

Before Mr. Justice Kemp and Mr. Justice Glover.

RANI LAEUN MANI AND ANOTHERS (JUDGMENT-DEBTORS) v. BEHARI LAL MOOKERJEE (DECREE-HOLDER).*

1871
May 5.

Execution of Decree—Interest decreed, but Rate not specified.

Baboo *Shyam Lal Mitter* for the appellants.

Baboo *Srinath Das* and *Kali Mohan Das* for the respondent.

The facts of the case are fully stated in the judgment of the Court which was delivered by

GLOVER, J.—This appeal is on a question of interest only. The judgment-creditor obtained his decree on the 24th of September 1858, with a specification in it that, from the original cause of action to the date of suit, interest should be given at the rate of 12 per cent. per annum, from date of suit to date of decision interest at 19 per cent., and that from the date of decision to date of liquidation, "interest" should be given. In the last case the rate of interest was not specified. The Subordinate Judge, taking all the circumstances into consideration, and holding that the omission to fix the rate was a mere clerical error, gave interest at 12 per cent., and against that order the appeal is made. The contention is that as the decree is silent on the subject, on interest could be allowed at all, and we have been referred to a Full Bench decision in the case of *Modhoo Sooden Lal v. Bekaree Singh* (1), and to the case of *Sheikh Abdul Ali v. Bibi Ashraffan* (2), in support of the

(1) 6 W. R., 108.

(2) *Before Mr. Justice Bayley and Mr. Justice Markby.*

The 17th June 1870.

SHEIKH ABDUL ALI (JUDGMENT-DEBTOR) v. MUSSAMAT BIBI ASHRAFFAN AND ANOTHER (DECREE-HOLDERS).†

Messrs. *R. E. Twidale* and *G. A. Twidale* for the appellant.

Mr. *C. Gregory* and *Munshi Mahomed Yousaff* for the respondents.

The judgment of the Court was delivered by

MARKBY, J.—It seems to us that this judgment cannot be supported. That which is

called the rectification of an error in a decree is really a substantial alteration in it. It is not a mere matter of course to give interest in a decree, and it is still less matter of course to give interest at any particular rate. The grant of interest is in every case a matter for the judicial determination of the Court which grants the decree.

We do not mean to lay down that, if the parties apply promptly to correct an oversight when the whole of the argument and all the facts of the case are fresh in the mind of the Court, that an obvious error or omission may not in some cases be corrected without the tedious and expensive process of a review.

But the Subordinate Judge does not, as we understand him, say that there is anything before him which brings the circumstances of this particular case back to his mind, so that he can say that

* Miscellaneous Regular Appeal, No. 72 of 1870, from an order of the Subordinate Judge of Hooghly, dated the 12th December 1870.

† Miscellaneous Regular Appeal, No. 33 of 1879, from an order of the Official Subordinate Judge of Tirhoot, dated the 8th November 1869.

objection; but both these decisions apply to cases where the decree is altogether silent with regard to interest, and not where it is silent merely as to the rate of interest. There is a decision of *Mussavut Sjobutra Bebee, v. Sheo Churn Lall* (1), in which it is laid down that where a decree does not specify any particular rate of interest, 12 per cent. should be given. It is argued more as a plea *ad misericordiam* than anything else, that considering the circumstances of this case, the fact that the judgment-debtor was, for the greater portion of the time since the decree was obtained, a minor, and that his mother who acted as his guardian expended funds lavishly instead of paying off this decree, he should not be charged with interest at all for the period in dispute; and that if it were given it should be awarded at the lesser rate of 6 per cent. per annum. We think that taking the whole case into consideration we should not be justified in interfering with the order of the Court below. The decree-holder has not been guilty of any laches in executing his decree; he commenced within a few months after obtaining it to try and recover the amount due to him, and from that time to this he has been constantly more or less occupied in endeavouring to obtain the fruits of his decree: that he has not been able to do so has been the result of various applications for delay made from time to time by the judgment-debtor's mother with the object of saving the family property from sale. It appears, moreover, that various sums of money, in part satisfaction of the decree, with interest at the rate of 12 per cent., have been paid for periods subsequent to the decree. It is said that the mother has been acting adversely to the minor's interests, but this does not appear to be so, as had not the mother applied as she did, from time to time to have the execution of the decree put off, the minor would have now no property left at all, inasmuch as it would all have been sold in execution of this decree.

We think, therefore, that the order of the Subordinate Judge granting interest at 12 per cent. is one with which we should not be justified in interfering, and the appeal must be dismissed with costs.

this was a mere clerical error or omission, and looking to the time (two years) which had elapsed since the case was heard, it would evidently be impossible that he could have any independent recollection of it.

We think that the Subordinate Judge was in this case making a substantial alteration in the decree, and that he was, substantially, if not in form, grant-

ing a review, and that, therefore, some good grounds for the delay ought to have been shown.

According to the decisions of this Court, therefore, the alteration made in the decree was made illegally, and the order of the Subordinate Judge must be set aside. The appellant will get his costs in this Court and the Court below.

(1) 7 W. R., 376.

1871
RANI LALUN
MANI
v.
BEHARI LAL
MOOKERJEE.