

*Privy Council Appeal No. 11 of 1937*

*Oudh Appeal No. 7 of 1936*

The Oudh Commercial Bank, Limited, Fyzabad - - - *Appellant*

*v.*

Pandit Bishambhar Nath Bajpai - - - *Respondent*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 14TH JULY, 1938

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*Present at the Hearing:*

LORD WRIGHT

LORD ROMER

LORD PORTER

SIR SHADI LAL

SIR GEORGE RANKIN

[*Delivered by* LORD WRIGHT]

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This is an appeal from a decree dated the 2nd January, 1936, of the Chief Court of Oudh at Lucknow, dismissing the appeal of the appellant with costs. The dismissal was by a majority judgment of two against one.

The question turns on the construction of a document of compromise and the true effect in law to be attached to what was done under that document.

The appellant had recovered judgment by a simple money decree against three defendants in the Court of the Additional Subordinate Judge at Unao on the 5th October, 1926. The amount awarded under that judgment was the sum of Rs.12,819 with interest at the rate of 6 per cent. until payment. On the 6th January, 1927, a compromise was agreed upon between the appellant and the respondent. That compromise was sanctioned by the Subordinate Judge at Unao by an order of the 3rd February, 1927.

The difficulty which has arisen is in respect of the true meaning of the compromise and the true effect to be given to the action which was taken under it.

The compromise, which is signed by the respondent, is as follows: It is headed with the name of the action and says:—

“ In the above-noted suit a settlement has been arrived at between the Oudh Commercial Bank, decree-holder and the applicant-judgment-debtor to satisfy the decree on these lines: (1) That the applicant judgment-debtor will continue to pay Rs.200 monthly as instalment towards the decretal money. The first instalment will be paid at the end of January, 1927, and this instalment will be of Rs.500 only, the rest of the instalments shall be of Rs.200 per month. If the applicant judgment-debtor does

not pay three consecutive instalments the decree-holder shall have power to take out execution in respect of the remaining entire amount due. In no other case the decree-holder shall have power to execute the decree against the applicant."

Clause (2) provided for an increase of interest from Rs.6 per cent. per annum to Rs.8 per cent. per annum. There were also terms entitling the appellant to execute the decree against the other judgment debtors.

The application to execute the decree, out of which these proceedings arose, was made to the Court on the 9th August, 1933. It recites that an application had been filed on the 15th February, 1930, which was dismissed on the 10th December, 1930. It was for execution to issue against the respondent in respect of a sum of Rs.10,758-5-3, together with various costs. That was arrived at by bringing into account the original amount of the decree with the addition of the interest unpaid and giving credit for the actual payments made in reduction, which amounted to Rs.7,868-12-0, and leaving the balance in respect of which it was sought to have execution.

Various objections were lodged by the respondent and, considering these objections, it is perfectly clear that the point taken by the respondent was that the compromise fixed the relations between the two parties and that on the terms of the compromise there had been no failure by the respondent to fulfil the terms of the compromise and, therefore, that there was no right to issue execution in respect of the judgment debt or any part of it. The respondent relied upon the term that no execution could be issued against him except in the case that the judgment debtor did not pay three consecutive instalments. He relied upon the fact that, after the date of the compromise, in addition to the first payment under the compromise of Rs.500, he had paid three consecutive instalments of Rs.200 each and he relied on the fact that he had never come within the terms that he had not paid three consecutive instalments, because in respect of every series of three instalments, which he seems to have separated out, he had paid the third instalment of the three: for instance, if instalments were due respectively in January, February and March, his case was that he had actually paid the March instalment and that he had not failed to pay three consecutive instalments; then, taking the following quarter of the year, he had paid the June instalment, though he had not paid the April and May instalments. That was his contention and that was the matter which was discussed at considerable length in the judgments appealed from. This though ingenious is somewhat disingenuous because payment of Rs.800 a year would barely, if at all, pay the interest.

Their Lordships, however, are unable to accept this contention. In their Lordships' judgment the respondent is in the position in fact that he has not paid three consecutive instalments and, therefore, he is in default under the compromise agreement, and the appellant, as decree-holder, has accordingly power to take out execution in respect of the remaining entire amount due.

In their Lordships' opinion the matter may be tested by taking a simple concrete case. Let it be assumed that there are instalments due in January, February and March and that when March comes the respondent, not having paid the January or February instalment, pays Rs.200. He pays no more in respect of that quarter. Then April comes and he pays nothing; then May comes and he pays nothing; June comes and then he pays Rs.200. In their Lordships' opinion of those facts the payment which is made in March is in law a payment, not of the March instalment, but of the January instalment. That is the position as the evidence stands. It is perfectly true that the respondent might have paid the instalment which he did tender in March, but on the express terms that it was a payment of the March instalment and not of the January or February instalment. The question would then arise whether the appellant was bound to accept a tender made in that way. That question does not arise and in their Lordships' opinion, when the instalment was paid in March, it was in fact and in law a payment of the January instalment. It follows from that that, when April came and no payment was made, there were three consecutive instalments unpaid, that is to say, the February instalment, the March instalment and the April instalment, and so on.

In these circumstances, in their Lordships' opinion the case ought to be decided on the footing that there has been default by the respondent in carrying out the compromise agreement and that the remaining entire amount due is claimable.

The result is that the appeal must be allowed with costs, and the case remitted to the execution Court to proceed with the execution as the facts of the case require, and their Lordships will humbly advise His Majesty accordingly. The judgment debtor must pay to the appellant the costs of the execution application in the Court of the Additional Subordinate Judge and of the appeal to the Chief Court. These costs will be added to the amount for which execution is directed.

In the Privy Council

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THE OUDH COMMERCIAL BANK,  
LIMITED, FYZABAD

v.

PANDIT BISHAMBHAR NATH BAJPAI

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DELIVERED BY LORD WRIGHT

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