

(1967) 12 AHC CK 0007
In the Allahabad High Court
Case No : Second Appeal No. 3211 of 1963

Habib Mian and Another	Vs	APPELLANT
Mukhtar Ahmad and Another		RESPONDENT

Date of Decision : 22-12-1967

Acts Referred:

Limitation Act, 1908 — Article 181
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, 2(2), 47
Contract Act, 1872 — Section 10

Citation : AIR 1969 All 296

Hon'ble Judges : R.S. Pathak, J;K.B. Asthana, J;Jagdish Sahai, J

Bench : Full Bench

Advocate : Mohd. Asif Ansari and S.K. Varma, for the Appellant; K.C. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Jagdish Sahai, J.—I have had the advantage of reading the opinion prepared by my brother Pathak, but for reasons stated in this opinion, I am unable to agree with him and have come to opposite conclusions.

2. This second appeal arises out of the proceedings for execution of the decree passed in Civil Suit No. 18 of 1950 of the Court of the Civil Judge, Ghazipur, on 17-3-1952 in terms of the compromise entered into by the parties on that date. The plaintiff to the suit was Mukhtar Ahmad who is respondent in this second appeal-The defendants were Habib Mian and Ishaq Mian, who are the appellants before us.

3. Clause 1 of the compromise deed provides that in view of the compromise arrived at between the parties, a decree in favour of the plaintiff and against the defendant No. 2 for a sum of Rs. 6,500 be passed subject to the condition that the decretal amount shall be payable in four annual installments. The first installment would be due on 31st of March 1953 and the remaining installments shall be payable on March 31 of the succeeding years. In case of default in

payment of any installment, the decree-holder would be entitled to execute the decree for the installments remaining due.

Clause 2 of the compromise deed is to the effect that the plaintiff would get Suit No. 121 of 1951, which he has filed in the Court of the Munsif, Mahmoodabad, dismissed within a period of one week from "today" (17-3-1952). In case the plaintiff does not get the suit dismissed within the aforesaid period, the defendant would be entitled to move the Court for the dismissal of the suit by filing a copy of the compromise deed in that Court.

4. Clause 4 of the compromise deed provides that the plaintiff is responsible to get the appeal filed by his aunt, Mst. Koza ibi, in the High Court against the decree passed by the Civil Judge, Ghazipur, in suit No. 9 of 1951, dismissed. In case the plaintiff does not get the aforesaid appeal dismissed, all the terms of this compromise would be deemed to have been cancelled and the suit would be deemed to have been dismissed. In case he (the plaintiff) gets the appeal dismissed, the costs of the appeal shall be on the parties.

5. Admittedly the judgment-debtors, Habib Mian and Ishaq Mian, did not make the payment of any installment though the decree-holder Mukhtar Ahmad got Suit No. 121 of 1951 dismissed within the period of one week of the date of the compromise. On 31st March 1960 the decree-holder applied for execution of the decree and prayed for the recovery of sums due to him in respect of the installments payable on March 31, 1954, March 31, 1955 and March 31, 1956.

6. The judgment-debtors filed an objection u/s 47, Civil P. C., on 1st of December 1960, objecting the executability of the decree on the ground that the decree-holder had not secured the dismissal of the appeal of his aunt, pending in this Court. The execution Court allowed one month's time to the decree-holder to get the appeal dismissed and file a copy of the dismissal order. On 16th of December 1960, the decree-holder filed a certified copy of the order dismissing the appeal of Mst Roza Bibi.

7. On 17th of December 1962, the execution Court dismissed the objections of the judgment-debtors u/s 47, Civil P. C. The judgment-debtors objectors filed Appeal No. 9 of 1961 in the Court of the District Judge, Ghazipur. This appeal was dismissed by the learned District Judge on 27-7-1963. Against the decree aforesaid of the learned District Judge, the instant second appeal has been filed in this Court.

8. The second appeal came up for hearing before Dhavan, J., who referred it to a larger Bench. The case was then placed before a Bench consisting of S. K. Venna and Rajeshwari Prasad, JJ., who made a reference to a Full Bench. This is how the case has come up before us.

9. The following two questions were raised before Dhavan J. and also before the Bench consisting of S. K. Venna and Rajeshwari Prasad, J:--

1. That the compromise decree was a conditional one and the decree was not

executable.

