

# ALLAHABAD HIGH COURT

Maharaj Kumar Mahmud Hasan Khan

Vs.

Moti Lal

First Ex. Decree Appeal No. 11 of 1956. , against decree of Civil J. Mohanlalganj Lucknow

(M.C. Desai, B. Upadhya and B.N. Nigam, JJ.)

30.04.1956. 07.07.1960

## JUDGMENT

**Desai, J.**

1. I agree with my learned brother that the question should be answered in the negative. Since the question is of great importance, I shall state my reasons in my own words.

2. The scheme of the Civil Procedure Code is that in one proceeding the court determines the liability of a party and the corresponding right or the other party and incorporates them in the decree and in another proceeding it executes the decree, i.e. at the instance of one party specifically enforces the liability against the other. There can be no execution or specific enforcement of a liability without a previous determination of the liability by a court and incorporated in a formal document called a decree. The Code does not contemplate the determination of a liability and its specific enforcement in one proceeding. This is one of the main differences between a criminal proceeding and a civil proceeding that in the former the execution follows at once in the same proceeding whereas in the latter it is through a separate proceeding. In the article "The Distinguishing Mark of Crime" Seton Pollock writes in (1959) 22 Modern Law Review, 495, at page 496 :

"It appears to be true without exception that crimes are wrongs in respect of which the execution of the court's judgment thereon is undertaken (subject to any exercise of the Crown's power to remit) without the Crown being moved thereto or deflected there from by any other party. This, it would seem, is never true of a civil wrong for, here, the judgment of the court is terminal in the sense that nothing happens unless the complaining party initiates some ancillary process to move the court to execution, for example, by judgment summons or writ of fieri facias".

There can, therefore, be no execution unless there exists a formal determination of the liability to be specifically enforced. An agreement or compromise, which is an act of the parties, is not a formal determination by the court of liability of one party to the other. A compromise may give rise to a formal determination, e.g. a decree, but is not itself a decree and cannot be executed. Even in a suit, in which parties are allowed to compromise, the compromise itself is not a decree but is to be followed by a decree incorporating the liability, agreed to by them. The determination of a liability, when there is a compromise in a suit, may appear to be a mere formal matter but is not so because the court has to determine whether the suit has been adjusted at all by the compromise and whether it is lawful or not; it is only when it is satisfied about these matters that it will hold that the liability of a party is that accepted by him in the compromise and will pass a decree embodying it. No such jurisdiction has been conferred an executing court. Not only can there be nothing like a compromise in execution proceedings (unless the compromise has the effect of adjustment at the decree) but also an executing court has been given no jurisdiction to decide whether the compromise is lawful or not and to determine the liability arising from it. Not only has no power been conferred upon it to vary the terms of the decree already passed or to substitute in its place another decree embodying the compromise but also no power has been conferred upon it to specifically enforce the compromise, even without doing so.

3. Section 47 is the only section that deals with the jurisdiction of an executing court. It is confined to determining all question; arising, between the parties to the suit and relating to the execution, discharge or satisfaction of the decree. It enjoins that all these questions shall be determined by the executing court and not by a separate suit. All other questions can be determined by a separate suit, any question that does not relate to the execution, discharge or satisfaction of the decree is thus not within the jurisdiction of the executing court. If there is a compromise after the passing of a decree by which its terms are varied, any question relating to the execution, discharge or satisfaction of the compromise cannot be said to be a question relating to the execution etc. of the decree. The compromise cannot be treated as the decree. If either party seeks to specifically enforce any term of the compromise, not only would it not be a case of executing the decree but also any question relating to the execution etc. or the compromise would not fall within the scope of Section 47 and cannot be determined by the executing court. If it cannot determine any question relating to the execution etc. of the compromise it means that it cannot execute the compromise. It is all the time concerned with the decree, whether in respect of its execution or in respect of its discharge or satisfaction. If a compromise that has the effect of discharging or satisfying it or preventing its execution is brought to its notice, it will certainly be bound to consider it, but only for the purpose of seeing whether the decree should be executed or not. The parties are not forbidden to compromise after the passing of a decree; they are free to do so, but only to the extent that the compromise is in respect of the mode of execution of the decree or amounts to an adjustment or satisfaction within the meaning of Order 21, rule 2, so as to prevent the execution of the decree. If the decree has not been discharged or satisfied by adjustment or otherwise, it would be bound to be executed at the instance of its holder. If the judgment-debtor objects to the execution on the ground of its being

discharged or satisfied by adjustment or otherwise the executing Court will decide the objection and will refuse to execute the decree if the objection is upheld. It will thus either execute the decree, or refuse to execute it; it has no other power. If a decree-holder wants to enforce a liability other than the judgment-debtor's decretal liability, it would strictly be not a question of execution of the decree and not be within the jurisdiction of the executing court. The mere fact that the new liability sought to be enforced by the decree-holder arises out of a compromise entered into between the parties in execution proceedings would be irrelevant; Section 47 will govern the case all the same.

