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the fine from Rs.100 to Rs.5. With this modification in the sentence, I would dismiss the petition for revision.

TEK CHAND J.

YOUNG C. J. YOUNG C. J.—I agree.

MONROE J. MONROE J.—I agree.

A. N. K.

Revision dismissed.

LETTERS PATENT APPEAL.

Before Addison and Din Mohammad JJ.

1934

Nov. 30.

BHARAT NATIONAL BANK, LTD., AND ANOTHER (JUDGMENT-DEBTORS) Appellants,

-versus

BHAGWAN SINGH AND ANOTHER (DECREE-HOLDERS)
ABDULLAH KHAN AND OTHERS (JUDGMENT-DEBTORS) } Respondents.

Letters Patent Appeal No. 81 of 1934.

Civil Procedure Code (Act V of 1908) O. XXI, r. 2 — Statement by decree-holders that an understanding has been arrived at and that time has been given to judgment-debtors to complete the understanding — Whether an adjustment of the decree.

Where the agent of a decree-holder stated in execution proceedings on a certain date that an understanding had been arrived at with the judgment-debtors who had at their request been allowed time to complete it, and that in case of non-completion of the understanding, proper application for further proceedings would be presented and the Court thereupon adjourned the case to a certain date when the proceedings were consigned to the record room.

Held, that the decree had not been extinguished on the above date as the decree-holders' agent reserved to himself the right of reviving the execution proceedings if the negotiations did not mature and time had been allowed to the

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judgment-debtors to enable them to complete the terms of the settlement.

And therefore, this was not an adjustment of the decree within the meaning of r. 2 of O. XXI, Civil Procedure Code, the alleged adjustment being merely an inchoate agreement which was to be completed on the fulfilment of certain conditions and not an adjustment actually made and completed, based on a future promise, which the Court would be bound to record.

Mara Ramanarasu v. *Matta Venkata Reddi* (1), distinguished.

Other cases, referred to.

Letters Patent Appeal from the order of Monroe J. passed in Civil Appeal No. 648 of 1933, on 30th May, 1934, affirming that of Chaudhri *Kanwar Singh, Senior Subordinate Judge, Gujranwala, dated 11th February, 1933, rejecting the application of judgment-debtors, requesting that certain adjustment made in the decree may be certified.*

RAM LAL ANAND II, and FAKIR CHAND, for Appellants.

KISHAN DAYAL and BHAGWAT DAYAL, for (Bhagwan Singh) Respondent.

DIN MOHAMMAD J.

DIN MOHAMMAD J.—On the 16th January, 1923, Rai Bahadur Benarsi Das of Ambala obtained a decree for Rs.68,000 odd against the appellants along with some others, who are not now before us. On the 27th November, 1923, this decree was confirmed by this Court. Up to the 31st December, 1927, the decree-holder realised Rs.46,438 in his decree and for the balance of the decretal amount, which, he then valued at Rs.50,000, he had the decree transferred on the 5th June, 1929, to the Court of the Senior Subordinate

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Judge, Gujranwala, for execution. On the 27th July, 1931, his agent made a statement to the executing Court in the following terms:—"*Madyunan ke sath samjhotah hua hai aur us ki takmil ke lie un ki hasab khawhash un ko muhlat di gai hai. Basurat adam-takmil samjhotah munasab darkhwast muzid kár-rwái ke lie pesh ki javegi.*"

Its literal translation is as follows:—"An understanding has been arrived at with the judgment-debtors and at their request they are being allowed time to complete it. In case of non-completion of the understanding proper application for further proceedings will be presented."

On this the executing Court recorded an order that as the decree-holder had allowed time to the judgment-debtors, the case was being adjourned to the 1st October, 1931. It is important to note in this connection that on the 27th July, 1931, the agent of the decree-holder alone was present presumably as warrants of arrest had been issued against the judgment-debtors and they were avoiding arrest.

