

Firm Rai Bahadur Het Ram-Bodh Raj, through Rai Bodh Raj
and another - - - - - *Appellants*

v.

Firm Seth Aya Ram-Tola Ram through Seth Tola Ram and
others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 21ST DECEMBER, 1937

Present at the hearing :

LORD RUSSELL OF KILLOWEN.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* LORD RUSSELL OF KILLOWEN.]

In this case the respondents obtained a compromise decree in the Court of the Judicial Commissioner of Sindh, dated the 12th April, 1923, and registered in the office of the Registrar on the 3rd August, 1923, by which it was ordered and decreed that there be a decree against the appellant firm and Bodh Raj for Rs.1,04,000 with interest at 6 per cent. per annum from that date up to payment payable as therein stated, viz., by the payment of six different sums each payable on or before a specified subsequent date with interest (on the last five) at 3 per cent. per annum from the 28th June, 1923. The six sums fell short of Rs.1,04,000 by Rs.8,000, and the decree provided that in case the six sums were paid up regularly on or before the due dates, the plaintiffs (i.e., the respondents to this appeal) would give up the balance of the principal amount, and the difference between the interest at 6 per cent. and the said interest at 3 per cent., and also interest on the first of the six sums. In case, however, any two of the six sums were not paid on due date, the whole amount then due should be recovered at once. As security for the due payments of the decree certain specified immoveable properties (including the right, title and interest of the appellant Dharu Lal) were declared to be under the mortgage lien of the plaintiffs; and the decree further stated that the appellant Dharu Lal

was not a partner in the appellant firm and was not personally liable for the claim in suit, but had joined in the decree as surety in order to secure the due payment of the plaintiffs' claim and to render his share in the joint family property liable for the plaintiffs' claim, and that the suit as against him was dismissed, but he continued liable as surety as above provided. Finally it provided that if Bodh Raj made default in payment of only one of the six sums on due date, except the first, then the plaintiffs would relinquish Rs.8,000 out of the principal amount but would recover full interest at 6 per cent.; but in the event of default of payment on due date of the first sum or in default of payment on due date of any two sums the plaintiffs would not relinquish any portion of principal or interest.

Their Lordships have referred in detail to this decree in order that its purport and effect may be seen. Under it the appellant firm and Bodh Raj became judgment debtors and personally liable for a sum of Rs.1,04,000 and interest at 6 per cent. per annum from the 12th April, 1923, until payment; but they could escape liability to pay in full if they made the lesser payments at the times and in the amounts specified in the decree. The appellant Dharu Lal came under no personal liability, but his right, title and interest in the specified immoveable property stood as security for the payments due under the decree.

The first of the six sums was paid, but the second and third sums were not paid. The decree was transferred for execution to the District Court at Dera Ghazi Khan. Execution application was made, but during the pendency of the execution proceedings a compromise was agreed upon, and on the 29th February, 1928, a petition was presented under Order 21, rule 2 and section 47 of the Code of Civil Procedure to have the compromise certified as an adjustment of the decree. The District Judge, on the 27th April, 1928, recorded the adjustment in the following language:—

“ The compromise which has been effected by the parties is now an accomplished fact. It has been finally verified in Court. The objectors have withdrawn their objections in view of this compromise. The payment has now to take place according to the scheme of instalments embodied in the compromise. For the present executing proceedings stand consigned to the record room after partial satisfaction.”

The terms of compromise are set out in the petition. They run as follows:—

“ The decree, dated the 12th April, 1923, in Suit No. 1105 of the year 1920 having been passed by the Court of the Judicial Commissioner, Sindh, was, for the purpose of execution, transferred to this Court. Execution proceedings thereof are pending in this Court. Rs.20,000 in respect of the first instalment, which according to the terms of the decree was due on the 28th June, 1923, have been realised prior to the filing of the application for execution, which is now pending. The decree-holder has produced in the Sindh Court the receipt of the sum thus realised. And now, according to the terms of the said decree the remaining amount

due to the decree-holder is, up to the 27th January, 1928, Rs.1,08,707-6-9 detailed below:—

	Rs.	a.	p.
“ The remaining principal amount	84,000	0	0
Interest	24,400	0	0
Costs of execution and appeal in execution, in all	307	6	9
	1,08,707	6	9

“ For the payment and realisation of this sum payable, the parties have made the following settlement:—

“ (a) Rs.8,000 including interest have to-day been paid to the decree-holder through Rai Dholan Ram Salooja.

“ (b) The balance of Rs.1,00,707-6-9 will be paid by the judgment-debtors in the following instalments:—

“ (i) The first instalment of sum of Rs.13,000 with interest at the rate of 0-5-6 per cent. per mensem from the 27th January, 1928, to the 26th January, 1929, will be paid on the 27th January, 1929.