4. From the proposition that a decree after being passed cannot be varied even by the parties acting in agreement or by any court at their instance, it follows that if there is a compromise varying its terms, so long as the decree is not set aside by a competent court it remains executable. If the compromise also becomes executable, it would result in an anomalous position of there being two different liabilities operating against the judgment-debtor in respect of the same subject-matter. It cannot be disputed that both the decree and the compromise cannot be executed against him simultaneously or one after the other. The liability under the compromise cannot be enforced against him unless the decretal liability has been or stands cancelled.

What is the effect of the compromise on the decree itself is not a matter within the cognizance of the executing court; it is not a question relating to the execution, discharge or satisfaction of the decree. Cancellation of a decree or alteration of a decree is not satisfaction or discharge of a decree. An executing court has, therefore, no jurisdiction to hold that the decree stands cancelled by the compromise. Such a decision must be given by a court having jurisdiction over the decree. Nothing turns upon the question whether the compromise is arrived at in an execution proceeding or out of court or before an application for execution of the decree is filed. An executing court does not get jurisdiction, which it would not otherwise possess mainly on account of the fact that the compromise takes place before it.

5. Where a matter is at the discretion of an executing court it may exercise its discretion in accordance with the agreement of the parties. If it can do either act A or act B, it may do act A just because the parties agree that it may be done. Its doing act A is not illegal and there is nothing wrong in its electing to do it simply because of the agreement of the parties. Thus provided that the decretal liability is left unaltered, an executing court can accept any compromise arrived at by the parties with regard to the mode of execution. If the parties agree that no warrant of attachment may be issued for a certain time within which the judgment-debtor promises to pay the decretal amount the court can act on the compromise. It may accept a compromise between the parties and cancel one process and issue another process for execution. The compromise in the present case is not in respect of a mode of execution of the decree as passed but is one varying its terms and stands on an entirely different footing. Section 47 does not clothe an executing court with power to vary the terms of a decree.

6. The question before the Judicial Committee in the case of the *Oudh Commercial Bank Ltd. v.*

*Bind Basni Kuer*<sup>1</sup>, was whether the decree-holder was entitled to interest at 6 1/2 per cent, according to the final decree for sale of the mortgaged property passed under Order 34, rule 10 or at 8 per cent, agreed to by the judgment-debtor in consideration of time given to him by the decree-holder. The question was answered in favor of the decree-holder, their Lordships observing that the Code contains no

<sup>1</sup> 66 Ind App 84

general restriction on the parties liberty of contract with reference to their rights and obligations under the decree, that Section 47 involves that if they contract upon terms which have reference to, and affect, the execution, discharge or satisfaction of the decree, the questions relating to such terms may fall to be determined by the executing court and that the additional liability accepted by the judgment-debtor under the compromise was not extraneous to the mortgage suit. They refused to regard the compromise for time in consideration of a reasonable rate of interest as an attempt to give the executing court jurisdiction to vary the decree and observed that it has jurisdiction to ascertain the effect of the compromise upon the parties' rights under the decree and to order accordingly. Anybody who disagrees with a decision of the Judicial Committee must do so at his own peril and I speak with great diffidence when I seriously doubt that a question of the effect of a compromise upon the rights of a party under a decree is a question relating to execution discharge or satisfaction of it. Their Lordships have not overruled the various decisions laying down that an executing court must execute the decree as it stands, that a decree cannot be altered except by a superior-court acting on appeal or in revision or by the court passing it on review or under Section 152, C.P.C. or Order 20, rule 11, that Order 23 does not apply in execution, that an agreement either is an adjustment within the meaning of Order 21, rule 2, and extinguishes the decree and prevents its execution or is not an adjustment and leaves it intact and that the general scheme of the Code is that execution must be preceded by a formal determination of the liability incorporated in a decree. Their Lordships made it clear that the decision was for the purposes of the case alone, for they refused to pronounce on the question whether every compromise interfering with a decree-holder's right to execute the decree according to its tenor amounts to an adjustment or what the effect is of a finding that a particular compromise for time is not an adjustment, said that compromises may take different forms and it is not possible to pre-judge the individual case and conceded that if an executing court acting under Section 47 finds that the effect of a compromise was to discharge the decree forthwith, it would have no jurisdiction to enforce it in execution proceedings but would leave the decree-holder to bring a separate suit upon the contract. They distinguished, however, a compromise intended to govern the liability of the judgment debtor under the decree and to have effect upon the time and manner of its enforcement which was held to be a matter to be dealt with under Section 47. In the end they held that the particular compromise they were dealing with could and should be enforced in execution. They seem to have been considerably influenced by the fact that the decree was one under Order 34, rule 10, requiring the mortgage account to be carried down to the date of actual payment after including all costs, charges and expenses properly incurred by the mortgagee up to that date. In their Lordships' view this provision allowed the executing court to include an additional interest agreed to be paid by the judgment-debtor under an arrangement

