

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.

1912.
July 12.
BHURCHAND HANSRAJ DOSHI AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, v. VIRA CHAMPA KHACHAR AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), third schedule, section 7 (1) (b); sections 69, 70—Decree—Interest awarded up to realisation—Execution—Interest calculated in darkhast up to its date—Collector carrying on execution and paying interest and amount as prayed in darkhast—Court directing Collector to continue execution till payment of interest up to realisation—Discretion of Collector—Jurisdiction of Court.

The plaintiffs obtained a money-decree against the defendants which awarded interest on the decretal amount up to its realisation. They applied to execute the decree and calculated interest over the decretal amount up to the date of the application. The Collector, to whom the execution-proceedings were transferred, placed the defendant's estate under his management; and when the decretal amount and interest as calculated in the plaintiffs' application were paid up, he treated the decree as satisfied and returned the execution-proceedings to the Court. The Court sent back the proceedings to the Collector, asking him to continue in management till interest over the decretal amount from the date of the application to the date of realisation was paid to the plaintiffs. The District Court held on appeal that the Court had no jurisdiction to interfere with what lay completely within the Collector's jurisdiction and reversed the order. On second appeal:—

Held, restoring the order passed by the first Court, that under the provisions of section 7 (1) (b) of the third schedule of the Civil Procedure Code of 1908, the Collector had to take into account the whole amount, with the total interest awarded by the decree, and that that would include not merely interest up to the date of the application, but also interest which would run according to the decree thereafter.

Per CHANDAVARKAR, J.—The Civil Procedure Code (sections 69 and 70) of 1908 gives authority to the Collector for the purpose of enabling him to determine the best mode or modes of satisfying the decree, whether it is to be satisfied by management by the Collector himself of the land attached in execution of the decree, or whether it is to be by its sale or letting. So far, therefore, as the machinery necessary for the satisfaction of the decree is concerned the Collector is the sole authority. The discretion is his and no Civil Court can interfere with that discretion. But that discretion does not extend to any jurisdiction in the Collector to determine whether the decree itself has been satisfied or not. The latter jurisdiction is the Civil Court's. It is that Court alone which is competent to determine the question judicially.

• SECOND, appeal from the decision of Dayaram Gidumal, District Judge of Ahmedabad, reversing the decree passed by P. C. Desai, Subordinate Judge of Dhandhuka.

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Proceedings in execution.

On the 30th May 1895 the plaintiffs obtained against the defendants a money decree for Rs. 1,700, which also awarded running interest up to realisation.

The plaintiffs applied to execute this decree on the 16th November 1895, and prayed to recover the decretal amount of Rs. 1,700 and Rs. 68, being interest on the amount from the date of the decree to the date of the application. The Court added further costs; and the amount to be recovered was Rs. 1,776-16-6.

The Court transferred the execution-proceedings to the Collector (in this case, the Talukdari Settlement Officer). That officer proceeded under sections 322, 322 A and 322 B of the Civil Procedure Code of 1882; took the defendants' estate into his management and paid off the amount of Rs. 1,776-10-6 by the 17th June 1910. He then regarded the decree as duly satisfied and returned the execution-proceedings to the Court.

The Subordinate Judge sent back the execution-proceedings to the Talukdari Settlement Officer asking him to continue his management till the plaintiffs were paid interest on the decretal amount from the date of the application to the date of realisation.

On appeal, the District Judge reversed the order, holding that the Civil Court had no jurisdiction to go into the question of satisfaction of the decree which lay completely within the Collector's jurisdiction.

The plaintiffs appealed to the High Court.

T. R. Desai, for the appellant:—When a decree is once sent to the Collector for execution, he is the only competent authority to decide what arrangements should be made for executing the decree. The Civil Court will have no jurisdiction to interfere with his discretion. But if any question were to arise in the course of execution of the decree as to the construc-

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tion of the decree and as to whether the decree itself is satisfied or not, those questions can be determined by the Civil Court alone. See *Mancherji v. Thakurdas*⁽¹⁾ and *Mathuradas v. Panhalal*⁽²⁾.

