

a consideration of the facts, though one of the reasons given may not be sound, Mr. Prenter decided that the appellant should not be given the bonus of Rs. 500, and with that order I refuse to interfere. It may be that the appellant has a remedy against the respondent based on the agreement alleged, but that is a separate matter. I dismiss the appeal with costs.

Appeal dismissed.

1919
 GHANSHAM DAS
 v.
 HINDUSTAN
 BANK, LTD.

APPELLATE CIVIL.

Mr. Justice Abdul Raoof and Mr. Justice Martineau.

Musst. RAJ KARNI (DECREE-HOLDER)—
Appellant,

versus

KARM ILAHI (JUDGMENT-DEBTOR)—
Respondent.

1919

June 6.

Civil Appeal No. 230 of 1919.

Civil Procedure Code, Act V of 1908, sections 47, 104 (h) and order 21, rule 40—execution of decree—order disallowing an application for the arrest of the judgment-debtor—whether open to appeal.

Held, that an appeal is competent from an order made under rule 40 of order 21 of the Code of Civil Procedure disallowing an application by a decree-holder for the arrest and imprisonment of his judgment-debtor, such an order coming within the purview of section 47 of the Code.

Sewa Singh v. Dhaukal (1), Abdul Rahiman v. Mahomed Kassim (2), Nayana Naikan v. Syed Ghulam (3), and Subbarama Ayyar v. Arunachellam (4), referred to.

Miscellaneous second appeal from the order of C. L. Dundas, Esquire, District Judge, Jhelum, dated the 8th October 1917, affirming that of Lala Diwan Chand, Senior Sub-Judge, Jhelum, dated the 14th July 1917, dismissing decree-holder's application for arrest of judgment-debtor.

TEK CHAND, for Appellant.

NEMO, for Respondent.

The judgment of the Court was delivered by—

ABDUL RAOOF, J.—The facts out of which this miscellaneous appeal has arisen are simple and the point for decision is a short one.

(1) 69 P. u. 1895.

(2) (1897) F. L. R. 21 Mad. 29.

(3) (1909) 6 Indian Cases 909.

(4) (1915) 32 Indian Cases 731.

1919

MUSSAMMAT
RAJ KARNI
v.
KARM ILAHI.

One Thandi Shah held two money decrees against Karm Ilahi. Execution proceedings were taken as to one of the decrees. A house was sold upon which the parties entered into a compromise. One of the terms of the compromise was that the amount of the decree would be payable by instalments, and in case of default of any instalment the decree-holder would have the power to recover the whole amount by executing the decree against the person and property of the judgment-debtor. A default having taken place the decree-holder applied for the arrest and imprisonment of Karm Ilahi. Thereupon the judgment-debtor was called upon to show cause why he should not be arrested and imprisoned. Several objections were urged by him which are given in detail in the judgment of the executing Court. That Court accepted the objections and dismissed the application of the decree-holder for the arrest and imprisonment of the judgment-debtor. This order was made under Rule 40, Order XXI, Civil Procedure Code. The decree-holder preferred an appeal to the District Judge of Jhelum. This appeal was dismissed by the learned District Judge on the ground that an order made under the above-mentioned rule was not appealable. He was of opinion that the order was neither appealable as an order under Order XLIII, nor as a decree under section 47, Civil Procedure Code. The decree-holder has come up in appeal to this Court, and it is argued on his behalf that the order appealed against related to the execution of a decree, and as such came under section 47 of the Code.

Reliance is placed on the provisions of clause (h) of section 104 in support of this contention. Under the said clause an appeal is allowed from "an order under any of the provisions of this Code—imposing a fine or directing the arrest or detention in Civil prison of any person except where such arrest or detention is in execution of a decree."

It is contended that the concluding words of the clause indicate that where an order directing the arrest or detention is made in execution of a decree, it is to be treated as an order coming under section 47.

In our opinion there is force in this contention which is supported by authorities. In a decision of the

Punjab Chief Court *Sewa Singh v. Dhaunkal* (1), it was decided that an order made under section 337 (a) was appealable as a decree as it came within the purview of section 244 (c) of the old Code. A similar view was taken by the Madras High Court in a case reported in *Abdul Rahiman v. Mahomed Kassim* (2). The cases of *Nayana Nairan v. Syed Ghulam* (3) and *Subbarama Ayyar v. Arumachellam* (4) also go to support the contention. In the face of these authorities the decision of the lower Appellate Court cannot be supported.

We therefore set aside the judgment and decree of the lower Appellate Court on this preliminary point and remand the case to that Court under Order XLI, Rule 23, to be re-admitted under its original number in the register of pending appeals and to be disposed of according to law. Cost will abide the result.

Appeal accepted.

1919

MUSSAIBIB
 RAJ KARNI
 v.
 KARM ILAHI.

(1) 69 P. R. 1895.

(3) (1909) 5 Indian Cases 909.

(2) (1897) I. L. R. 21 Mad. 29.

(4) (1915) 32 Indian Cases 781.