2. That the execution application was barred by limitation as the Article applicable is 181 of the First Schedule of the Limitation Act and not Article 182 of the same Schedule.

The same questions have been raised before us.

10. It has been contended that even though Clause 4 of the compromise deed did not fix any time within which the appeal of Mst. Roza Bibi was required to be dismissed, the said appeal should have been dismissed latest by the 30th of March 1953, that is, a day before the payment of first installment fell due. This submission has prevailed with my brother Pathak, but I regret I cannot accept the submission as a sound one.

It is true that a decree passed by a Court on the basis of a compromise is the creature of the agreement of the parties to which is superadded the command of the Court. It is not necessary to refer to the cases in which such a view has been taken. Some of them have been referred to by my brother Pathak in his opinion. There can also be no doubt that the cardinal principle for the construction of agreements or contracts is that the entire agreement or contract must be taken as constituting an organic synthesis and the whole of it must be read together in order to find out as to what the parties actually intended to provide for.

11. Even though in a general sense a decree passed on a compromise is the creature of an agreement of the parties, it does not only remain an agreement, but becomes the decree of the Court. If the parties are aggrieved against the decree or their contention is that the decree is not in accordance with the terms of the compromise, the only remedy would be to file an appeal against the decree in the appellate Court. Assuming that in a decree terms of the compromise have not been properly reproduced and the clause securing a right to a party in the compromise deed has not been incorporated in the decree, the remedy of the party would be to appeal against the decree and not to bring a suit for specific performance of the compromise on the basis of which the decree was passed.

12. When a decree has been passed even though in terms of the compromise, the executing Court has to see the decree and not the original compromise that was filed in the Court and on the basis of which the decree has been passed, assuming that there is a conflict between the compromise decree and the compromise deed.

13. The legal position as stated above, in my opinion, is well settled and no authority need be cited in support of it.

14. The question, therefore, that requires consideration is as to what was the effect of the passing of the decree on 17th of March 1952. In the decree all the clauses of the agreement deed have been reproduced. Clause 1 clearly provides that a decree shall be passed for the recovery of a sum of Rs. 6,500 though

payable in four annual installments commencing from 31st of March 1953. There is also the fourth, clause which provides that in case the appeal of Mst. Roza Bibi was not got dismissed, all the clauses of the compromise deed shall be treated cancelled and the suit would be deemed to have been dismissed.

15. Having given the matter my anxious consideration to all the clauses contained in the decree, I am of the opinion that the effect of passing of the decree on the 17th of March 1952 was that the suit of the plaintiff-respondent stood decreed for the recovery of a sum of Rs. 6,500, though the amount was recoverable in installments. It is well settled that a decree becomes effective no sooner it is passed. Clause 1 of the decree was effective immediately the compromise was accepted and a decree was passed in its terms. It would be noticed that whereas Clause 1 of the decree is applicable with immediate effect, Clause 4 deals with a future state. The words in Clause 1 are "a decree in favour of the plaintiff and against the defendant No. 2 For a sum of Rs. 6,500/- be passed subject to the condition that the decretal amount shall be payable in four annual installments. Once the decree was passed, can it be said that Clause 1 did not become effective immediately on the passing of the decree. In Clause 1, the passing of the decree was not made subject to something happening in future. It would be noticed that Clause 4 could not have immediate effect because it dealt with a condition that was to be performed in future by the decree-holder i.e., after the decree was passed. It would also be noticed that no time-limit was provided for getting the appeal of Mst. Roza Bibi dismissed and even according to the learned counsel for the judgment-debtors its dismissal could be secured any time up to the 30th of March 1953, i.e., even after a year and 13 days after the passing of the decree. It cannot be said that Clause 1 remained suspended until the 30th of March 1953. Once a decree is passed, the controversy between the parties is concluded by the decree. Even in a case where the decree provides for the dismissal of the suit if a particular installment is not paid at the time specified in the decree, the right to file the appeal does not accrue on the date of the default of the payment of installment, but on the date the decree is passed. (See *Bharath Singh v. Dharam Singh* 17 Oudh Cas 14 : 21 Ind Cas 193 : AIR 1914 Oudh 147 and AIR 1947 146 (Oudh))

