

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Bani Ram and another v. Nanhu Mal, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered 25th June 1884.

Present :

LORD WATSON.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THE question in this Appeal arises in the execution of a decree of the Court of the Subordinate Judge of Aligarh, dated the 7th May 1875. It was on a compromise, the claim in the suit being to recover Rs. 60,000 principal and Rs. 14,715 interest. The decree was in these terms: "That a decree for a fixed sum of Rs. 78,700, as due up to the 4th May 1875, be given to the Plaintiff against the two Defendants under the terms of the compromise; that this sum be paid by the Defendants in two years, with interest at 12 annas per cent. per mensem." The claim was upon a bond of the 10th July 1872, which stipulated for interest at 12 annas per cent. Execution proceedings appear to have been taken upon this decree, but the actual application for the execution is not on the record. It would appear, however, that some villages were sold on the 20th December 1877, and were purchased by the decree holder; and a petition was presented by the judgement debtors on the 20th April 1878, in which it was said that they were willing to pay interest according to accounts.

On the 17th May 1878 they presented another petition, in which the statement was made that the decree holder should not get the interest which he then claimed, the question apparently being as to the interest beyond the two years. On the 30th August 1878 the question between the parties was more distinctly raised. Then, in a petition of the judgement debtors, it was stated that the Plaintiff had filed an application for execution of the decree in the sum of Rs. 38,000 on the 6th August 1878, " and charged interest at 12 annas per cent. after " the lapse of the term of two years, contrary to " the terms of the decree. Prior to this, on " 18th July 1878, an objection was filed regarding " the same, which was rejected without due con- " sideration. The petitioner therefore prays that " an Order, after inquiry, may be passed for " deducting the excessive interest which the " decree holder has charged contrary to the " terms of the decree." On this it was ordered that the case should be brought forward for decision on the 1st November 1878. It appears from the list of papers that have not been forwarded with the record that the case was twice adjourned, and on the 25th January 1879 an Order was made in these terms:—" In my opinion the objection is " not tenable. The decree of the Court of the " Subordinate Judge, dated 7th May 1875, clearly " provides that under the terms of the com- " promise a decree for the payment of a fixed sum " of Rs. 78,800 be made in favour of the Plaintiff " against both the Defendants as due up to the 4th " May 1875, and that Defendants should pay the " amount with interest at 12 annas per cent. per " mensem. Hence the plea of the Defendants can- " not in any way be held to be a reasonable one." Then it states what the plea of the Defendant was:—" That if the said amount had been paid " within two years the interest would have been

“ paid to the decree holder, and that the interest
 “ on the decree money could not be recovered
 “ after the expiry of the term fixed for payment.”
 Looking at the dates which have been given, it
 seems clear that this Order must have been made
 in the execution proceedings in which the petition
 of the 30th August 1878 had been presented. It
 is an Order by the Judge deciding against the
 objection which had been made by the judgement
 debtor, that the decree money could not be re-
 covered after the expiry of the two years. The
 next step appears to have been an application for
 the execution of this decree on the 5th December
 1879, in which an account was made up claiming
 the interest at the rate of the 12 per cent. up to
 the time of the execution ; and upon that the
 Judge made this Order. As to the first objec-
 tion,—which is stated at page 10, and which
 was this: “ The judgement debtor has the
 “ following objections to the whole of the de-
 “ mand made under the decree: (1) From the
 “ date of the decree the decree holder cannot
 “ under any circumstances get more than eight
 “ annas per cent. interest on the decree money
 “ according to law, especially when the decree
 “ does not provide for any interest after two
 “ years, nor has any rate been fixed in it,”
 —the Judge says: “ The Court is of opinion
 “ that the decree holder would get the same
 “ interest on the decretal money which has
 “ been awarded to him in the Court’s decision
 “ in the regular suit. It is 12 annas per cent.
 “ In the Execution Department the Court cannot,
 “ contrary to the decision in the regular suit, re-
 “ duce the rate of interest from 12 annas per
 “ cent. to 8 annas per cent. in any way. The
 “ objector’s statement, that the decree does not
 “ provide any rate of interest subsequent to two
 “ years, is altogether wrong. The two years’
 “ period in the decree is for the payment of the

“ judgement debt, not for the payment of interest
 “ at 12 annas per cent.” Then comes this :
 “ Before this also this very objection had been
 “ raised on behalf of the objector, and rejected by
 “ the Court on the 25th January 1879. No
 “ appeal has been preferred from that Order.”
 From that decision there was an appeal to the
 High Court, which says in its judgement : “ It was
 “ urged before us that the decree holder is not
 “ entitled to any interest after the expiry of two
 “ years from the date of the decree ; and this seems
 “ to us to be the case. The decree is for a sum
 “ of Rs. 78,700 only. The decretal Order proceeds
 “ to direct that this sum shall be paid in two years,
 “ with interest at 12 annas per cent. per mensem,
 “ but there is no Order as to payment of interest
 “ after two years.” The High Court took no
 notice of the ground upon which the Subordinate
 Judge decided,—that the question had been con-
 cluded by his Order of the 25th January 1879 ;
 and their Lordships think it should be remarked,
 in justice to the High Court, that this may be
 accounted for by the fact that not long before
 this the full Bench of that Court had held that
 the law, which they call the law of *res judicata*,
 was not applicable to execution proceedings. The
 question now for their Lordships’ decision is,
 whether the Order of the 25th January 1879 was
 not conclusive between these parties ? It was
 an Order made in the execution proceedings in
 this very suit ; and the decision of this Board
 in *Ram Kirpal Shukul v. Mussumat Rup
 Kuari*, (11 Indian Appeals, page 37,) is exactly in
 point. The only question that could be raised,
 and was raised by the learned Counsel for the
 Respondent, was that there might be some
 difficulty as to the construction to be put upon
 the words of the Order of the 25th of January
 1879. But looking at the terms of that Order,
 although it may not be so clearly expressed

as it might have been, there appears to be no doubt that what was decided on that occasion was the same right to recover the interest, after the expiration of the two years which was fixed by the decree for payment, as is now put in question in the present execution proceedings.

Under these circumstances their Lordships will humbly advise Her Majesty that the Order of the High Court be reversed; and the Respondent will pay the costs of this Appeal, and also pay the costs of the proceedings in the High Court.

