellants was raised in *Gopal Dai* v. *Chunnilal*(1) and upon the view of the law which then prevailed it was held that the amount paid by the judgment-debtor for the satisfaction of a particular decree was not available for rateable distribution to the other decree-holders. It is to be noticed that the language of section 295 of the old

(1) (1885) I. L. R. 8 All. 67.

Code, to which section 73 of the new Code corresponds, was somewhat different from that of section 73. Under the old Code the Court could rateably distribute such assets only as were "realised by sale or otherwise in execution of the decree". In *Purshotamdass Tribhovandass* v. *Mahant Surajbhari Haribharthi*(1), Sir Charles Sargeant, C.J. expressed the view that these words must be read as if the words "from the property of the judgment-debtor" were inserted after the word "realised". That case was followed in a number of other cases and though its correctness was doubted by Sir Lawrence Jenkins in *Manilal Umedram* v. *Nanabhai Manek Lal*(2), the view which prevailed in all the High Courts was that section 295 applied only to sale-proceeds of property sold in execution of a decree and money realised in one of the modes expressly prescribed by the various sections of the Code. In 1908 the section being amended the words "wherever assets are realised by sale or otherwise in execution of a decree" have been replaced by the words "where assets are held by a Court". It is obvious that by the use of these words the legislature has considerably enlarged the scope of the section and it is no longer permissible to hold that rateable distribution must be confined only to those cases where assets are realised by sale or by some other process of execution. The words of the new section are wide enough to cover not only the money which a judgment-debtor is compelled to pay, but also money voluntarily paid into Court by him to satisfy a decree under execution. The words "assets held by a Court" obviously mean any fund in possession of a Court or at its disposal which may be applied by it for the payment of judgment-debtor's debt. It is difficult to hold that the payments made by the appellants in this case fall outside this definition.

(1) (1889) I. L. R. 6 Bom. 588.

(2) (1903) I. L. R. 28 Bom. 264.

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Now, section 73 being imperative, it is obligatory upon a Court to distribute rateably the assets held by it (irrespective of how they came into its hands) among all the creditors who are entitled to the benefit of this section. The assets are so distributable by the operation of law and there is nothing in this section or any other provision of the Code to show that the Court must deal with them in accordance with the wishes of the judgment-debtor. When, therefore, there are several decrees outstanding against a judgment-debtor, and all the requirements of section 73 are complied with, the judgment-debtor cannot prevent rateable distribution by merely ear-marking his payments for the benefit of one of the decree-holders. Thus in the present case though the payments made by the appellants were made for the satisfaction of the decretal dues of Mahabir Choudhury alone, the Munsif had to dispose of the money paid by them in the manner provided in section 73 with the result that the entire decree of Mahabir Choudhury has not been satisfied. Order XXI, rule 55, must be read subject to section 73, and if it is so read, the case before us will present no difficulty whatsoever.

The view which I have expressed is supported by the decision of a Division Bench of this Court in *Bhattoo Singh* v. *Raja Raghunandan Prasad Singh*(1) and by a number of decisions of the High Courts of Calcutta, Madras and Allahabad [*See Noor Mahomed Dawood* v. *Bilasiram Thakursidass*(2); *Chisulal Agarwalla* v. *Todermall Agarwalla*(3); *Hari Charan Roy Chaudhury* v. *Birendra Nath Saha*(4), *Chittagong Urban Co-operative Bank, Ltd.* v. *The Indo Burma Trades Bank, Ltd.*,(5); *Thiraviyan Pillai* v. *Lakshmana Pillai*(6) and *Sidnath Tewari* v. *Tegh*

(1) (1933) I. L. R. 12 Pat. 772.
(2) (1919) I. L. R. 47 Cal. 515.
(3) (1921) 70 Ind. Cas. 539.
(4) (1921) 70 Ind. Cas. 541.
(5) (1938) 42 Cal. W. N. 840.
(6) (1917) I. L. R. 41 Mad. 616.

