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The second question relates to procedure under section 167 of the Act. The written application for service of notice was made to the Collector of Nadia as prescribed by the first clause of the section. According to the practice which prevails in the Collectorate of Nadia, the application was received by a Deputy Collector in charge. Notice was thereafter issued from the Collectorate as prescribed by the third clause of the section, and there is no question but that the notice was duly served in compliance with the Act. The application, when presented, was [916] sealed with the Collectorate seal, and the notice was also sealed with the Collector's seal, though it was signed by a Deputy Collector "for the Collector."

The provisions of the Act were complied with: the applicant did all that the law required him to do. The Collectorate was merely the medium for service, and the officers in charge caused the notice to be served in the manner prescribed by the rules. There was no illegality or irregularity. We agree with the observations of the Court on this point in *Akhoy Kumar Soor v. Bejoy Chand Mohatap* (1).

We are unable to accept the view of the appellant that the proceedings were either illegal or irregular, because the Collector did not personally receive the petition, or personally cause the notice to be served. Having regard to the many and multifarious duties of the Collector, it is impracticable that he could personally attend to such details, and the fact that both the application and the notice bear the seal of the Collectorate is, to our minds, sufficient to warrant the conclusion that the application was presented to the Collector, and that he caused the notice to be served within the meaning of section 167.

The appeal therefore fails and is dismissed with costs.

MITRA, J. I agree.

Appeal dismissed.

32 C. 917 (=9 C. W. N. 1004).

[917] APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Caspersz.

GOPAL SAHU v. BRIJ KISHORE PERSHAD.*

[25th and 29th May, 1905.]

Civil Procedure Code (Act XIV of 1882), s. 257A—Agreement to give time on condition of payment of higher rate of interest—Sanction of Court not accorded—Non-extinction of judgment-debt—Separate suit to recover enhanced interest, maintainability of.

It is only when the judgment-debt is extinguished and a new contract made that an agreement giving time for the satisfaction of the judgment-debt, not sanctioned by the Court, can be enforced.

Where, therefore, the judgment-debtors filed an application before the Court executing the decree for a postponement of the sale, as they had agreed to pay interest at a rate higher than the decretal rate, but the sanction of the Court was not accorded to such payment.

Held that, as the agreement contained in the petition did not put an end to the plaintiffs' claim on their previous decree and substitute something else in

* Appeal from Appellate decrees No. 2752 of 1902 against the decree of G. Gordon, District Judge of Saran, dated the 18th June 1902, reversing the decree of Gopi Nath Mattay, Subordinate Judge of Saran, dated the 30th of September 1897.

(1) (1902) I. L. R. 29 Cal. 813, 820.

its place, it was void under s. 257A of the Civil Procedure Code, and that no separate suit would lie to recover the enhanced interest under the agreement.

Hurkissen Dass Serowjee v. Nibaran Chander Banerjee (1) distinguished, *Venkata Subramania Ayyar v. Koran Kannan* (2) and *Lalji Singh v. Gaya Singh* (3) followed.

[Ref. 61 P. L. R. 1907=71 P. W. R. 1907=29 P. R. 1903 (F. B.)]

APPEAL by the plaintiffs.

The plaintiffs Nos. 1 to 3 and 8 to 11 and Ram Aotar Saha, the father of plaintiffs Nos. 4 to 7, obtained a mortgage decree against the first two defendants and the father of the remaining defendants ordering the sale of the mortgaged property and awarding interest on the decretal amount at the rate of 8 annas per cent. per mensem from the date of the decree to that of realization. [918] Subsequently an application was made by the plaintiffs and Ram Aotar for the execution of the decree, and an *istihar* for the sale of the mortgaged property was issued in due form fixing March 1892 for the sale. On the 12th March, however, the defendants filed a petition before the Court, with the consent of the plaintiffs, for a postponement of the sale, as they had agreed to pay interest at the rate of 12 annas per cent. per mensem and the Court stayed the sale. There was no request in the application for sanction of the agreement, nor did the Court accord its sanction to the payment of the increased rate of interest.

The judgment-debtors having finally defaulted after several such postponements, the plaintiffs made an application for the execution of the decree with interest at the higher rate. The judgment-debtors then filed their objections on the ground, *inter alia*, that the agreement to pay interest at the rate of 12 annas per cent. was illegal under s. 257A of the Civil Procedure Code, and the Court allowed the objection on the 11th May 1897. They then paid in certain sums with interest at the decretal rate. The plaintiffs thereupon brought the present suit to recover the interest due at the excess rate of 4 annas per cent. per mensem. The defendants contended mainly that the alleged agreement was invalid under s. 257A of the Code, and that a separate suit was also barred under s. 244 thereof.