16. There is a difference between a decree being effective and its being executable. It is effective from the date it is passed. It becomes executable when the restriction on its execution is removed. It would also be noticed that whereas Clause 2 of the compromise decree casts a duty on the plaintiff-respondent to get his suit dismissed within a period of one week from the date of the compromise, no time is fixed in Clause 4 for getting the appeal of Mst. Roza Bibi dismissed. In the compromise application embodying the terms of the compromise, it has been stated:

^^fygktk eqrkfcd lqygukkek eqdnek esa fMxjh eqj?ko Qjekdj "kjk;r lqygukkek tqtk fMxjh fd;k tkos**

This would show that the decree was to be passed immediately. When all the

clauses of the decree are read in the background of the legal position that a decree becomes effective no sooner it is passed the right conclusion, in my opinion, to draw would be that a decree for a sum of Rs. 6,500 was passed in favour of the plaintiff-respondent though the payment was deferred to the time when the installments fell due.

17. Properly analysed, the argument of the learned counsel for the judgment-debtors comes to this that the suit stood dismissed on 30th of March 1953 i.e. a day before the first installment fell due. This would presuppose that no decree was ever passed for the recovery of any amount and the suit was dismissed on 30th of March 1953. In my judgment such a conclusion is not possible. As I have already said earlier, the decree became effective on the date it was passed and the rights of the parties were conclusively adjudicated upon on 17th of March 1952. Though a compromise decree, it was still a decree and the effect of passing it was that the suit of the plaintiff was disposed of finally on 17th of March 1952 and the first term of the compromise became an effective rule of the Court.

18. There is good authority for the proposition that a judgment by consent or default is as effective and operates as estoppel between the parties as a judgment whereby the Court exercises its mind on a contested case. (See Raja Sri Sailendra Narayan Bhanja Deo Vs. The State of Orissa,

19. If the parties to the compromise provided for a time limit in Clause 2, but did not do so in Clause 4, the only inference possible is that they did not intend to provide for any time limit. It may be mentioned that Clause 1 was operative and effective no sooner the decree was passed, with the result that on 17th of March 1952 a decree for the recovery of a sum of Rs. 6,500 came into existence in favour of the plaintiff-decree-holder respondent against the defendants-judgment-debtors-appellants. If all the clauses of the compromise decree are read harmoniously, no other conclusion, in my opinion, is possible. To my mind all that Clause 4 provided for was that the plaintiff-decree-holder-respondent would not be entitled to enjoy the fruits of the decree and to recover any sums under it until the appeal of his aunt, Roza Bibi, in the High Court was dismissed. The meaning that the words have in an agreement or in a statute is to be gathered from the context in which they are used. The relevant words used in Clause 4 are:

^ ^ vihy etdwj eq?bZ jkstk chch ls [kkfjt dj k nsxk vxj vihy etdwj [kkfjt ugh dj k nsxk rks tqeyk "kjk;r lqyguek eulw[k le>k tko vkSj nkok eq?b? fMlfel erlkSoj le>k tkosxk-**

The English translation would be the suit of the plaintiff would be deemed to be dismissed or shall be treated as dismissed and not that the suit of the plaintiff shall stand dismissed. The words

^ ^ tqeyk "kjk;r lqyguek eulw[k letk tkos-**

also indicate that the conditions of the compromise deed would be deemed to be cancelled or as if they were cancelled and not that they are cancelled. Clause 4 had to be in this language because under Clause 1 the parties had agreed to a decree with immediate effect for the recovery of Rs. 6,500 being passed and the passing of the decree for the sum was not to be postponed till after the dismissal of the appeal of Roza Bibi. The original words in Clause 1 may also be read. They are:

^^;g fd crdehy QSlyk lkylh fMxjh ogd eq?g f[kykQ eqnkysgqe Qjhd nks;e ckr eq- 6500? 6 gtkj ikap lkS bl "krZ ds lkFk eqj?ko dh tkos-** It would appear from the words ^^crdehy QSlyk lkylh** ^^?crjehe**

in the copy is a mistake) that the decree for the recovery of Rs. 6,500 was to be passed forthwith and could not be postponed till after the appeal of Mst. Roza Bibi was dismissed.