whereby the mortgaged property stood safe from a fear of sale under the decree. The decree in the instant case was not a decree under Order 34, rule 10, and there was no question of taking an account in execution and including in the decretal liability costs, charges and expenses properly incurred by the decree-holder. Therefore, with great respect to the views of their Lordships I am constrained to hold that the compromise in the present case cannot be specifically enforced and that the decree-holder's remedy is simply to execute the decree as it was passed it has not been altered on appeal, revision or review, or under Section (152 or under Order 20, rule 11 C.P.C.).

7. The provisions contained in Order 21, rule 2, are of no avail to the decree-holder. Sub-rules (1) and (2) lay down the procedure for the recording of an adjustment or satisfaction, in whole or in part, of a decree; the primary responsibility for bringing the adjustment or satisfaction to the notice of the executing court is laid upon the decree-holder but the judgment-debtor also has been given the right to bring it to the notice of the executing court and the executing court is required, on being satisfied of the existence of the adjustment or satisfaction, to record it. The effect of adjustment or satisfaction of a decree or a part of it is obviously to render the decree or the part of it in executable, to remove it from the jurisdiction of the executing court. When the decree or a part of it has been complied with by the judgment-debtor, there remains nothing to be done by the executing court in respect of it. In *Fateh Muhammad v. Gopal Dass*<sup>2</sup>, Mahmood, J. said at page 431 that the effect of a decree-holder's asking the executing court to record an adjustment or satisfaction of the decree is to say "My decree has been adjusted and extinguished; strike off the case". Bhashyam Aiyangar, J., with the concurrence of Benson, J.; said in *Venkatagiri Iyer v. Sadagopachariar*<sup>3</sup>, that if adjustment of a decree is recorded, "there can be no further proceedings for execution of the decree". Sadasiva Aiyar and Noler, JJ. in *Lodd Govindoss v. Vishnadoss*<sup>4</sup>, had no doubt that an adjustment "is a transaction which extinguishes the decree as such in whole or in part and results in a satisfaction of the whole or a portion of the decree in respect of the particular relief or reliefs granted by the decree." This decision was approved of by Shadi Lal, C.J. and Broadway, J. in *Bakhshi Ram v. Des Raj*<sup>5</sup>, and by Mukerji and Roy, JJ. in *Azizur Rahman v. Aliraja*<sup>6</sup>, where they said that an adjustment extinguishes the decree adjusted. The same view was taken by Davis, J.C. and Lobo A.J.C. in *Ramibai v. Rewachand*<sup>7</sup>, at page 230 they observed :

"The adjustment of a decree ....means the extinguishing of a decree ..... it is to all intents and purposes executed, and no question of the execution of the adjusted decree is possible. The wording of Order 21, Rule 2, Civil Procedure Code, appears to us to imply a finality which excludes any future application in execution to the Court."