“ (ii) The second instalment of the sum of Rs.12,600 with interest at the rate of 0-5-6 per cent. per mensem from the 27th January, 1928, to the 26th January, 1930, will be paid on the 27th January, 1930.

“ (iii) The third instalment of the sum of Rs.12,600 with interest at the rate of 0-5-6 per cent. per mensem from the 27th January, 1928, to the 26th January, 1931, will be paid on the 27th January, 1931.

“ (iv) The fourth instalment of the sum of Rs.13,000 with interest at the rate of 0-5-6 per cent. per mensem from the 27th January, 1928, to the 26th January, 1932, will be paid on the 27th January, 1932.

“ (v) The fifth instalment of the sum of Rs.12,500 with interest at the rate of 0-5-6 per cent. per mensem from the 27th January, 1928, to the 26th January, 1933, will be paid on the 27th January, 1933.

“ (vi) The sixth instalment of the sum of Rs.12,000 with interest at the rate of 0-5-6 per cent. per mensem from the 27th January, 1928, to the 26th January, 1934, will be paid on the 27th January, 1934.

“ (vii) The seventh instalment of the sum of Rs.13,707-6-9 with interest at the rate of 0-5-6 per cent. per mensem from the 27th January, 1928, to the 26th January, 1935, will be paid on the 27th January, 1935.

“ If the judgment debtors do not make the payment of any instalment out of the first six ones mentioned above at the stipulated time, the decree-holders will allow them a further period of one month. Even after one month having been allowed an instalment as given above is not paid, the decree-holders shall then be entitled to realise the entire sum remaining due to them by a single instalment along with the additional interest at the rate of 0-2-6 per cent. per mensem besides the rate of interest mentioned above. In other

words, the interest under such circumstances shall be calculated at the rate of 0-8-0 per cent. per mensem instead of at the rate of 0-5-6 per cent. per mensem. The decree-holders will also realise the remaining interest at the rate of 0-2-6 on the instalments paid prior to default. If the judgment debtors make the payment of the instalments detailed above at the fixed time, the decree-holders shall remit Rs.10,300 out of the principal.

“ Conditions Nos. 4, 5, 6 and 7 given in the decree-sheet dated the 12th April, 1923, are still in force. The liability of R. S. Dharu Lal, as is given in the decree-sheet and as has been declared by the order of the High Court, dated the 6th May, 1927, shall continue to be in force.

“ The application is, therefore, submitted under Section 47 and Order 21, Rule 2, of the Civil Procedure Code, for the above adjustment being certified.”

The two instalments payable under this compromise on the 27th January, 1929, and the 27th January, 1930, were paid within one month of those dates respectively. The third instalment payable with interest on the 27th January, 1931, was not paid. The decree holders accordingly, on the 13th February, 1932, applied to the Court of the District Judge for execution of the decree of the 12th April, 1923, alleging that the balance then due of the decretal amount was Rs.89,270 7a. 3p., and asking for the assistance of the Court by issue of warrant for the arrest of the first judgment-debtor, and warrant for the attachment of the immoveable property of both the judgment-debtors.

Objections were filed by both judgment-debtors raising questions of limitation, and also contending in effect (1) that the compromise arrived at in 1928 created a new liability which superseded the original decree and rendered it no longer enforceable, (2) that the compromise was not an adjustment within Order 21, rule 2, and (3) that the executing Court possessed no authority to enforce through execution the new liability, which could only be enforced by obtaining a decree in a fresh suit on the compromise.

The matter was argued before the District Judge, who delivered his judgment on the 7th February, 1934. He held that the compromise was an adjustment properly recorded under Order 21, rule 2, that the application was not time barred, that the decree was still executable, and that execution should take place.

An appeal to the High Court of Judicature at Lahore was dismissed by Jai Lal and Sale JJ., who held that the compromise was a modification of the manner in which the decree was to be satisfied, that the decree still subsisted, that the judgment-debtors were estopped from asserting that owing to want of jurisdiction in the District Judge the compromise was not binding on them, and that accordingly the application for execution was not affected by any question of limitation because it had been made within three years of the last instalment payment or the last default. On the appeal Dharu Lal had, apparently for the first time, contended that he had been discharged from all liability in

respect of his property by reason of time having been given without his consent to the principal debtors; but that contention was rejected by the High Court.

From that decision an appeal has been brought to His Majesty in Council.