On the 1st October, 1931, it appears from an illegible scribble in the handwriting of the Subordinate Judge himself that the proceedings were consigned to the record room. The index, however, clearly shows that the application for execution was dismissed in default.

On the 22nd October, 1931, Barkat Ram appellant presented an application to the executing Court that the decree had been adjusted in the manner explained by him in the petition and that the said adjustment should be recorded under rule 2 of Order 21, Civil Procedure Code. Notices were issued to the decree-holder, in reply to which he informed the Court that

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he had sold the decree to *Sardar* Bhagwan Singh, Banker, Amritsar, on the 19th August, 1931, for Rs.23,000. On the 8th August, 1932, Barkat Ram appellant applied to the executing Court to bring Bhagwan Singh on the record in place of the decree-holder.

On the 11th February, 1933, the executing Court refused to record the alleged adjustment on the ground that it did not come within the purview of rule 2 of Order 21, Civil Procedure Code, inasmuch as the terms of the original decree had been varied by the alleged compromise and those terms also had not yet been fulfilled. From that order the appellants presented an appeal to this Court which was heard by a Judge sitting alone, who confirmed the decision of the executing Court. It is against this order that the present Letters Patent Appeal has been preferred.

Counsel for the appellants contends that a complete adjustment was effected on the 27th July, 1931, as is evidenced by the statement of the decree-holder in the executing Court as reproduced above; and as the Court was informed of this adjustment it was its duty to allow the appellants sufficient opportunity to prove its terms.

He further urges that the account of the compromise, as given by Barkat Ram in his application dated the 22nd October, 1931, exactly represents what happened and that the conditions mentioned therein should be taken to be correct in view of the statement of the decree-holder's agent. In support of his contention he relies mainly on *Mara Ramanarasu* v. *Matta Venkatta Reddi* (1) where a Bench of the Madras High

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Court held that a promise to do something in future is legal consideration and there is no legal impediment in the way of a decree-holder accepting a mere promise that the judgment-debtor will do something at some future date as a legal and immediate adjustment in satisfaction of his decree. Where the decree-holder accepts such a promise, there is a new contract amounting to a legal adjustment of the decree on the basis of which the judgment-debtor is entitled to apply to the Court to enter up satisfaction of the decree.

In my view the question, whether an adjustment has been made as contemplated by rule 2 of Order 21, is not a question of law only but a mixed question of law and fact, and before any principles of law enunciated in any decision can be made applicable to the facts of any particular case, it is necessary to find out from the allegations made as to what the intention of the parties was and unless this is done, it will not be possible to determine whether those principles apply or not. Now a reference to the statement of the decree-holder's agent unequivocally indicates that to his mind it was not at all present that the decree had been completely extinguished on the 27th July, 1931. He clearly reserved to himself the right of reviving the execution proceedings if the negotiations did not mature, and he further stated that it was merely to enable the judgment-debtors to complete the terms of the settlement that was going on between the parties that time had been allowed. In these circumstances it cannot be fairly argued that any negotiations that were being carried on at that time had so matured as to amount to a satisfaction of the decree and thus make it non-existent. Even the application that was presented by Barkat Ram himself on the 22nd October, 1931, stated that one of the judgment-debtors had to

pay Rs.15,000 within three months and the applicant himself Rs.10,000 within a year and a half, and if the other judgment-debtor failed to pay his share as agreed upon, the decree-holder would be at liberty to sue out execution for Rs.25,000 against the applicant. I am further confirmed in my view by what the Court did on the 27th July. The execution proceedings were not consigned to the record room on that day but an adjournment was granted to enable the parties to settle the matter between themselves, if possible. To my mind the only test that is applicable to determine whether an adjustment has taken place or not is to find out whether the decree was completely satisfied or not on that day. If it was, the adjustment will no doubt be complete as required by rule 2 of Order 21; if not, it will not be an adjustment at all which a Court is bound to record.

