

the original side of the Supreme Court of Bombay which was specifically debarred from entertaining such suits by its Charter. This is no guidance. I must assume until the contrary is proved that an Act passed by the Indian Legislature is valid until and unless the contrary has been proved. The contrary has not been proved. Therefore, I must assume that it is right. For these reasons I dismiss the appeal with costs.

1927

DR. R. N.  
SINGHA  
v.  
SECRETARY  
OF STATE  
FOR INDIA IN  
COUNCIL.  
BAGULEY, J.

## APPELLATE CIVIL.

*Before Mr. Justice Carr.*

MAUNG TIN

v.

MA MI.\*

1927

Sep. 2.

*Civil Procedure Code (Act V of 1908), O. 21, r. 2 (2) and (3)—Whether executing Court can inquire into adjustment of decree if application by judgment-debtor within time.*

*Held*, that the provisions of Order 21 in Rule 2, sub-rules 2 and 3 should be read together, so that where the decree-holder has applied for execution to the Court that passed the decree and the judgment-debtor files in the execution proceedings an application to record an adjustment of the decree within 90 days from the date of such adjustment, the judgment-debtor is entitled to have his allegation of adjustment of the decree inquired into by such executing Court.

*Paw Tun*—for Appellant.

*Lambert*—for Respondent.

CARR, J.—The facts of this case are that on the 4th September, 1926, the respondent obtained in the Subdivisional Court of Nyaunglebin a money decree against the appellant. On the 23rd December she applied to execute this decree—to the same Court. Arrest of the appellant was asked for and notice was issued to him. On the day fixed appellant's advocate said that he had paid off the decree and apparently at

\* Civil Second Appeal No. 228 of 1927.

1927

MAUNG TIN

v.

MA ML.

CARR, J.

the same time filed the petition now filed at page 5 of the execution proceedings. This is in terms an application to record the satisfaction of the decree by an adjustment made on the 14th October 1926. It is dated the 22nd October but clearly was not filed until the 4th January, 1927. It was still, however, within the period of ninety days allowed by law for an application by judgment-debtor under Order XXI, Rule 2 (2) of the Civil Procedure Code. The Sub-divisional Judge, under sub-rule (3) of that rule refused to inquire into the alleged adjustment, and the District Court on appeal confirmed that refusal.

I have been referred to a considerable number of cases which fall into two classes :—

(1) Cases in which it has been laid down that a Court executing a decree is absolutely debarred from considering an alleged adjustment which has not been certified or recorded.

(2) Cases in which it was held or suggested that if an objection to the execution of a decree on the ground of an uncertified adjustment is made within the time allowed by law for an application under Rule 2 (2) of Order XXI it may properly be treated as an application under that rule and be inquired into.

In the cases under class (1) the objections all seem to have been beyond time and the question that now arises was not considered. On the other hand all the cases in class (2) appear to be *obiter*.

I propose therefore to consider the question as *res integra*.

If we read sub-rules (2) and (3) of Rule 2 independently of one another there is a conflict between them. A literal interpretation of sub-rule (3) would clearly have the effect of depriving the judgment-debtor of the right given to him by sub-rule (2). Obviously this cannot be allowed. So long as the

judgment-debtor applies under sub-rule (2) within the time allowed for him to do so he has the right to have his application heard. Technically perhaps the correct procedure would be for the judgment-debtor to make an application to the Court under sub-rule (2) and then to file a separate application in the execution proceedings asking that they may be stayed until his other application has been heard. If he did that it seems to me impossible for any Court to refuse to inquire into the alleged adjustment. To allow his right to such an inquiry to be defeated by reason of a trivial irregularity of procedure would obviously be unjust and would lead to an abuse of the process of the Court.

I hold therefore that on a reasonable interpretation of Rule 2 of Order XXI as a whole the appellant is entitled to have his allegation of the adjustment of the decree inquired into.

I allow the appeal, set aside the judgments and decrees of the Courts below and remand the case to the Subdivisional Court for disposal on its merits after inquiry.

1927

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v.

MA MI.

CARR