

MOTI LAL BANKER

v.

MAHRAJ KUMAR MAHMOOD HASAN KHAN

February 9, 1968

[R. S. BACHAWAT AND V. BHARGAVA, JJ.]

Civil Procedure Code, 1908, s. 47 and O.21 r. 2—Execution proceedings ending in compromise whereby interest at rate higher than decreed rate agreed to be paid—if such agreement enforceable in execution proceedings.

A suit filed by the appellant ended in a compromise and was decreed on March 24, 1953 in terms of the compromise. The decree directed the respondent to pay within six months Rs. 22,500 plus interest at 6%. As the respondent failed to pay, the appellant commenced execution proceedings on May 23, 1954 for Rs. 24,150 in the same court and these proceedings also ended in a compromise on May 29, 1954 whereby the respondent agreed to pay within two months Rs. 24,150 with interest at 1% per month. The compromise was recorded by the executing court. Upon the respondent's continued failure to pay, the appellant commenced the present execution proceedings on February 18, 1955 for realization of Rs. 24,150 and interest at 1%. The respondent filed objections under s. 47 C.P.C. and one of these was that the appellant could not realise interest at 1% per month in execution of the decree. The executing court dismissed the objections. On appeal to the High Court and upon a reference by a Division Bench, a Full Bench of the High Court held that a compromise entered in a proceeding for execution of a decree by which the judgment-debtor undertakes to pay interest at a rate higher than the decree rate of interest, is not enforceable in a proceeding for execution of the decree.

On appeal to this Court.

HELD: (i) It is open to the parties to enter into a compromise with reference to their rights and obligations under a decree. There is nothing in the Code of Civil Procedure which prevents the parties from entering into such a compromise. If the compromise amounts to an adjustment of the decree, it must be recorded under O. 21, r. 2 and if not so recorded, it cannot be recognised by any Court executing the decree. The compromise of May 29, 1954 was so recorded within the prescribed period of limitation and was a fair bargain to postpone the execution of the decree on payment of reasonable interest. The terms of the compromise related to the execution of the decree, the executing court has power to determine all questions arising between the parties to the suit relating to the execution of the decree and to give appropriate relief on such determination. Exclusive power to determine such question is given to the executing court by s. 47 of the Code of Civil Procedure. The agreement to pay the higher interest is enforceable in execution of the decree. [160 F—161 B]

Mr. Hasan Khan v. Motilal, A.I.R. 1961 All. 1; overruled.

The Oudh Commercial Bank Ltd. v. Thakurain Bind Basni Kuer, (1939) L.R. 66 I.A. 84, 100-103; *Sreeshteedhur Shaha v. Woomeshnath Roy*, (1866) 5 W.R. (Miscellaneous Appeals) 1; and *Lakshmana v. Sukiya Bai*, (1884) I.L.R. 7 Mad. 400 referred to.

A The jurisdiction of the executing court to enforce such a compromise under s. 47 and O. 21, r. 2 is not affected by the provisions of O. 23, r. 4, or O. 20, r. 11 or O. 20, r. 3. [161 D]

Pradyumna Kumar Mullick v. Dinendra Mullick, [1937] L.R. 64 I.A. 302, referred to.

B The compromise decree of May 29, 1954 was also enforceable on the ground that as the execution proceedings were started in the same Court which passed the decree, that Court had the power to pass an order under O. 20, r. 11 in terms of the compromise of May 29, 1954 directing postponement of the execution of the decree on the term that the judgment-debtor would pay interest at the rate of 1 per cent per month until realisation. The prescribed period of limitation of six months under Art. 175 of the Indian Limitation Act, 1908 for an application for payment of the decretal amount by instalments did not apply to the compromise petition as it did not ask for payment of the decretal amount by instalments but for postponement of the execution of the decree for two months. In any event the order passed on the petition was binding on the parties until it was set aside and could be enforced in execution proceedings. [162 B-D]

Monmohan v. Khalishkhali Cooperative Bank, (1937) 41 C.W.N. 480; referred to.

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 387 of 1965.

Appeal from the judgment and decree dated September 17, 1963 of the Allahabad High Court, Lucknow Bench in First Execution Decree Appeal No. 11 of 1956.

E *C. B. Agarwala and J. P. Aggarwal*, for the appellant.

The respondent did not appear.

The Judgment of the Court was delivered by

Bachawat, J. The appellant instituted a suit in the Court of the Civil Judge, Mohanlalganj, Lucknow against the respondent and his brother, Amir Ali Khan, claiming a decree for Rs. 41,500. The suit ended in a compromise. On March 24, 1953, the suit was decreed in terms of the compromise. Under the decree, Amir Ali Khan was liable to pay Rs. 16,500 within a year. He discharged his liability by paying this amount. The decree directed the respondent to pay within six months Rs. 22,500 carrying interest at 6 per cent per annum. The respondent failed to pay the decretal amount. On May 23, 1954, the appellant took out execution for Rs. 24,150 and attached Iqbal Manzil. The application for execution was filed in the Court of the Civil Judge, Mohanlalganj, Lucknow. The execution proceedings ended in a compromise. The appellant agreed not to execute the decree for two months. The respondent agreed to pay within two months Rs. 24,150 with interest at 1 per cent per month until realisation. In default of payment, the appellant was authorised to realise the amount due under the compromise in execution

