*Before Mr. Justice L. S. Jackson and Mr. Justice Markby.*

1869 June 17.

PARES NATH MUKHOPADHYA AND OTHERS (DECREE-HOLDERS) v. KISTO MOHAN SAHA AND ANOTHER (OBJECTORS) *

*Payment into Court—Judgment-Debtor—Discretion of Court—Interest.*

When a payment is made into Court by a judgment debtor in full satisfaction of the decree, but which the Court accepted and retained as a payment on account, the judgment creditor can have no right to claim interest upon the whole amount of his decree. The Court executing the decree has a discretion in allowing interest, which will not be interfered with in special appeal.

*Kunhy* v *Sing* v *Tooydun Sing* (1) distinguished.

Baboos *Krishna Sukha Mookerjee* and *Harimohan Chuckerbutty* for appellants.

Baboo *Mukini Mohan Roy* for respondents.

JACKSON, J.—One question in this appeal relates to the right of the decree-holder to receive interest upon the whole amount due, without taking into account a sum paid into Court by the judgment-debtor some months previously, which amount, at the time of deposit, the judgement-debtor represented to be all that was really due to the execution creditor, and which therefore he paid in as if it were in full satisfaction of the decree, but which the Court which received the deposit did not accept as such full satisfaction, but merely as a payment on account, and directed notice of the payment to be given to the execution-creditor. It seems that on receiving notice the decree-holder came in, and objected to the statement of account as given by the judgment-debtor, and also refused to receive this payment as a payment in full, but did not object to receive it as payment in part. He neither accepted nor refused it in that point of view. He allowed it to lie in the Collector's treasury.

We have been referred to *Kunhya Sing* v. *Tooydun Sing* (1), which a case very like the present—the learned Judges laid down the general principle of law "that a judgment creditor, like any other creditor, is not bound "to accept a tender of a sum admittedly less than what is due to him, and "that he has a right to insist on being paid the principal with interest in full. "If he refuses to receive a sum in part of what is due to him, his refusal will "not deprive him of his right to interest; in other words, the debtor can "derive no benefit from the rejected offer of a part payment." I am not inclined to question the correctness of the principle of law therein laid down. I certainly cannot say that a judgment creditor would be bound to accept a tender of a sum admittedly less than what is due. But it seems to me that the principle laid down in that case does not completely dispose of the case

* Miscellaneous Special Appeal, No. 142 of 1869, from a decree of the Judge of Beerbhoom, dated the 5th January 1869, affirming the order of the Subordinate Judge of that district, dated the 27th April 1868.

(1) 7 W. R., 20.

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before us, because it is observed in that case that, if the creditor "refuses "to receive a sum in part of what is due to him, his refusal will not deprive "him of his right to interest; or in other words, the debtor can derive no "benefit from a rejected offer of part payment." Now we have not here a rejected offer of part payment. The decree-holder merely states that this is not the whole of the amount due to him, and he refuses to receive it as the whole amount.

Then in that case the learned Judges went on to consider the particular facts. They said:—"It is impossible from the materials before us to say how the accounts in this case were made up;" and they then went into the facts, and declared that it would be necessary to make a fresh account on the principle laid down by them, and directed that the case should be remanded for that purpose. Now here we have no considerations of that kind. We are not called upon to consider what the amount actually due was, but simply the one proposition, viz., the judgment debtor having represented the sum which he deposited to be the amount due, and the Court having found the amount not to be so, and yet having allowed the judgment-debtor to derive the benefit of his deposit in the way of saving interest,—whether as a matter of law the Courts below have acted erroneously in so doing. I think not. I think this is a matter within the discretion of the Court. While on the one hand I think it would be impossible for us to say that a judgment-debtor should be allowed to pay into Court a sum which amounted to 9-10ths of his debt, and that the judgment-creditor would be absolutely entitled to disregard such payment, and insist five years afterwards upon receiving interest in full upon the entire amount due under the judgment, as if no such deposit had ever been made; neither on the other hand ought we to affirm any principle of law whereby a judgment-debtor should be enabled to make repeated trifling deposits in part payment of a large decree, and so cause inconvenience and give rise to perpetual taking of accounts on the part of the judgment-creditor. Without therefore at all questioning the correctness of the ruling in the case I have referred to, it seems to me, that we ought to deal with this matter as a matter of discretion.

I observe that the Judge states that "the Subordinate Judge finds that as "a portion of his money for which execution was taken out was deposited in "Court for payment to the creditor, and the Court accepted the deposit on "the 15th January 1867, the decree-holder should have taken the money; "and as he has not done so, he is not entitled to interest." I think it a fair construction to put upon those words that the Subordinate Judge considered the deposit made by the judgment-debtor to be a reasonable and fair deposit, and such as the judgment-creditor ought in fairness to receive; and when we see in addition to that, that the judgment-creditor did not expressly declare that he would not receive a part payment, but merely repudiated the statement that it was a payment in full, I think the judgment-debtor was fairly entitled to suppose that this money was received as a payment on account of the judgment, and that he ought not to be compelled to pay interest afterwards

upon an amount which he had so applied. On these grounds I think we ought not to interfere with the decision of the Courts below, and that this appeal ought to be dismissed with costs.

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MARKBY, J.—I am of the same opinion. Upon the first point, which is I think an extremely clear one, I do not wish to say anything. With regard to the second point, I also entirely adopt the proposition of law as laid down in *Kunhya Sing* v. *Tooydun Sing* (1). What I consider the learned Judges have there laid down, are general rules which would regulate the satisfaction of a decree by a judgment-debtor to his judgment-creditor. On the other hand, I am not at all inclined to say that the Court which has to execute the decree, is entirely without discretion in the matter as to whether or not it will allow a part payment by the execution-debtor. Under ordinary circumstances, the execution-debtor, in my opinion, would not be allowed to make such a part payment. Under ordinary circumstances, the execution creditor would not be called upon to accept it. But on the other hand, there may be circumstances under which a Court may say that this is a proper case in which part payment ought to be allowed, and the execution-creditor asked to accept. As I understand the judgments of the lower Courts in this case, that is what has been done; and that having been done, we ought to uphold those judgments, unless it has been shown to us that this was not a case in which that discretion may be exercised. So far as I can see, I think that it was a case in which such discretion might well be exercised; and having been exercised by both the lower Courts, I think there is no ground for our interfering with those judgments.

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*Before Mr. Justice L. S. Jackson and Mr. Justice Markby.*

## DEBKUMARI BIBI (PETITIONER) *v.* RAM LAL MOOKERJEE (OPPOSITE PARTY.)*

1869
*June* 17.

*Ground for Rejecting Application—Act VIII. of* 1859, *s.* 243—*Sale—Judgment-Debtor.*

The fact of the judgment-debtor's possessing properties other than the one attached, is no ground for rejecting an application, under section 243 Act VIII. of 1859, for the appointment of a manager.

To save a particular property from sale, a judgment-debtor must shew the value and condition of other properties in her possession, and the Judge must consider how and by what arrangement such a disposal of different portions of such property may be made, so as to avoid the sale of the property already attached.

Baboo *Ashutash Dhar* for petitioner.

Baboos *Gopal Lal Mitter* and *Ambika Charan Banerjee* for opposite party

*Miscellaneous Regular Appeal, No. 168 of 1869, from a decree of the Judge of Hooghly, dated the 31st March 1869.

(1) 7 W. R., 20.