20. Therefore, when Clauses 1 and 4 as also other clauses are read together, it becomes clear that the compromise deed required that a decree for the recovery of a sum of Rs. 6,500 be passed in favour of the plaintiff with effect from the date of the compromise. The effect of Clause 4 is that even though a decree for a sum of Rs. 6,500 would be, and was in fact passed, in favour of the decree-holder, all clauses in the compromise decree would be treated as cancelled and the decree-holder would not be entitled to take any benefit under the decree as if the suit had been dismissed, if the appeal of Mst. Roza Bibi was not dismissed. That being the position and there being no time limit for the enforcement of the condition in Clause 4, it appears to me that the correct interpretation of the compromise decree would be that the plaintiff has a valid decree in his favour but it could not be executed until the appeal of Mst. Roza Bibi was dismissed. In other words, the effect of Clause 4 is similar to the provision for installments, i.e., that though the decree for the recovery of Rs. 6,500 is effective from the date it was passed (17th March 1952), the decretal amount could not be realised until 31-3-1953 when the first installment fell due. To my mind the circumstance that the first installment became due on the 31st of March 1953 is wholly immaterial for holding that the appeal should have been got dismissed by 30-3-1953.

21. It is well settled that an instrument, whether it is a compromise decree or a decree given after contest or a judgment, must be read objectively on the basis of the language used in it. (See Commissioner of Police, Bombay Vs. Gordhandas Bhanji, The parties deliberately did not provide for a time limit for the compliance of the condition contained in Clause 4 of the compromise decree. With great respect to my brother Pathak, I am unable to agree that the Court can fix the time limit.

22. There is no law which precludes a decree-holder from foregoing realisation of one or two or all the installments due to him. It was, therefore, open to the plaintiff-decree-holder-respondent to forego the amount due to him under the first

installment. Admittedly and clearly the appeal of Mst. Roza Bibi was dismissed by this Court and a copy of the order of the High Court was filed in the execution Court on 16-12-1960. In my opinion, there can be no valid objection to the execution of the decree after the 16th of December 1960 and I am unable to agree with my brother Pathak that "inasmuch as the decree-holder failed to get the appeal dismissed before March 31, 1953, the suit must be deemed to have been dismissed and, in the circumstances, there being no decree which could be executed against the judgment-debtors, the execution application is liable to be dismissed on that ground".

23. It is true that Clause 1 provides that the defendants would pay to the plaintiff the decretal amount in four annual installments. The first installment would be due on 31st March 1953 and the second, third and fourth on the 31st March of the succeeding years. But it is a concession which has been given to the defendant-judgment-debtors. This condition is not co-related with the condition contained in Clause 4 of the compromise decree. Assuming that the plaintiff - decree-holder- respondent got the appeal of Mst, Roza Bibi dismissed on a date earlier than 31st March 1953, would he become entitled to recover the first installment or any installment on that date? The only answer can be that he will not be so entitled. The result, therefore, is that tho installment clause is not related to the fourth clause and for that reason it is not possible to conclude that the intention of the parties was that the appeal of Mst. Roza Bibi should be got dismissed before the 31st of March 1953.

24. In my opinion the plaintiff-decree-holder-respondent became entitled to execute the decree only on the 16th of De-cember 1960 because the decree, though effective, was not enforceable until the appeal of Mst. Roza Bibi was got dismissed.

25. In Rameshwar Singh v. Homeshwar Singh AIR 1921 PC 31, a similar question arose with regard to the construction of a decree before the Judicial Committee. Their Lordships observed as follows:--

"They are of opinion that, in order to make the provisions of the Limitation Act apply, the decree sought to be enforced must have been in such a form as to render it capable in the circumstances of being enforced."

They further observed:

"They are of opinion that when the Limitation Act of 1908 prescribes three years from the date of a decree or order as the period within which it must be enforced, the language, read with its context, refers only, as they have already indicated, to an order or decree made in such a form as to render it capable in the circumstances of being enforced.....This interpretation appears to them not only a reasonable one in itself, but to be in accordance with the previously expressed opinion of this Board in Shaik Kamaruddin Ahmad v. Jawahir Lal 32 Ind App 102 (PC)."

In the present case the decree was not enforceable until the appeal of Mst. Roza Bibi was dismissed. That event took place on 16th of December 1960 and the decree became enforceable on that date. Consequently, the starting point of limitation should be that date. In that view of the matter it appears to me that the instant execution is within the period of limitation provided by law. The view that I am taking also finds support from Lalji Koeri Vs. Gajadhar Koeri, and Jugal Singh alias Jugal Kishore Vs. Lochan Singh and Others, In fact two earlier decisions of this Court, i.e., Chhedi v. Lalu ILR (1902) All 300 and Musammat Rukmina Kuar and Others Vs. Sheo Dat Rai and Another, also support the view that I am taking.