In the argument before their Lordships a number of authorities were cited or referred to, from which it would appear that different Courts in different parts of British India follow different practices in regard to the kind of transaction by way of compromise or adjustment which may or may not properly be recorded as certified under Order 21, rule 2 (2). Their Lordships, however, are of opinion that in the circumstances of the present case, a consideration of these authorities affords them no assistance in determining the rights of the parties.

They feel no doubt about the proper construction of the compromise come to in 1928. The decree of the 12th April, 1923, had imposed a decretal liability of Rs.1,04,000 with interest at 6 per cent. It did not provide for the discharge of that liability by instalments. It contained provisions for the payment of instalments amounting to a smaller sum and at a lower rate of interest upon the observance of which provisions the judgment-debtors could escape the decretal liability. In 1928 those provisions, and those provisions only, were modified. The decretal liability remained, save of course to the extent to which it had in fact been reduced by moneys already paid. The compromise affected only the provisions upon the observance of which the full decretal liability could be avoided. That this is the true construction of the compromise seems to their Lordships clear, apart from the clause which keeps in force the provisions of the decree in regard to Dharu Lal; but that clause places the matter beyond doubt. The liability for which his property stood as security was the decretal amount of Rs.1,04,000 with interest at 6 per cent. That liability is kept on foot. But there is no provision which would operate to render his property liable to meet a liability created by the compromise in substitution for and therefore in extinction of the decretal amount under the original decree.

In these circumstances it would seem to be immaterial to consider whether the compromise was or was not an adjustment within Order 21, rule 2 (2). If it was, it was duly recorded or certified, and the Court may recognise it in executing the decree. If it was not such an adjustment, there is nothing to prevent the Court from doing that which it obviously should do, viz., looking at it and taking it and the payments made under it into account in executing the decree.

The question then remains of the Limitation Act.

Counsel for the appellants rightly disclaimed the contention which had been raised before the High Court that the application to record the compromise had, in view of

article 175 of the Limitation Act been made out of time. He contended, however, that the application of the 13th February, 1932, was barred by limitation under article 182. Any question which might otherwise have arisen under that article is, in their Lordships' opinion, met on the facts of this case by a consideration of section 20 of the Act. The last payment made in respect of the first instalment and interest was a sum of Rs.825 paid, as admitted by the parties on the 15th February, 1929. The payment was made, and necessarily made, in respect of principal and interest; it was therefore a payment of interest on a debt as such by the person liable to pay the debt. Further, in a letter addressed to the decree-holders and signed by Bodh Raj, he says, referring to the Rs.825, "Deduct from this the amount that is due to you for my first instalment according to accounts and keep the rest in my name. . . . Send me a formal receipt of the amount of the first instalment together with interest by registered post." These facts are sufficient to show that section 20 has come into play, and that accordingly the period of limitation must be computed from the 15th February, 1929. There can, their Lordships think, be little doubt, in view of the many subsequent payments, that a fresh period of limitation could, if necessary, be shown to start at a much later date—but a period commencing on the 15th February, 1929, is sufficient to cover the present application.

A suggestion was made that the letters alleged to be letters of Bodh Raj were not genuine, but this suggestion was rejected by the District Judge: and although the High Court indicated a possibility or probability of remanding the case in certain events for further enquiries, their Lordships think that the evidence before the District Judge amply justified his conclusion, and that no remand should be made.

The only remaining question is as to the position of Dharu Lal. If the decretal amount remained a judgment debt not barred by limitation, his property is charged with it unless the charge has in some way been released. He claims that it has been released by reason of the alleged fact that time was without his consent given to the principal debtor.

This contention is an obvious afterthought. It was not raised until one Atam Parkash, a member of the firm of decree-holders, said in evidence before the District Judge, that "time had been allowed by us for payment of the third instalment till the end of July, 1931." This appears to their Lordships to afford no justification for holding that Dharu Lal's property was freed from the charge. The question had never been in issue. The evidence cited does not prove more than that the persons referred to as "us" stayed their hands without necessarily being under any binding obligation so to do. Further, in view of the fact that Dharu Lal (who gave no evidence in the case), although not a partner

in the firm was a brother of and member of a joint family with Bodh Raj, it would seem almost incredible if a binding agreement for time had been made, that it had been made without the knowledge and assent of Dharu Lal. The liability of Dharu Lal's property is established by the documents, and it was for him affirmatively to prove that it had been released or discharged, and this he failed to do.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellants must pay the respondents' costs.

In the Privy Council.

FIRM RAI BAHADUR HET RAM.BODH
RAJ, THROUGH RAI BODH RAJ
AND ANOTHER

v.

FIRM SETH AYA RAM.TOLA RAM
THROUGH SETH TOLA RAM
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DELIVERED BY LORD RUSSELL OF KILLOWEN

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