N. K. Mehta, for the respondent:—When the Collector is seized of the execution-proceedings, he is the competent authority to decide all questions relating to execution. In the present case, the Court asked the Collector to execute the decree for a certain amount, which was mentioned in the application for execution: as soon as that amount was realised the only thing that remained to be done by the Collector was to send back the proceedings to the Civil Court. The Collector did so. The decree-holder did not seek to recover in his application the future interest.

Desai, in reply:—The amount of future interest was not mentioned in the application, for it could not be ascertained till the decretal debt was fully paid. Notwithstanding this omission the Collector is empowered, under rule 7, clause 1(b), of schedule III to the Civil Procedure Code (Act V of 1908), to pay the future running interest.

CHANDAVARKAR, J.:—The District Judge has taken an erroneous view of the jurisdiction of the Collector or rather the Talukdari Settlement Officer, who exercised the powers of Collector under section 320 of the old Code of Civil Procedure (Act IV of 1882), and under sections 69 and 70 of the present Code of Civil Procedure (Act V of 1908), in respect of the execution of the decree concerned in this case. The Chapters in which these sections respectively occur deal with the functions of the Collector as the authority invested with jurisdiction to see that the decree is satisfied. The authority is given for the purpose of enabling the Collector to determine the best mode or modes of satisfying the decree, whether it is to be satisfied by management by the Collector himself of the land attached in execution of the decree, or whether it is to be by its sale or letting. So far, therefore, as the machinery

(1) (1905) 7 Bom. L. R. 682.

(2) (1894) 19 Bom. 216.

necessary for the satisfaction of the decree is concerned, the Collector is the sole authority. The discretion is his and no Civil Court can interfere with that discretion. But that discretion does not extend to any jurisdiction in the Collector to determine whether the decree itself has been satisfied or not. The latter jurisdiction is the Civil Court's. It is that Court alone which is competent to determine the question judicially.

But it is argued in support of the decree of the lower Court appealed from that in any case the decree must be upheld because the determination by the Talukdari Settlement Officer that the decree was satisfied is perfectly consistent with the facts of the case. And the facts relied upon shortly are, that the present appellant did not by his *darkhast*, sent to the Collector for execution, ask for any running interest allowed to him by the decree, but that he asked merely for execution in respect of the principal amount allowed by the decree and interest up to the date of the *darkhast*. Although that is so, if we have regard solely to the prayer in the *darkhast*, we must also have regard to the fact that the *darkhast* could not have been presented by the appellant in any other form. It was not necessary for him to ask for running interest because the law itself makes provision for its award in execution when the decree has been sent to the Collector. When it is so sent the Collector has to see, not that it is partially satisfied, but that it is wholly satisfied. When interest awarded by the decree up to the date of satisfaction is running from day to day, the decree-holder being unable at the date of his *darkhast* to specify the day up to which interest can be calculated, it is the Collector who has to take into account the whole of the period, present and future, and he cannot return the decree to the Civil Court as satisfied till after the whole amount including interest awarded by the decree has been paid.

Section 7 (1) (b) of the third schedule of the Code of Civil Procedure, 1908, provides that where the amount to be recovered and the property available have been determined as provided in paragraph 4 or paragraph 5, the Collector may, if it

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appears that the amount with interest (if any) in accordance with the decree may be recovered without such sale, raise such amount and interest. According to the plain language, then, of this section the Collector has to take into account the amount, with the whole of interest awarded by the decree. That includes not merely interest up to the date of the *darkhast*, but also interest which runs according to the decree thereafter.

On these grounds the decree appealed from must be reversed and that of the Subordinate Judge restored with costs both of this appeal and of the appeal in the District Court on the respondents.

BATCHELOR, J. :—I am of the same opinion. The most that Mr. Mehta could urge for the respondents in this case was that the appellant in his *darkhast* of 1895 had not specifically prayed for interest up to the date of payment. That is true. He had asked in terms only for interest up to the date of his application, but in his application he had specifically referred to that clause in the decree which ordained that interest should run up to the date of realisation. And under section 7 (1) (b) of the third schedule of the Civil Procedure Code it appears to me that despite the appellants' omission to make the particular claim for further interest it was the Collector's duty to arrange for the satisfaction of the decree with such interest as the decree itself awarded, that is to say, with running interest up to the date of payment. I agree, therefore, that this appeal should succeed.

Appeal allowed.

R. R.