proceedings. The parties agreed that in the meantime Iqbal Manzil would continue to remain attached. The executing Court recorded the compromise. On February 18, 1955, the appellant filed the present execution application for realisation of Rs. 24,150 and interest thereon at 1 per cent per month. The respondent filed objections under s. 47 of the Code of Civil Procedure giving rise to Miscellaneous Case No. 79 of 1955. One of the objections was that the appellant could not realise interest at 1 per cent per month in execution of the decree. The objections were dismissed by the executing Court. The respondent filed an appeal against this order. At the hearing of the appeal, a Division Bench of the High Court referred to a Full Bench the question whether it was open to the parties in execution proceedings to enter into a compromise postponing the execution of the decree on condition of paying enhanced interest. At the hearing of the reference, a Full Bench of the High Court reframed the question. The question as reframed by the Full Court was: "Is a compromise entered in a proceeding for execution of a decree by which the judgment-debtor undertakes to pay interest at a rate higher than the decree rate of interest, enforceable in a proceeding for execution of the decree?" The Full Bench by a majority judgment reported in *Md. Hasan Khan v. Motilal*⁽¹⁾ answered the question in the negative. The matter came up for final hearing before a Division Bench. The Bench gave effect to the Full Bench ruling and held that the compromise dated May 29, 1954 could not be enforced in execution proceedings. In other respects, the Bench confirmed the order of the Civil Judge dismissing the objections and dismissed the appeal. It is from this order that this appeal has been filed by the appellant after obtaining special leave. The sole question in this appeal is whether the compromise of May 29, 1954 is enforceable in execution proceedings.

It is open to the parties to enter into a compromise with reference to their rights and obligations under a decree. There is nothing in the Code of Civil Procedure which prevents the parties from entering into such a compromise. If the compromise amounts to an adjustment of the decree, it must be recorded under O. 21, r. 2 and if not so recorded, it cannot be recognised by any Court executing the decree. The compromise of May 29, 1954 was so recorded within the prescribed period of limitation. The compromise was a fair bargain to postpone the execution of the decree on payment of reasonable interest. The terms of the compromise related to the execution of the decree. The executing Court has power to determine all questions arising between the parties to the suit relating to the execution of

(1) A.I.R. 1961 All. 1.

- A the decree and to give appropriate relief on such determination. Exclusive power to determine such questions is given to the executing Court by s. 47 of the Code of Civil Procedure. The executing Court can determine all questions relating to the agreement postponing the execution of the decree and the incidental term as to payment of the higher rate of interest. The agreement to pay the higher interest is enforceable in execution of the decree, see *The Oudh Commercial Bank, Ltd. v. Thakurain Bind Basni Kuer*⁽¹⁾. On the question whether the agreement to pay interest at a rate higher than the rate provided in the decree can be enforced in execution proceedings there was a conflict of judicial opinion. The Privy Council decision settled the law on this point. There were also earlier decisions which held that execution could issue both for the sum decreed and for the interest promised, see *Sreeshteedhur Shaha v. Woomeshnath Roy*⁽²⁾ and *Lakshmana v. Sukiya Bai*⁽³⁾.

- D The jurisdiction of the executing Court to enforce such a compromise is not taken away by O. 23, r. 4 of the Code of Civil Procedure. The effect of O. 23, r. 4 is that O. 23, r. 3 does not apply to execution proceedings. Independently of O. 23, r. 3, the provisions of O. 21, r. 2 and s. 47 enable the executing Court to record and enforce such a compromise in execution proceedings. Nor does O. 20, r. 11(2) affect this power of the executing Court. Order 20, r. 11 enables the Court passing the decree to order postponement of the payment of the decretal amount on such terms as to the payment of interest as it thinks fit on the application of the judgment-debtor and with the consent of the decree-holder. It does not affect the power of the executing Court under s. 47 and O. 21, r. 2.

- F Nor does O. 20, r. 3 affect the power of the executing Court to record and enforce the compromise. Order 20, r. 3 provides that a judgment once signed cannot afterwards be amended or altered save as provided by s. 152 or on review. The decree is drawn up in accordance with the judgment. The parties cannot by an agreement confer upon the Court the power to amend the decree in contravention of O. 20, r. 3 or the power to enforce the amended decree. See *Pradyumna Kumar Mullick v. Dinendra Mullick*⁽⁴⁾. Order 20, r. 3 should be read with O. 20, r. 11 which shows that after the passing of the decree the Court may order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to payment of interest as it thinks fit. The two provisions read together show that a direction for postponement of payment of

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(1) [1939] I.R. 66 : I.A. 84, 100-103.

(2) [1866] 5 W.R. (Miscellaneous Appeals) 1.

(3) [1884] I.L.R. 7 Mad. 433.

(4) [1937] L.R. 64 I.A. 332, 338.

the decretal amount upon the term that the judgment-debtor should pay a reasonable rate of interest is not an alteration of or addition to the decree. We are of the opinion that the compromise of May 29, 1954 as to payment of interest can be enforced in execution proceedings.

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The compromise is enforceable in execution proceedings on another ground. The decree was passed on March 24, 1953 by the Court of the Civil Judge, Mohanlalganj, Lucknow. Execution proceedings were started in the same Court. As the Court which passed the decree it had the power to pass an order under O. 20, r. 11 in terms of the compromise of May, 29, 1954 directing postponement of the execution of the decree on the term that the judgment-debtor would pay interest at the rate of 1 per cent per month until realisation. The prescribed period of limitation under Art. 175 of the Indian Limitation Act, 1908 for an application for payment of the decretal amount by instalments was six months from the date of the decree. The compromise petition did not ask for payment of the decretal amount by instalments. It asked for postponement of the execution of the decree for two months. Article 175 did not apply to the petition. Even if Art. 175 applied to the petition, the order passed on the petition is binding on the parties until it is set aside and may be enforced in execution proceedings, see *Monmohan v. Khalishkhali Co-operative Bank*(¹).

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In the result, the appeal is allowed with costs, and it is declared that the compromise of May 29 1954 can be enforced in the execution proceedings.

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R.K.P.S.

Appeal allowed.

(1) [1937] 41 C.W.N. 480.