A Full Bench of this Court consisting of Sulaiman, Mukerji and Boys, JJ., following the cases of *Lodd Govindoss*<sup>8</sup>, and *Amur Rahman*<sup>9</sup>, said in *Gobardhan Dass v. Dau Dayal*<sup>10</sup>, that an adjustment must "be a transaction which extinguishes the decree as such in whole or in part and results in its total or partial satisfaction" (280). Though this case has been overruled by the Privy Council, it has not overruled this view. An adjustment of a decree thus results in its being

rendered in executable and if it is still put into execution, the judgment-debtor has a right to object to the execution and the executing court is bound by Section 47 to decide the objection. Sub-rule (3), however, lays down, that any adjustment which has not been certified or recorded cannot be recognized by the executing court. The only purpose for which an adjustment or satisfaction of a decree can be recognized by the executing court is that of striking off the execution. Thus it is for the judgment-debtor to avail himself of the plea of

<sup>2</sup> ILR 7 All 424

<sup>4</sup> AIR 1916 Mad 604

<sup>6</sup> AIR 1928 Cal 527

<sup>3</sup> 14 Mad LJ 359 at page 366

<sup>5</sup> AIR 1931 Lah 608

<sup>7</sup> AIR 1937 Sind 229

<sup>8</sup> AIR 1916 Mad 604

<sup>10</sup> AIR 1932 All 273

<sup>9</sup> AIR 1928 Cal 527

adjustment or satisfaction and not for the decree-holder. It would be for the judgment-debtor to plead that the decree has been adjusted or satisfied; such a plea is not expected from the decree-holder because the plea in effect means that his execution application should be dismissed. It follows that if a decree-holder claims any benefit or advantage out of a transaction, it may be anything but is not an adjustment or satisfaction within the meaning of rule 2. This is borne out by observations in some of the cases mentioned above.

"A transaction by which the parties agree to vary the mode by which the reliefs granted by the decree are to be realized in execution in that suit or the time when the decree becomes executable, is not an adjustment of the decree but is a transaction which attempts to vary the terms of the decree, leaving the altered terms to stand in the place of the terms of the decree so as to constitute a new executable decree";

see the cases of Lodd Govindoss, AIR 1916 Madras 604 at page 604, Bakhshi Ram, AIR 1931 Lahore 608 at page 609 and Gobardhan Das, AIR 1932 Allahabad 273 (FB) at p. 280. If a transaction consists of stipulations that have to be carried out in future and not of stipulations that have already been carried out, it does not amount to an adjustment within the meaning of rule 2; see the cases of Azizur Rahman, AIR 1928 Calcutta 527 at page 529, Bakhshi Ram; AIR 1931 Lahore 608 and Ramibai, AIR 1937 Sind 229, where the learned Judicial Commissioner said that

"A decree can be adjusted within the meaning of rule 2 ..... only by an executed agreement and not by an executory agreement".

In the case of Fateh Muhammad, ILR 7 All 424 Mahmood, J. refused to regard an agreement as an adjustment if it kept the decree alive and the attachment of property in execution of it intact. Stuart, C.J. said in *Debi Rai v. Gokal Prasad*<sup>11</sup>, that if the effect of an agreement was the complete abandonment of the decree' as such it would amount to an adjustment of it, even though it contained a record of the sum that was due by one party to the other. In *Dina Misra v. Ramdas Tiwari*<sup>12</sup>, an adjustment was held by Courtney-Terrell, C.J. and Saunders, J. to include "any step which alters the liability under the decree whether by reducing the amount recoverable or by reducing the number of persons against whom the decree would otherwise be executed"; this confirms that adjustment is an agreement than operates in favour of the judgment-debtor.

The compromise in question keeps the decree alive though the liability of the judgment-debtor under it is enhanced. It consists of a stipulation to be performed in future. It operates adversely to the judgment-debtor and is invoked by the decree-holder in support of his claim. It cannot amount to an adjustment within the meaning of rule 2.

8. If the compromise were to be treated as an adjustment within the meaning of rule 2, the decree-holder would still not gain anything. So far as the decree is concerned it would stand adjusted or satisfied and would no longer be open to execution. The decree-holder may have some right under the adjustment but so far as the decree

<sup>11</sup> ILR 3 All 585 (FB)