26. In Musammat Rukmina Kuar and Others Vs. Sheo Dat Rai and Another, the decree provided that the plaintiff-decree-holders were to get possession upon payment of Rs. 750 to the defendants in any year in the month of Jeth. Though the decree was passed on 22nd of January 1894, the plaintiff-decree-holders paid the money only on the 15th of June 1915 and the execution application was made on 29th of June 1916. Banerji and Rufiq, JJ., rejected the plea that the execution was barred by limitation and held that the right to execute the decree did not accrue until Rs. 750 was paid, and the same could be paid in the "Jeth" of any year.

27. Mr. S. K. Varma, learned counsel for the defendants-judgment-debtors-appellants, has placed reliance upon (Siri) Narain Tewari and Another Vs. Brij Narain Rai and Another, . In that case one Mst. Jokhna Tewarin obtained a decree against a number of persons including Raja Bahadur Brij Narain Rai and Rai Jagdish Narain Rai. Against these persons the decree passed was for delivery of possession of one anna seven pie and 10 chhatak zamindari share of village Kat Kuian. The decree provided that the right to possession was contingent upon Mt. Jokhna depositing in the Court to the credit of Brij Narain Rai and Jagdish Narain Rai a sum of Rs. 2,499-15-0. No date for payment of the sum was specified in the decree. After the death of Mst. Jokhna, her sons put the decree in execution on 31st July 1928 and money was deposited to the credit of Raja Bahadur Brij Narain Rai and Jagdish Narain Rai on 30th of September 1928. The application was opposed on the plea of bar of limitation. Sen and Bennet, JJ., observed:

"Where a decree is not immediately executable and the right to apply for execution depends upon the fulfilment of certain contingencies provided for in the decree, Article 182 is clearly inapplicable and the only Article governing the execution is the residuary Article 181. This view receives support from the decision of this Court in Musammat Rukmina Kuar and Others Vs. Sheo Dat Rai and Another, which has already been adverted to and also from the decision of the Privy Council in AIR 1921 PC 31. Where, under the terms of a decree the right of the decree-holder to recover possession of some property in the hands of the defendants is contingent upon the decree-holder paying certain sums of money to the defendants but no date for payment is specified, the decree-holder is entitled to pay " the money on the date when the decree was passed and ask

for possession immediately after the payment had been made. The right accrues to the decree-holder immediately and at once, and the decree-holder is not entitled to prolong the date of payment by his or her inaction or laches." (1919) 51 Ind Cas 576.

In my opinion this case is clearly distinguishable. In this case the decree-holder was a free agent and she could make the payment any day she liked after the passing of the decree. In the case before us the plaintiff-decree-holder was not a free agent in the sense that it was not his appeal which was to be dismissed, but it was the appeal of his aunt, who was to be persuaded to get it dismissed. It was for this reason that no time-limit was fixed in Clause 4 of the compromise decree. The learned Judges in (Siri) Narain Tewari and Another Vs. Brij Narain Rai and Another, have proceeded on the footing that when no date for payment was provided, "the decree-holder is entitled to pay the money on the date when the decree was passed". Can it be said that the plaintiff-decree-holder-respondent before us was entitled to get the appeal of his aunt dismissed at his will. The circumstances that prevailed in (Siri) Narain Tewari and Another Vs. Brij Narain Rai and Another, were wholly different from those before us. That case, to my mind, is clearly distinguishable.

28. With great respect to the learned Judge who decided AIR 1931 54 (Nagpur) I am unable to share their view. Bhuralal Vs. Jiwansingh and Another, is an authority for the proposition that the execution of the conditional decree is governed by Article 181 and not Article 182. It would be noticed that in this case also the decree-holder was a free agent unlike the decree-holder before us.

28-A. For the reasons mentioned above, I am of the opinion that the execution application is well within time. It is wholly immaterial that the plaintiff-decree-holder-respondent gave up his case for the recovery of his first installment. In view of the circumstance that, in my opinion, the decree became enforceable on 16th of December 1960, I need not go into the question whether Article 181. or Article 182 or any other Article would apply.

29. The result is that I would dismiss this appeal with costs.

Asthana, J.

