
(1916) 04 AHC CK 0002
In the Allahabad High Court

Ratan Lal

APPELLANT

Vs

Musammai Biba Kunria and Others

RESPONDENT

Date of Decision : 17-04-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22

Citation : AIR 1916 All 42 : 34 Ind. Cas. 144

Hon'ble Judges : P.C. Banerji, J

Bench : Single Bench

Judgement

P.C. Banerji, J.—The appeal arises out of execution proceedings and the question, is whether the decree-holder-appellant was entitled to charge interest on the amount alleged by him to be due. The decree in this case was passed on the 5th of April 1906 u/s 88 of the Transfer of Property Act in favour of one Sita Ram. It was for a sum of Rs. 1,481 and provided that future interest would be payable at the rate of 6 per cent. per annum. An order absolute u/s 89 of the Transfer of Property Act was passed on the 14th of September 1907, but this order contained no provision as to payment of future interest.

2. On the 2nd of October 1907 the decree-holder and the judgment-debtor entered into a compromise and under this compromise it was agreed between the parties that the decree-holder would be entitled to a sum of Rs. 1,200 and no more. There was no provision in the compromise that interest would be payable upon the aforesaid sum of Rs. 1,200. This compromise took the place of the decree and from the terms of the compromise it is clear that there was no agreement between the parties that beyond the sum of Rs. 1,200 any further sum would be payable in the shape of interest. The decree was assigned to the present applicant for execution on the 20th of July 1908. He took no steps until the 14th of March 1910, when he applied to have his name substituted for that of the original decree-holder. In that application in calculating the amount of the decree he included interest. This application was dismissed for default on the 11th of June 1910. He made a further application on the 16th of that month for

the same purpose. A notice was issued to the original decree-holder and the judgment-debtor and on the 17th of September 1910, the name of the transferee was ordered to be substituted for that of the original decree-holder. On the 14th of February 1911, the transferee of the decree applied for execution. As more than one year had not elapsed from the date on which the last application was disposed of, no notice, such as is required by Order XXI, Rule 22, was issued. The decree was transferred to the Collector for execution. The judgment-debtor made some payment and took time and the record was returned to the Court by which it had been transmitted to the Collector, On the 25th of September 1913, the present application for execution was presented and in it the applicant included interest on the amount which he sought to recover. The judgment-debtor raised an objection to the effect that interest was not payable under the terms of the compromise. The Court of first instance overruled the objection, but the lower Appellate Court allowed it. In this appeal it is contended that interest ought to have been allowed.

3. The learned Vakil for the appellant has put forward two reasons for his contention. He urges that if the terms of the decree and the compromise be properly construed, it must be held- that it provided for the payment of interest. It is next urged that as upon the application for execution dated the 14th of February 1911 no objection was raised by the judgment-debtor as to the claim for interest, the matter has become *res judicata*. In my opinion both contentions must fail. I have already said that the compromise has taken the place of the decree. If the order absolute had stood alone it might, with some force, have been urged that as that order only made the original decree absolute and as the original decree provided for future interest, the decree-holder was entitled to interest in spite of the omission to provide for interest in the order absolute subsequently passed; but in the present case the parties entered into a compromise, and the only amount which under that compromise the decree-holder was entitled to recover was, according to the agreement of the parties, Rs. 1,200. There was no mention of interest. On the contrary the terms of the compromise show that the decree-holder gave up everything except Rs. 1,200. Therefore, under the compromise the judgment-debtor is not liable to pay interest.

4. As regards the second point it is admitted that there was no adjudication between the parties when the application for execution, dated the 14th of February 1911, was made. There was no occasion to issue a notice to show cause as required by Order XXI, Rule 22, and, therefore, the judgment-debtor had no opportunity of raising any objection as to the interest claimed by the transferee of the decree. The learned Vakil for the appellant has referred to the decision of a Bench of this Court in *Ghulam Muhammad Khan v. Narain Das A.W.N. (1901) 32*. In that case it was held that as the decree-holder had made several applications for execution in which he had included interest and the judgment-debtor raised no objection and the Court ordered execution to issue, it must be held that there was an adjudication by the Court adverse to the

judgment-debtor and the same question could not be raised in subsequent proceedings. In the present case the only application for execution in which interest was included was the application of the 14th of February 1911. As regards that application no notice was issued to the judgment-debtor to show cause why execution should not issue and no such notice was necessary. The judgment-debtor, therefore, had no opportunity of raising an objection as to the amount claimed before execution was granted. It is true that a notice was issued for settling the matters referred to in Order XXI, Rule 66, but that was not a notice relating to execution of the decree. In a recent case, namely, Kalyan Singh v. Jagan Prasad 30 Ind. Cas. 523 : 13 A.L.J. 828 : 37 A. 589, it was held by a Bench affirming the decision of a learned Judge of this Court that the fact that a judgment-debtor did not on a previous application for execution take exception to the amount set forth in it as being due, did not preclude him from afterwards raising the question of his liability. In the present case there was, as I have said above, no order which might be deemed to be equivalent to an adjudication as between the parties in regard to the amount payable under the decree. Therefore, the omission of the judgment-debtor to contest the amount claimed upon the previous application of 1911 did not debar her from contending in the present case that she was not liable for the amount now claimed. In this view the decision of the Court below is right and this appeal must fail. I accordingly dismiss it with costs.