<sup>12</sup> AIR 1933 Pat 576

obtained by him is concerned it would be extinguished by it. He can enforce the agreement in any manner permitted by law and if he is granted relief under it, it is by enforcement of the agreement and not by execution of the decree. An executing court has jurisdiction only to execute the decree, i.e. it can enforce only the decretal liability and it has jurisdiction, conferred by Section 47; to decide all questions relating to execution, discharge and satisfaction of the decree, but it has no jurisdiction whatsoever over any other matter and cannot enforce any other liability. It would have no jurisdiction to enforce the liability arising out of the adjustment or to execute it or get it specifically performed. Section 47 clearly confines its jurisdiction to questions relating to the decree under execution; it may execute the decree in whole or in part or may refuse to execute it in whole or in part but has no other jurisdiction. Enforcing a liability not under the decree (because it would have stood extinguished by the adjustment) but under the adjustment itself could not possibly amount to executing either the same decree or another decree. An adjustment of a decree is not itself a decree; to hold otherwise would be to go against the very conceptions of an adjustment (which is extinction of the decree) and of a decree (which is a formal adjudication by a court finally determining the rights of the parties). A liability must be distinguished from a decree; a decree gives rise to a liability, but a liability can also arise otherwise than by a decree. An executing court is concerned only with enforcing the decretal liability and not with enforcing any other liability. An adjustment may substitute a decretal liability by another liability but the executing court has no jurisdiction over the latter. If the decree is extinguished by the adjustment there remains nothing to be executed by it; if the adjustment substitutes another liability in place of the decretal liability the decree-holder may take any action to enforce it but cannot ask the executing court to exercise its jurisdiction in execution. Otherwise the result would be, as pointed out by the learned Judicial Commissioner in Ramibai's case, AIR 1937 Sind 229, that

"the Court might be called upon to execute not the decree it passed, but a hundred decrees, not one of which it passed or which any other Court passed, but which the parties choose to substitute by mutual agreement for the decree of the Court" (230).

In Debi Rai's case, ILR 3 All 585 (FB) Stuart, C.J. and Pearson, Spankie and Straight JJ., refused to execute an adjustment as a decree, Stuart, C.J. observing at page 587 that "such an agreement could not be enforced in the execution department, but, if at all, only by a separate suit", and Pearson, J., at page 588 that "the execution of a compromise is not within the competency of a court in the execution of decree department; and that the consent of the parties to the decree .....cannot give to the Court a jurisdiction which the law does not confer upon it." In Venkatagiri Iyer's case, 14 Mad LJ 359 the learned Judges pointed out at page 3136 that! the "agreement so far as it provides for the payment of any sum in excess of the decree amount can be enforced only by a separate suit". In Azizur Rahman's case, AIR 1928 Calcutta 527, the learned Judges stated at p. 529 that "an adjustment to give effect to the terms of which would be to create a new decree at variance with the decree under execution and which will again, have to be executed" is not within the contemplation of rule 2; it follows that an adjustment within the meaning of rule 2 cannot be executed as if it were itself a decree. The duty of an executing court, as pointed out by Sulaiman, J., in Gobardhan's case, AIR 1932 Allahabad 273(FB) at p. 279, is to execute the decree as it finds it; it has no jurisdiction to alter or vary it and to execute it as it would stand after an alteration or variance. A decree cannot be varied even by the court passing it except on review or under Section 152; this was made clear by the Judicial Committee in *Kotagiri v. Vellarki*<sup>13</sup>, It cannot be varied by another court except on appeal or in revision. A judgment once signed cannot be altered or added to, save as provided by Section 152 or on review; see Order 20, rule 3, A decree must agree with the judgment; see Order 20, rule 6. If a decree is prepared agreeing with the judgment, so long as the judgment is not altered the decree cannot be altered. In the present case the decree prepared by the court was in agreement with its judgment and the judgment has not been altered by it; it follows that the decree cannot possibly be altered, i.e., cannot be altered by anyone in any circumstance. It cannot be altered even by compromise or agreement between the parties. It is open to them to substitute another liability in place of the decretal liability but they cannot alter the decretal liability. They can adjust the decree in any manner they like; they can adjust; it even though thereby the decretal liability is replaced by another liability. What they cannot do is to claim that the decretal liability is altered, i.e., that the new liability shall be deemed to be the decretal liability. They had a right, while the suit was pending, to agree to a particular decree being passed, i.e., to a particular liability being incorporated in the decree, but after the passing of a decree they have no right to vary its terms even by an agreement. It is expressly laid down in Order 23, rule 4, that nothing in the order shall apply to any proceedings in execution of a decree. The Parties are thus deprived of the right of varying the terms of a decree by compromise. In support of these observations reference may be made to the cases of Venkatagiri Iyer, 14 Mad LJ 859, Lodd Govindoss, AIR 1916 Madras 604, Bakshi Ram, AIR 1931 Lahore 608 and Gobardhan Das, AIR 1932 Allahabad 273 (FB). In the case of Lodd Govindoss, AIR 1916 Madras 604, the learned Judges after considering the provisions of Order 23, rule 4, had no doubt that "compromises after decree cannot be recorded and cannot form the foundations of orders affecting the rights of parties under the decree". In Bakshi Ram's case, AIR 11931 Lah 608, the learned Judges considered it beyond dispute that the parties cannot in execution proceedings vary the terms of the decree.