30. My brother Pathak has given all the necessary facts in the judgment prepared by him and I need not repeat the same. The two questions which have been referred to us relate to the executability of the decree in question and the rule of limitation applicable.

31. The decree by its first clause commands the judgment-debtor to pay a sum of Rs. 6,500 to the decree-holder in four equal annual installments, the first installment tailing due on March 31, 1953 and the remaining three installments on March 31 of succeeding years. It has also been provided that in case the judgment-debtor defaulted in payment of any installment, the decree-holder would be entitled to execute the decree for the sum remaining due. The second

clause relates to some suit which was pending and the decree-holder undertook to have it dismissed within one week. If the decree-holder failed to do so, then the judgment-debtor was permitted to move the Court for dismissal of the suit. The third clause is not material for our purposes. By the fourth clause the decree-holder undertook to secure the dismissal of the appeal filed by his aunt. Smt. Roza Bibi and pending in the High Court. If the decree-holder did not get the appeal dismissed, then it was stipulated that all the conditions of the compromise decree would be deemed abrogated and the suit would be deemed to have been dismissed.

32. To my mind the second clause above said hardly had any effect on the decree in the suit. The failure on the part of the decree-holder to have the suit dismissed within one week did not absolve the judgment-debtor from payment of the decretal amount but only furnished him with a right to move himself for dismissal of the suit. It is the third clause above said which had the effect of absolving the judgment-debtor from payment of the decretal amount on the failure of the decree-holder to get the dismissal of the appeal filed by his aunt pending in the High Court. In fact, the terms of Clause (4) are worded in a manner that the suit would be deemed to be dismissed unless the decree-holder gets the appeal of his aunt dismissed. That is to say, there would be no liability on the judgment-debtor to pay the decretal amount mentioned in Clause (1) and in the manner provided therein until the appeal of his aunt pending in the High Court was got dismissed by the decree-holder.

The only intelligible way in which I construe the decree reading Clauses (1) and (4) together is that a conditional decree was passed, namely, on the decree holder getting the appeal of his aunt dismissed by the High Court the judgment-debtor would pay the amount of Rs. 6,500 in four equal annual installments. It is significant to note that the first annual installment was made payable on March 31, 1955. It is clear, therefore, that the parties intended that the decree-holder would fulfill the condition above said by March 31, 1953. Though no time-limit was specifically mentioned in Clause (4) within which the decree-holder was to get the appeal of his aunt in the High Court dismissed, the intention of the parties was clear that that appeal must be got dismissed before 31-3-1953.

33. It was suggested by the learned counsel for the decree-holder that the condition of the nature found in Clause (4) of the decree whose fulfilment depended on the volition of another person and not the decree-holder, the terms under that clause, particularly when no time-limit was fixed, would only mean that whenever that contingency happened, namely, the aunt of the decree-holder got her appeal dismissed by the High Court, it is only then that the limitation for the execution of the decree will start running. It is difficult for me to agree with this contention of the learned counsel. When the decree-holder entered into a compromise and undertook to have the appeal of his aunt in the High Court dismissed, he will be presumed to have full control on the situation, otherwise he would not have agreed to any such condition when the failure to fulfil it entailed

the serious consequence mentioned in that very clause, namely, that the plaintiff's suit would be deemed to be dismissed.

In my judgment from the very day the decree in question came into existence the decree-holder had full freedom to fulfil the conditions mentioned in Clause (4) and the decree as passed being executable on fulfilment of a condition contained in Clause (4) of the decree which condition could be fulfilled at any time after passing of that decree. Article 181 of the Limitation Act was applicable. I am supported in this view of mine by a Division Bench decision of this Court in (Siri) Narain Tewari and Another Vs. Brij Narain Rai and Another, The ratio of that case, to my mind, fully governs the decision in the instant case.

34. The result is that I agree with the conclusions of Brother Pathak, though for somewhat different reasons, that the appeal should be allowed with costs.

Pathak, J.

35. Upon a reference made by Dhavan, J., to a larger Bench for resolving the conflict of opinion between different Benches of this Court on the question whether Article 181 or Article 182 of the Indian Limitation Act was attracted, and thereafter, when the case was Listed before S. K. Verma and Rajeshwari Prasad, TJ., upon a reference made by them to a Full Bench, this case has now come before us.