Bahadur Singh(1)]. For the purpose of the present discussion it will be sufficient to refer to the first mentioned case only which has been relied on in a number of other cases. In that case on an application by a judgment-creditor for execution of a decree, money was paid by the judgment-debtor to the Sheriff who paid it into Court. Two other creditors, who had previously applied for execution, had part of their claim and the costs of execution respectively unpaid and asked for rateable distribution of the assets. A question then arose as to whether the money lying in the Court was available for rateable distribution, and, while answering it in the affirmative, Rankin, J. observed as follows :—

" The money, paid with whatever motive, if paid to the Court, is paid upon terms of the Code whatever they may be. These terms, as I read section 73, have been laid down so that distinctions in the form in which execution has been had, in the precise extent to which execution has been allowed to run, in the exact source or genesis of the fund in Court, are now no part of the definition of the assets that are subject to distribution rateably. The object of the new Code in using larger language can only be to avoid anomaly. To introduce a distinction on the strength of the voluntariness of the payment or the purpose of the debtor, is, I think, to cut down the language and intention of the Code upon a principle which is inapplicable to the subject-matter and which if applicable is very difficult to imply."

It has been pointed out to us that a contrary view has been expressed by Scott, C.J. in *Sorabji Cooverji* v. *Kala Raghunath*(2) who has commented upon section 73 in these words :—

" In the reference to ' the cost of realisation ' we have an indication that the legislature contemplated that the assets referred to should be assets held

(1) (1932) I. L. R. 54 All. 516.
(2) (1911) I. L. R. 36 Bom. 156.

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in the process of execution. If we were to hold that money paid into Court under Order XXI, rule 55, was assets held by the Court within the meaning of section 73, we should be only nullifying the provisions of rule 55; for, there would be no inducement to any judgment-debtor to procure a payment into Court of the amount of the claim of his attaching creditor if the money could at once be absorbed by rateable distribution amongst a number of other creditors."

The soundness of this view was doubted by a learned Judge of the Bombay High Court in *Nathmal Ghamirmal* v. *Maniram Radhakisson*(1). In that case the learned Judge referring to the grounds on which the remarks of Scott, C.J. were based observed as follows:—

"The first ground follows the cases decided on the words 'sale or otherwise', which are held to mean sale or other process of execution provided for in the Civil Procedure Code.....But these cases all followed *Purshotamdas'* case(2) in restricting the process to one of sale or conversion of the property and I venture to doubt whether this is not too restrictive a construction under the amended section in which the words 'sale or otherwise' have been dropped and in which there is merely an implication that the assets should have been realised or obtained in execution proceedings. I also venture to doubt the correctness of the second reason. Order XXI, rule 55, operates effectively where there is one decree-holder. If there are a number of decree-holders, there is no scope for the rule for the judgment-debtor has no motive for paying off one judgment-creditor when the same property is liable to be re-attached by the others. To allow one decree-holder to be paid off in full when the property is insufficient to discharge other judgment-debts might possibly be undue preference and defeat

(1) (1919) 21 Bom. L. R. 975.
(2) (1882) I. L. R. 6 Bom. 588.

the object of the section which is equal distribution of all the monies received in execution. Again, why should a judgment-creditor, whose attachment has been removed under Order XXI, rule 55, be in a better position than a judgment-creditor who has taken the trouble of bringing the property to sale. Lastly, if the money paid under Order XXI, rule 55, to remove an attachment is not available for rateable distribution then *a fortiori* money paid to stop a sale under Order XXI, rule 83, would also not be so available..... So that the interpretation put upon the section in *Sorabji Coovarji* v. *Kala Raghunath*(1) makes the new section more restrictive than the old one, and this is not what the Legislature intended."

Again in *Indaji Majaji* v. *Coovarji Nowroji Gamadia*(2) another learned Judge of the Bombay High Court refused to follow the opinion of Scott, C.J., on the ground that the observations made by him were in the nature of obiter dicta. We are informed that the opinion expressed by Scott, C.J. has been followed in *Firm of Haji Umar Sharif* v. *Rodba*(3) and has also been quoted with approval in *Administrator-General of Burma* v. *M. E. Molla*(4) but it appears to me that the balance of authority is against that view and for the reasons I have already stated I have no hesitation in following the view already expressed in *Bhattoo Singh* v. *Raja Raghunandan Singh*(5). In my opinion, therefore, the decisions of the Courts below are correct and I would accordingly dismiss this appeal with costs. The Civil Revision no. 582 of 1938 is dismissed without costs.