The view taken in the case of Gobardhan Das, AIR 1932 Allahabad 273 (FB), is that "an execution court has no power to alter or vary the decree under execution" (280) and that "the legislature does not contemplate the prolongation of execution proceeding by successive compromises ?being entered into at long intervals" (281). The reason for not applying Order 23 in execution proceedings is, as stated in the case1 of Azizur Rahman, AIR 1928 Calcutta 527 at p. 529, that "Order 21, Rule 2 and Section 47 taken together provide a complete procedure for recording compromises arrived at in execution proceedings'. At page 530 the learned Judges said that

"the uniform current of authorities of the High Court of Calcutta was that an agreement arrived at after the passing of a decree cannot be taken cognizance of by the executing court and "that it can be enforced only through a separate suit."

<sup>13</sup> ILR 24 Mad 1 (PC)

9. The plea that the judgment-debtor is estopped from pleading that the compromise can be specifically enforced in execution is without substance, see the observations in the case of Gobardhan Dass, AIR 1932 Allahabad 273 (FB) at p. 281, with which I respectfully agree.

#### **Upadhya, J.**

10. The question referred to this Full Bench by a Division Bench of this Court reads as follows.

11. Whether during the pendency of the execution proceedings it is open to the parties to enter into a compromise or an arrangement postponing execution of the decree on condition of paying enhanced interest ?

12. After considering the facts of the case and the real nature of the question arising in the case we considered it necessary to retrain the question so as to bring out as accurately as possible the real question which has to be answered to enable the Bench to dispose of the appeal. The question as refrained is :

13. 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 decreed rate of interest, enforceable in a proceeding for execution of the decree ?

14. A suit was filed on the 29th April 1952 for recovery of a sum of Rs. 41,500/-. A compromise was arrived at in that suit on the 24th March 1953 of which the terms were that the present appellant would pay a sum of Rs. 22,500 ,to the plaintiff-respondent within a period of six months and that a decree for a total sum of Rs. 39,000/- be passed against both the defendants with future interest at 6 per cent per annum, The parties had further agreed that no interest was to be charged or paid if payment was made within the stipulated period of six months as mentioned

above.

15. Payment was not made, and on the 23rd May 1954 an application was made for execution of the decree by sale of some immoveable property of the appellant. The 17th July 1954 was fixed for the return of the notice under Order 21, rule 66, C.P.C. On the 29th May 1954 another compromise was entered into by which the parties agreed that the decree should not be executed for a period of two months and that the judgment-debtor would pay a sum of Rs. 24,180/- within a period of two months together with interest at 1 per cent per mensem. This higher rate of interest was to be paid from the date of the second compromise till the date of the realization of the entire amount. Payment was not made again and another application for execution was filed which has given rise to the present appeal. It was contended on behalf of the judgment-debtor that the decree was not executable for various reasons.

16. The question referred to this Bench relates to an objection that an agreement entered into between the decree holder and the judgment-debtor in execution proceedings cannot be given effect to as if it had been embodied in the decree itself. The contention is that the ambit of an executing court's jurisdiction is limited. It is to enforce the decree, to execute it and it cannot be enlarged so as to enable that court to decide any matter extraneous to the decree or to go behind the decree or to alter or amend it even if the parties, by entering into a compromise during the execution proceedings desire this to be done. The executing court cannot be asked to modify the decree. This is the view taken by a Full Bench of this Court in AIR 1932 Allahabad 273. The rule laid down in this case came up for consideration before the Judicial Committee of the Privy Council in 66 Ind App 84 . The Privy Council observed that if the terms of an agreement between the parties have reference to and affect the execution, discharge or satisfaction of the decree the provisions of Section 47 of the C.P.C., permit that the questions relating to such terms may fall to be considered by the executing court. Their Lordships distinguished the case where an agreement between the parties varied the terms of a decree from cases of amendment or alteration of the decree under Section 152 of the C.P.C., or by review.