36. The respondent Mukhtar Ahmad, filed a suit (No. 18 of 1950) against the appellants, Habib Mian and Ishaq Mian. The parties entered into a compromise and the suit was decreed in terms of the compromise on March 17, 1952. The material terms of the compromise provided:

1. The judgment-debtors would pay to the decree-holder a sum of Rs. 6,500, the payment to be made in four equal annual installments of which the first installment would be paid on March 31, 1953 and the remaining installments on March 31, of succeeding years. In case the judgment-debtors defaulted in payment of any installment, the decree-holder would be entitled to execute the decree for the installments remaining due.

2. The decree-holder would get Suit No. 121 of 1951 which was pending before the learned Munsif, Mahmoodabad, dismissed within one week. Upon default by the decree-holder, the judgment-debtors would be entitled to move the Court for dismissal of the suit by producing before it a copy of the compromise,

3. The decree-holder would secure the dismissal of the appeal filed by his aunt, Mst. Roza Bibi, in the High Court. If he did not get the appeal dismissed, then all the conditions of the compromise would be deemed abrogated and the suit would be considered as having been dismissed.

37. It appears that the judgment-debtors, Habib Mian and Ishaq Mian, did not make payment of the installments. There is no dispute that the decree-holder, on his part, obtained the dismissal of the suit (No, 121 of 1951) within the

stipulated period of one week,

38. On March 31, 1960, the decree-holder applied for execution of the decree and prayed for recovery of the installments which had fallen due on March 31, 1954, March 31, 1955 and March 31, 1956. Apparently the decree-holder considered that the period of limitation for executing the decree in respect of the installment due on March 31, 1953, had expired. On December 1, 1960, the judgment-debtors filed an objection u/s 47 of the CPC contending that the execution application was not maintainable as the decree-holder had not secured the dismissal of the appeal pending in this Court in accordance with the terms of the compromise decree. The decree-holder was allowed one month by the executing Court to file a copy of the order of this Court dismissing the appeal. On December 16, 1960 he filed a certified copy of the order. The objection of the judgment-debtors was dismissed on December 17, 1962. An appeal by the judgment-debtors was dismissed by the learned District Judge, Ghazipur, on March 27, 1963. The instant execution second appeal was then preferred.

39. I think it necessary at the outset to examine the provisions of the compromise decree and to ascertain how the several rights and liabilities between the parties have been distributed under the decree. In doing so, the principles of construction of a compromise decree must be borne in mind. There is authority for the proposition that a compromise decree is a creature of the agreement on which it is based and is subject to all the incidents of such agreement, that it is but a contract with the command of a Judge superadded to it and in construing its provisions the fundamental principles governing the construction of contracts are applicable. *Nagappa v. Venkat Rao* ILR (1901) Mad 265; *Rani Amrita Sundari Debi Chowdhurani and Others Vs. Munsif Sherajuddin Ahmed Chowdhury and Others*, C.J. *Smith Vs. A. Kenny*, Official Trustee of Bengal, and *Jahuri Lal and others Vs. Khandhai Lal and others*

40. One of the cardinal principles in the construction of contracts is that the entire contract must be taken as constituting an organic synthesis, embodying provisions which balance in the sum of reciprocal rights and obligations. It is through the prism of that principle that the terms of the compromise decree must be analysed.

41. Now, the judgment-debtors were liable to pay a sum of Rs. 6,500 to the decree-holder. The payment was to be made in four equal installments on clearly defined dates, the first installment being payable on March 31, 1953. If there was default in payment of any installment, the decree-holder was entitled to execute the decree for all the installments remaining due. But the decree-holder was also subject to certain obligations. He was obliged to secure the dismissal of a certain suit within one week. He was also required to secure the dismissal of an appeal pending in this Court. No limit of time was expressly appointed for the dismissal of the appeal but it was clearly stipulated that in case the decree-holder failed to get the appeal dismissed, all the terms of the compromise would stand abrogated and the suit would be deemed to have been dismissed.

42. It seems to me, upon careful consideration, that the last provision is the key to the understanding of the entire compromise decree. If the decree-holder fails to secure the dismissal of the appeal, the suit must be deemed to have been dismissed. The dismissal of the appeal is the crucial event which determines whether the decree is one dismissing the suit or is one granting relief. I find it impossible to contemplate that you must first take it that there is a decree granting relief and obliging the judgment-debtors to pay, and subsequently, when the decree-holder fails to get the appeal dismissed, you must now suppose that there is instead a decree dismissing the suit-The decree, in my opinion, would be an effective decree against the judgment-debtors only if the decree-holder succeeded in getting the appeal dismissed.