The Subordinate Judge held that ss. 244 and 257 A of the Civil Procedure Code did not bar the plaintiffs' claim and that the suit was maintainable. Upon appeal the District Judge reversed the decree of the Subordinate Judge, holding that, apart from the petition of the 12th March 1902, there was no separate and independent agreement, which the plaintiffs were entitled to enforce by separate suit, that a petition in execution was not an independent agreement, which could be enforced, and that the suit was, therefore, barred under s. 244 of the Code.

The plaintiffs appealed to the High Court against his decision.

Babu *Saligram Singh* (with him *Babu Mon Mohun Dutt*) for the appellants. The want of sanction renders an agreement void under s. 257A of the Civil Procedure Code, so far only as its enforcement in the execution of the decree is concerned, but a [919] separate suit brought in respect of it is not barred either by s. 244 or s. 257A of the Code: *Hurkissen Das Serowjee v. Nibaran Chander Banerjee* (1), *Hukum Chand Oswal v. Taharunnessa Bibi* (4). The suit is not for interest due under the original decree, nor does any question relating to the execution of that

(1) (1901) 6 C. W. N. 27.

(2) (1902) I. L. R. 26 Mad. 19.

(3) (1903) I. L. R. 25 All. 317.

(4) (1889) I. L. R. 16 Cal. 504.

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decree arise in the present case. The suit is founded on a separate agreement contained in the petition of the 12th March.

Babu *Raghu Nandan Pershad* for the respondent. The agreement on which this suit is based did not extinguish the decree, but merely postponed its execution. It was not, therefore, an independent contract as in the two cases cited above. The decree being still alive and no sanction obtained, the present agreement is void under s. 257A of the Code for all purposes, and no suit based on it is maintainable: *Venkata Subramania Ayyar v. Koran Kannan* (1), *Lalji Singh v. Gaya Singh* (2), *Tukaram v. Anantbhat* (3).

RAMPINI AND CASPERSZ, JJ. The facts of this case are not disputed. The plaintiffs were decree-holders. They were executing a decree against the defendants. The defendants as judgment-debtors asked for time and obtained it by agreeing to pay interest at 9 per cent. instead of at 6 per cent. on the decree, which had been given against them. Their agreement was contained in a petition to the Court of execution dated the 12th March 1892. No sanction was accorded by the Court to the agreement to pay an increased rate of interest.

The plaintiffs now sue for the sum due for increased interest under the agreement. The first Court gave them a decree. The District Judge reversed the first Court's decision on the ground that the plaintiffs' suit is barred by section 244.

The plaintiffs appeal. On their behalf it is argued that the suit is not barred by section 244, because the plaintiffs are not suing for interest due under their original decree, nor does the question at issue in the present suit relate to the execution of that decree. They are suing, it is said, on a separate agreement [920] contained in the defendants' petition of the 12th March 1892, which is something distinct from their original decree. It is further contended that this agreement is not void under the provisions of section 257A, and reliance is placed on a judgment of a single Judge of this Court in the case of *Hurkissen Dass Serowjee v. Nibaran Chander Banerjee* (4). But in that case the original judgment-debt had been extinguished, and a promissary note substituted for it, and it was held that this note could be sued on. This is not the case in the present suit. The agreement contained in the defendants' petition of the 12th March 1902 did not put an end to the plaintiffs' claim on their previous decree and substitute something in its place. According to the rule laid down in *Venkata Subramania Ayyar v. Koran Kannan* (1) and in *Lalji Singh v. Gaya Singh* (2) it is only when the judgment-debt is extinguished and a new contract made that an agreement giving time for the satisfaction of the judgment-debt, not sanctioned by the Court, can be enforced. If we follow this rule, and we consider that we should do so, the agreement entered into by the parties to this Court, giving time to the defendants in consideration of their paying a higher rate of interest, is void under the provisions of section 257A, as not having received the sanction of the Court and cannot be enforced by suit.

For these reasons we dismiss this appeal with costs.

Appeal dismissed.

(1) (1902) I. L. R. 26 Mad. 19.

(2) (1908) I. L. R. 25 All. 317.

(3) (1900) I. L. R. 25 Bom. 252.

(4) (1901) 6 C. W. N. 27.