17. Section 33 of the Code of Civil Procedure lays down that the Court, after the case has been heard, shall pronounce judgment and on such judgment a decree shall follow. The Code contains provisions as to how and by which Court a decree may be executed. Section 38 says that a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution and Section 42 provides that the Court executing a decree sent to it "shall have the same powers in executing such decree" as the Court which passed it. It may be noticed that the powers of the executing court which, are stated to be the same as those of the Court which passed the decree are limited by the words "in executing such decree". Section 47 further lays down that all questions arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. The scope of the words 'relating to the execution, discharge or satisfaction of the decree' has been the subject of a large number of decisions as questions have often arisen as to whether a particular matter is one

relating to the execution, discharge or satisfaction of the decree or not but these provisions do not empower the executing Court to go behind the decree itself. Section 152 of the Code empowers the Court which passes a decree either of its own motion or on the application of any of the parties to correct clerical or arithmetical mistakes in judgments, decrees or orders arising from any accidental slip or omission. The court may also review its decision. Section 114 of the Code and Order 47 Rule 1 embody the powers relating to review. But this power of review is possessed by the Court which passes the decree and not by the Court to which it is sent for execution. The jurisdiction of the executing Court is limited to execution alone and such Court has only to enforce the terms of the decree. Mahmood, J., in *Muhammad Sulaiman v. Jhukki Lal*<sup>14</sup>, observed :

"I hold it to be a correct proposition of law that a Court executing a decree is bound by the terms of that decree and cannot go behind them. It is equally true as a general proposition that such Court can neither add to such a decree nor vary its terms."

Considering the restricted scope of the powers of an executing Court the question arisen as to whether that Court can in the course of execution proceedings entertain an

<sup>14</sup>ILR 11 All 228

agreement or compromise between the parties before it and incorporate such compromise or agreement in the decree so as to effect an alteration in or the modification of the decree itself. This Court in its Full Bench decision referred to above has taken the view that it cannot. The Privy Council in the Oudh Commercial Bank case, 66 Ind App 84 , mentioned above has expressed a contrary opinion.

18. If the work done by civil courts on the revisional or reference side be excluded it can be divided into two main classes (i) that of deciding disputes between parties and (ii) that of enforcing such decision. The first part of the court's work culminates in a decree or order and thereafter comes the work of enforcing the decree or order and this part of the work is known as proceedings in execution. The disputes therefore which relate to the rights of parties have to be settled before a decree is passed and a decree is therefore denned as the formal expression of an adjudication which so far as regards the court expressing it conclusively determines' the rights of the parties with regard to all or any of the matters in controversy in a suit. If a claim for money is made it is for the court passing the decree to decide the extent of the defendant's liability and to determine what interest if any, is to be paid by him. If the court in passing the decree directs that interest shall be paid by the defendant at a particular rate it is obviously a conclusive determination by the court about the plaintiff's right and the defendant's liability relating to interest. It is not contended that the executing court may alter suo motu the rate of interest payable by the judgment-debtor, for this would be in violation of the terms of the decree it is called upon to execute. Their Lordships of the Privy Council have expressed the opinion that there is nothing in the C.P.C., restricting the rights of the parties to enter into an agreement themselves and obtain the sanction or approval of the court to such an agreement and thus have the terms of the decree altered. It appears that the various provisions of the C.P.C., which lay

down how a decree may be altered or varied were not placed before their Lordships. Perhaps the well settled rules relating to the limited jurisdiction of a court executing a decree were also not placed for their consideration fully. It is of course always open to parties to enter into any agreement subject to its being valid under the law. If the agreement is valid the courts will enforce it. But the manner in which such contracts or enforceable agreement may be given effect to is well known. If a party to the contract does not comply with it the other party has to seek the enforcement of the contract by instituting a suit for the purpose. It is difficult to see how without following this procedure the agreement between the parties may be given effect to by an executing court which obviously is neither called upon nor expected to follow the normal procedure of a suit and to adjudicate between the parties on all questions that might arise relating to the en-forcibility of the agreement. The duty of the executing court in the execution proceedings is evidently to execute the decree as it finds it. The decree itself has its origin in most cases in agreements between the parties which are sought to be enforced through courts by institution of suits. The opinion expressed by the Judicial Committee though not binding now on Courts in India is undoubtedly entitled to the greatest respect and it is necessary to analyse the basis for the opinion and to see how far it is consistent with the statute and the case law prevailing in the country. The Judicial Committee has itself mentioned that 'the question is difficult and important'. The following passage from the judgment of Sir George Rankin embodies the reasons on which the decision of the Judicial Committee appears to be based.