If he did, the decree would be an operative decree binding the judgment-debtors to pay a sum of Rs. 6,500 in four equal installments on the dates appointed under the decree. If, however, the decree-holder failed to get the appeal dismissed, the suit itself would stand dismissed and in that event it would be as if there was no decree against the judgment-debtors. AIR 1947 146 (Oudh) That necessarily implies that there was never any liability upon the judgment-debtors under the decree to pay the sum of Rs. 8,500.

43. I also find it difficult to suppose that the parties intended that the judgment-debtors should be obliged to pay Rs. 6,500 within a stipulated period and left an indefinite period to the decree-holder to secure the dismissal of the appeal, especially when the failure of the decree-holder in that behalf would result in a dismissal of the suit--a result inconsistent with the existence of a decretal liability against the judgment-debtors. It is pertinent to note that the appeal had been filed by the decree-holders aunt, and there is nothing to show that at the instance of the decree-holder the appeal was bound to be dismissed. It seems to me that upon a proper construction of the compromise decree, the decree-bolder was bound to get the appeal dismissed before there could be any obligation on the judgment-debtors to pay Rs. 6,500 or any part of that sum. The dates of payment of the installments are laid down clearly by the decree. The parties intended when they entered into the compromise agreement that time was of the essence in the payment of the installments.

This conclusion appears inescapable if regard be had to the condition that in default of payment by the judgment-debtors of any installment by the stipulated date, the decree-holder would be entitled to execute the decree for the entire amount remaining due. An agreement enabling the judgment-debtors to pay the decretal amount in installments is in the nature of a concession, and a term of the agreement providing for withdrawal of the concession in case of default of payment by the stipulated date affords strong indication that the time for payment was considered by the parties to be of the essence when they entered into the agreement. B. Kishen Prasad and Another Vs. Kunj Behari Lal The time for payment of the installments of Rs. 6,500 being clearly fixed there was a definite period within which the dismissal of the appeal was to be secured by the

decree-holder. That period, in my opinion, extended to the date immediately preceding the date on which the first installment fell due and did not extend any further.

44. Upon that view of the matter, I would hold that the decree-holder was bound to get the appeal dismissed between March 17 1952, the date of the decree, and March 31, 1953, when the first installment became payable. The period is over one year and it can be reasonably supposed that it was considered sufficient by the parties for the decree-holder to secure the dismissal of the appeal. If within this period the decree-holder failed in getting the appeal dismissed, the suit would be considered as having been dismissed and this would be before the date upon which the first installment would otherwise have been payable by the judgment-debtors. If the decree-holder succeeded in getting the appeal dismissed within this period, clearly the judgment-debtors would be liable to pay the first installment on March 31, 1953, in accordance with the terms of the decree and, thereafter, further installments annually.

45. In my opinion, inasmuch as the decree-holder failed to get the appeal dismissed before March 31, 1953, the suit must be deemed to have been dismissed and, in the circumstances, there being no decree which could be executed against the judgment-debtors, the execution application is liable to be dismissed on that ground.

46. In the circumstances, the other decisions referred to before us are clearly distinguishable. Reference has been made to AIR 1921 PC 31, ILR (1902) All 300 , Musammat Rukmina Kuar and Others Vs. Sheo Dat Rai and Another, (Siri) Narain Tewari and Another Vs. Brij Narain Rai and Another, Jugal Singh alias Jugal Kishore Vs. Lochan Singh and Others, ; Bhuralal Vs. Jiwansingh and Another, Shankar Sakhambar Jagdale Vs. Ratanji Premji Shet, Beni Sah v. Sheo Sah AIR 1949 Cal 661; Lalji Koeri Vs. Gajadhar Koeri, . All these are concerned with cases where admittedly there was an executable decree and the only question was whether the execution of the decree was barred by limitation. Upon that question it became necessary for the Court to decide whether Article 181 or Article 182 applied or some other period of limitation was attracted. They are not cases where the Court found that the suit must be considered as dismissed and there was no decree to be executed.

47. In my judgment, the appeal should be allowed with costs throughout.

ORDER

Asthana, J.

48. In view of the majority decision this appeal is allowed with costs.