

## APPELLATE CIVIL.

*Before Mr. Justice LeRossignol and Mr. Justice Martineau.*

1926

Jan. 25.

HANUMAN PARSHAD AND ANOTHER  
(DECREE-HOLDERS) Appellants

*versus*

NATIONAL BANK OF INDIA, LTD.  
(JUDGMENT-DEBTOR) Respondent.

Civil Appeal No. 1728 of 1924.

*Civil Procedure Code, Act V of 1908, section 144—  
whether applicable to a decree reversed by the Privy Council  
and whether interest should be allowed on the sum paid by  
the decree-holder under the appellate decree of the Chief  
Court reversed by the Privy Council.*

A decree for Rs. 83,032 with interest obtained by the appellants in the trial Court, was reversed by the Chief Court, and they paid Rs. 1,79,546 to the respondent bank in settlement of the Chief Court's decree, with interest and costs. This decree was set aside by the Privy Council and the decree of the trial Court restored. The appellants then claimed repayment of the Rs. 1,79,546 as well as interest thereon and costs in the Privy Council. The only item disputed by the Bank was the interest.

*Held*, that section 144 of the Code of Civil Procedure, being very comprehensive, is applicable to a case in which a decree has been reversed by the Privy Council and that the decree-holders were entitled to interest on the whole sum of Rs. 1,79,546 paid by them to the Bank under the Chief Court's decree.

*Tangatur Subbarayudu v. Yerram Setti Seshasani* (1), and *Rodger v. The Comptoir D'Escompte De Paris* (2), followed.

*Miscellaneous first appeal from the order of Bhagat Jagan Nath, Senior Subordinate Judge, Delhi, dated the 7th April 1924, disallowing interest on the amount of Rs. 1,79,546.*

MANOHAR LAL AND SARDHA RAM, for Appellants.

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MEHR CHAND, MAHAJAN, AND RAJ NARAIN, for Respondent.

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The judgment of the Court was delivered by—

MARTINEAU J.—This appeal and the cross-appeal No. 1820 of 1924 arise out of proceedings consequential on a judgment of the Privy Council by which a decree of the Chief Court was reversed and that of the Subordinate Judge restored. The Subordinate Judge had, on the 15th December 1915, passed a decree in favour of *Seth Kanhaya Lal*, now represented by his sons, against the National Bank of India, Limited, for Rs. 83,032-8-3, with interest at 6 *per cent. per annum* from the date of suit till realisation. On the 7th September 1916 the Bank paid to the decree-holder Rs. 1,52,125-4-9, which included Rs. 83,032-8-3 principal, Rs. 2,453-3-6 on account of costs, and Rs. 66,639-9-0 interest up to the 13th January 1916. After the reversal of the decree by the Chief Court on the 15th January 1919, *Seth Kanhaya Lal* paid to the Bank Rs. 1,79,546-0-10, which included the Rs. 1,52,125-4-9 which the bank had paid in September 1916, interest thereon up to the 14th June 1919, and costs. The decree of the Privy Council reversing that of the Chief Court was passed on the 23rd April 1923. The decree-holders then applied for the repayment of the Rs. 1,79,546-0-10 as well as for interest thereon and costs incurred in the Privy Council. It is the claim for interest which is in dispute. The Subordinate Judge has allowed the decree-holders interest at 8 *per cent.* on Rs. 27,420-12-1, that is, the difference between the sums of Rs. 1,52,125-4-9 and Rs. 1,79,546-0-10. Both parties have appealed.

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It is contended for the Bank that section 144, Civil Procedure Code, on which the decree-holders rely, does not apply, and that the latter are only entitled to execute their decree and to get interest at 6 *per cent. per annum* on the amount decreed, while the decree-holders claim interest on the sum of Rs. 1,79,546-0-10. We are of opinion that under section 144, which is very comprehensive, the decree-holders are entitled to interest on the sum of Rs. 1,79,546-0-10 paid by them to the Bank in 1919 under the Chief Court decree which was afterwards reversed, and we do not agree with the argument that the section is inapplicable to a case in which a decree has been reversed by the Privy Council. In *Tangatur Subbarayudu v. Yerram Setti Seshasani* (1) it was held that the section applied however the reversal of a decree had been effected, and the judgment of the Privy Council contained in *Rodger v. The Comptoir D'Escompte De Paris* (2) affirmed the principle that where there had been a reversal of a decree in the Privy Council interest should be allowed on money which had to be paid back in consequence of that reversal. We therefore hold that the decree-holders are entitled to interest on the whole sum of Rs. 1,79,546-0-10 which they paid to the Bank in 1919, and we accept their appeal and direct that interest be paid to them on that sum. We also accept the Bank's appeal to the extent of reducing the rate of interest payable to 6 *per cent per annum*. This was the rate at which the decree-holders paid interest to the Bank, and we do not think they are entitled to interest at a higher rate on the amount refunded to them. The decree-holders will get their costs in this Court in their appeal, and the parties

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(1) (1916) I. L. R. 40 Mad. 299. (2) (1871) I. R. 3 P. C. 465.

will pay their own costs in the appeal of the Bank.

A. N. C.

*Appeal accepted.*

### APPELLATE CIVIL.

*Before Mr. Justice Campbell and Mr. Justice Zafar Ali.*

MULK RAJ AND ANOTHER (DEFENDANTS) Appellants

*versus*

RALLA RAM-RAO MAL & OTHERS  
(PLAINTIFF) AND BUTA AND ANOTHER } Respondents.  
(DEFENDANTS)

1926

Feb. 12.

Civil Appeal No. 2398 of 1922.

*Civil Procedure Code, Act V of 1908, Order XXI, rule 63—Decree-holder himself withdrawing attachment of property before any decision is arrived at by the executing Court on objections made to the attachment and then instituting a suit—whether such a suit is competent under the rule or any other provision of the law.*

The property in dispute was attached in execution of a decree, and the attachment was objected to by the judgment-debtor's brothers. Before the executing Court could give its decision on the objection decree-holder applied for release of the property, stating that he would bring a regular suit to have it declared liable to attachment and sale and brought the present suit accordingly.

*Held*, that when an objection is made under Order XXI, rule 58 it is not open to the decree-holder to refrain from contesting the objection, to withdraw the attachment and then to bring a suit under Order XXI, rule 63 of the Code of Civil Procedure. The rule contemplates that the objector's claim is accepted or disallowed by the executing Court and it is only the party against whom the order is made who may institute a suit to establish the right he claims to the property.

*Held also*, that the rule precludes all suits except the one allowed by the rule itself and therefore the suit is not competent either under any other provision of the law.