MANOHAR LALL, J.—On the 30th March, 1938, the appellant deposited a sum of Rs. 2,479/12/0 towards the full satisfaction of the decretal amount and costs due from him to the respondents who were

(1) (1911) I. L. R. 36 Bom. 156.
(2) (1925) 28 Bom. L. R. 237.
(3) (1925) A. I. R. (Nag.) 157.
(4) (1927) I. L. R. 5 Rang. 573.
(5) (1933) I. L. R. 12 Pat. 772.

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executing their money decree by attaching a property of the appellants in Execution Case no. 44 of 1937. Prior to that date two other decree-holders, who are also respondents before us, had applied on the 27th September, 1937, and on the 21st March, 1938, respectively, for a share in the rateable distribution of the assets if and when realised from the sale of the property of the judgment-debtor under attachment. The learned Munsif distributed the amount deposited on the 30th March, 1938, rateably among the three decree-holders. The appellant being aggrieved by the order which has resulted in the continuation of the attachment of the property due to the partial satisfaction of the decree under execution in Case no. 44 of 1937 has appealed to this Court against the appellate order of the learned Subordinate Judge affirming the decision of the Munsif ordering a rateable distribution.

The question upon these facts which arises is whether the courts below had any jurisdiction to distribute the amount which had been deposited by the judgment-debtor-appellant. The argument before us took the form that the provisions of Order XXI, rule 55, sub-clause (*a*), specifically provided that

> "where the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, the attachment shall be deemed to be withdrawn".

and therefore it was argued that when on the 30th March, 1938, the amount of the decree in Execution Case no. 44 of 1937 together with costs had been deposited, the Court had no jurisdiction except to withdraw the attachment and erred in law in distributing the proceeds rateably. It appears to me that this argument is unsound. The provisions of section 73 are imperative. It leaves no option in the Court and directs the Court that where assets are held by the executing Court, the assets after deducting the cost

of realisation shall be rateably distributed among the persons entitled to share rateably in the distribution as provided in the section. The assets become available for payment in the hands of the Court on the date when the assets are paid in or realised by the Court. The direction under section 73 seizes the assets as soon as they are paid in and the subsequent diversion of the assets is then regulated not by the wishes of the person who has deposited the asset but by the operation of law. It is immaterial with what object and desire the judgment-debtor deposited the amount in Court because, as observed by Rankin, J. in *Noor Mahomed Dawood* v. *Bilasiram Thakursidass*(1), the deposit in Court must be taken to be on the terms provided by the Code of Civil Procedure and not upon the supposed wishes or desires of the judgment-debtor. If the judgment-debtor so desired, it was open to him to pay the money outside the Court, but when he chooses to deposit the money within the Court, the terms of the Civil Procedure Code begin to operate and the law as provided in the Code must take effect. The apparent difficulty which has been felt by Wort, J. in *Radha Mohan* v. *Musammat Wahidan*(2) does not appear to me to be any difficulty at all. Order XXI, rule 55, is so worded as to ensure that the attachment shall be deemed to be withdrawn when the decree has been satisfied. It will be a strange result if the decree is not satisfied and yet the attachment is deemed to be withdrawn by a mere deposit. The legislature could not have meant to reach such an inequitable result. The decree may be satisfied either by deposit under clause (*a*) or otherwise as stated in clause (*b*). But the legislature has never stated that a mere deposit will satisfy the decree. Ordinarily a decree will be satisfied if the deposit is made of the amount of the decree and there is no obstacle whatsoever in the decree-holder receiving it. In cases where the

(1) (1919) I. L. R. 47 Cal. 515.
(2) (1934) I. L. R. 13 Pat. 446.