In fact the language employed by Reilly J. in *Mara Ramanarasu* v. *Matta Venkata Reddi* (1) also leads to the same conclusion. At page 205 of the Report he observes as follows :—

" It may well be said that, if a judgment-debtor comes into Court and alleges that the decree-holder has given up the weapon available in his hand, the decree which he can execute, and in its place has accepted a promise that the judgment-debtor will do something at a future date and if that is disputed, then the evidence that the decree-holder has done such a thing should be carefully scrutinized. It may very well be a foolish thing for a decree-holder to do; it may be unreasonably generous; it may be likely to give him a great deal of trouble in future. But, if it is proved that he has done so, that *he has accepted a new contract*

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in place of his decree as immediate satisfaction of that decree at the time of his acceptance, there is no legal impediment in the way of his doing so and there is no justification for the Court refusing to find on proper evidence that he has done so."

Reference may also be made with advantage to the observations made by Sulaiman J. in *Gobardhan Das* v. *Dau Dayal* (1) and to *Azizur Rahman Chaudhury* v. *Aliraja Choudhry* (2) and *R. S. M. Venkatalingama Nayanim Bahadur Varu, Rajah of Kalahasti* v. *Rao Muni Venkatadri Rao Garu* (3).

From the words used by the decree-holder's agent and the action of the Court thereon as well as from the terms mentioned in Barkat Ram's application dated the 22nd October, 1931, the only conclusion possible is that the alleged adjustment was merely an inchoate agreement; an adjustment was under consideration and was to be made on the fulfilment of certain conditions; it was not an adjustment actually made and completed, based on a future promise; and it did not, therefore, come within the purview of rule 2 of Order 21, Civil Procedure Code.

Counsel for the respondents has relied on *Bakhshi Ram Varma* v. *Des Raj* (4) where a Bench of this Court has gone even farther than this and has observed as follows:—" It is beyond dispute that the parties cannot in execution proceedings vary the terms of the decree; and a contract, which seeks to substitute one decree for another decree, cannot be regarded as an adjustment. If, however, the terms of the compromise have been carried out and the decree is extinguished in whole or in part the compromise can be recognised by the Court."

(1) I. L. R. (1932) 54 All. 573.
(2) 1928 A. I. R. (Cal.) 527.
(3) I. L. R. (1927) 50 Mad. 897.
(4) 1931 A. I. R. (Lah.) 608.

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It is not necessary for the purposes of this case to discuss the propriety of the length to which the above judgment has gone. It is sufficient to remark that even on the authorities cited to us on behalf of the appellants themselves they cannot succeed. I would, therefore, dismiss this appeal with costs.

DIN MOHAMMAD J.

ADDISON J.—I agree.

ADDISON J.

Appeal dismissed.

P. S.

CIVIL REFERENCE.

Before Addison and Din Mohammad JJ.

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Jan. 19.

SOM CHAND-MALUK CHAND—Assessee,

versus

THE COMMISSIONER OF INCOME-TAX—Respondent.

Civil Reference No. 24 of 1937.

Indian Income Tax Act (XI of 1922), SS. 23 (4), 66 (2) (3) — Assessment under S. 23 (4) — Question formulated by High Court under S. 66 (3) not raised by assessee in his application to Commissioner under S. 66 (2) — Jurisdiction of High Court to interfere with assessment — Inherent powers — of High Court.

The Income-tax Officer made the assessment to the best of his judgment, under s. 23 (4) of the Act and the assessee having exhausted his other remedies to get the assessment cancelled and the Commissioner having refused to state the case under s. 66 (2) ultimately applied to the High Court under s. 66 (3) and the High Court formulated the question " whether..... the assessment was not made arbitrarily..... ". The Commissioner challenged the jurisdiction of the High Court to entertain the question on the ground that it was never raised before the Income-tax authorities; the assessee contended that the High Court was competent to interfere in the exercise of its inherent powers.