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law intervenes and directs that although the full amount was intended to be paid to the decree-holder, but it has to be diverted by reason of section 73 or some other provisions of the Code, obviously the decree has not been satisfied in full even though there had been a deposit of the full decretal amount. Sub-clause (*a*) of rule 55 ought to be read in such a way that the provisions of section 73 and Order XXI, rule 55, do not conflict with each other. It is a well-known rule of construction that each part of a Statute should be endeavoured to be construed in such a way that there may be no conflict with any part, if it can be done without doing any violence to the plain meaning of the language adopted by the legislature. If rule 55 (*a*) is so read along with section 73, it seems to me clear that the decree can only be satisfied if the amount is available to the decree-holder in full satisfaction of his decree. It has been held in a number of cases that a deposit which is made by the judgment-debtor under Order XXI, rule 83, of the Code of Civil Procedure is an asset available for rateable distribution. I do not see similarly how it can be argued that the deposit in the present case was not an asset within the meaning of the word "asset" used by my learned brother at page 465 in *Radha Mohan's* case(1) which in my view gives the key to the solution of the present problem. The word "assets" must be taken to mean any fund in the hands of a Court which may be applied by the Court for the payment of the debt of a judgment-debtor. If the debtor has only a single debt, the Court is bound to apply the deposit or fund to the payment of that debt, but if the judgment-debtor has a number of decree debts, the execution Court, if satisfied that the conditions of section 73 of the Code are fulfilled, is bound to apply it rateably to reduce the decree debts of the number of decree-holders who are so entitled to share in the rateable distribution of the assets. In other words, the moment the deposit

(1) (1934) I. L. R. 13 Pat. 446.

is made by a judgment-debtor in the executing Court or the money is realised involuntarily or voluntarily in the course of execution by the executing Court, the assets are held by the Court and they will be applied in the manner provided by the Code.

An argument was advanced in some cases depending upon the construction of Order XXI, rule 89, of the Code of Civil Procedure. It was argued that where rule 89, sub-clause (*a*), directs payment of five per centum of the amount of sale price as compensation to the auction-purchaser, then logically this five per centum ought to be treated as part of the assets of the judgment-debtor and, therefore, it should be available for distribution to all the decree-holders and should not be paid to the auction-purchaser. The answer to this argument is very simple. The five per centum of compensation which is paid to the auction-purchaser is not in payment of a debt due to the auction-purchaser. It is a statutory payment in order to ensure the setting aside of the sale. The auction-purchaser is never executing any decree and nothing is due to him from the judgment-debtor—the amount which is being paid by the judgment-debtor as a part of the statutory requirement is not being paid by him to his creditor and therefore it cannot be called an asset available for distribution.

For these reasons I think that the decision of this Court in *Bhattoo Singh* v. *Raja Raghunandan Prasad Singh*(1) was correct and with great respect, the doubt expressed by Wort, J. in *Radha Mohan's* case(2) was not justified. The remarks of the learned Judge are expressly obiter because he says—" I think it is unnecessary to decide the question in the present case ". He then goes on to observe—" to hold that the payment under Order XXI, rule 55, was an asset

(1) (1933) I. L. R. 12 Pat. 772.
(2) (1934) I. L. R. 13 Pat. 446.

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distributable amongst decree-holders would raise difficulties which from one point of view are unsurmountable " and proceeds to point out that the terms of rule 55 definitely require that the attachment should cease the moment the amount is deposited irrespective of the claims against that deposit. I have already pointed out that I do not agree with this view. But even if this view is taken to be correct, I do not see how the fact, that an attachment is to be deemed to be raised the very instant the deposit is made, can have any bearing at all upon the subsequent diversion of the deposit by the operation of section 73. The distribution of the assets is one thing and the raising of the attachment is another. A recent case of the Calcutta High Court in *Chittagong Urban Co-operative Bank, Limited*, v. *The Indo Burmah Trades Bank, Limited*(1), expressly follows the decision of this Court in *Bhattoo Singh*'s case(2).

My learned brother in the judgment just delivered has traced the history of the legislation by which a radical change has been effected in the corresponding section under the Code of 1882 shewing that the present section 73 is now much wider and in effect adopts the view expressed by Sir Lawrence Jenkins in the earlier Bombay case. I agree with those observations entirely and have nothing to add.

For these reasons I agree that the appeal fails and must be dismissed with costs.

The Civil Revision also fails, but there will be no costs.

S. A. K.

Appeal and application dismissed.

(1) (1938) 42 Cal. W. N. 840.
(2) (1933) I. L. R. 12 Pat. 772.