"1. They do not consider that it (Gobardhan Dass case) takes sufficient account of the facts that the Code contains no general restriction of the parties' liberty of contract with reference to their rights and obligations under the decree and that if they do contract upon terms which have reference to and affect the execution, discharge or satisfaction of the decree, the provisions of Section 47 involve that questions relating to such terms may fall to be determined by the executing Court.

2. The compromise of 1927 however was recorded (under Order 21, Rule 2). It was an adjustment even if it was something more and it contained the terms upon which the adjustment was agreed to. It was not an attempt to bring under the decree a liability extraneous to the mortgage or the mortgage suit.

3. They are not prepared to regard a fair and ordinary bargain for time in consideration of a reasonable rate of interest as an attempt to give Jurisdiction to a court to amend or vary the decree. Such a bargain has its effect upon the parties' rights under the decree and the executing court under Section 47 has jurisdiction to ascertain its legal effect and to order accordingly.

4. In the absence of express statutory authority it is not possible in their Lordship's view to regard Order 20 Rule 11 as excluding any possibility of the parties coming to a valid agreement for time to which the Court under Section 47 will have regard. If ..... the agreement is intended to govern the liability of the debtor under the decree and to have effect upon the time or manner of its enforcement, it is a matter to be dealt with under Section 47. In such a case to say that the creditor may perhaps have a separate suit is to misread the Code, which by requiring all such matters to be dealt with in execution

discloses a broader view of the scope and functions of an executing Court. Their Lordships are in agreement with the statement in the case of Gobardhan Das that in numerous cases a compromise between the decree-holder and the judgment debtor entered into in the course of execution proceedings which was duly recorded, has been enforced and they are not of opinion that the practice, which is both widespread and inveterate, is contrary to the Code. They are of opinion that in the present case the compromise can and should be enforced in these execution proceedings."

19. There can be no dispute that the parties liberty of contract with reference to their rights and obligations under the decree are not restricted by any provision of the Code of Civil Procedure, nor about the dictum that if such contract relates to the execution, discharge or satisfaction of the decree it would be within the ambit of the executing court's power by virtue of the provisions of Section 47 of the Code of Civil Procedure . The essential question is, whether an agreement to pay an enhanced rate of interest recorded by the executing court, but subsequently disputed as invalid, may be enforced in execution of the original decree, and whether such a compromise is a matter relating to the execution, discharge or satisfaction of the decree within the meaning of Section 47 of the Code. The mere existence of the parties of contract does not appear to lead to an assumption that an executing court with its powers defined by Sections 42 and 47, mentioned above, would have the jurisdiction not only to entertain and record it but also to enforce it.

20. The second passage quoted above shows that their Lordships treated the compromise in the case before them as an adjustment recorded under Order 21 Rule 2. It may be relevant to consider in the instant case whether the compromise in dispute is an 'adjustment' within the meaning of the law.

21. The view expressed in the first part of the third passage quoted above cannot be doubted. In that particular case before their Lordships the agreement amounted to a fair and ordinary bargain for time in consideration of a reasonable rate of interest, and this in itself was obviously not an attempt to give jurisdiction to a court but if the agreement in spite of being fair and proper did affect the terms of the decree it appears difficult with the utmost respect, to accept that the parties did not attempt to amend or vary the decree or that the agreement was not intended to produce that result. If anything, the parties wanted, even if for proper reasons, nothing but this that the decree as passed should not be enforced and that it should be enforced or executed only with the amendments made according to the agreement. Section 47 does not confer on the executing Court the power to adjudicate about the rights of the parties or to deal with all matters relating to the rights of the parties under the decree and if the matter is not one relating to the execution, discharge or satisfaction of the decree as passed and as is under execution it again appears difficult to accept that the executing court would have jurisdiction to ascertain its legal effect or to pass orders consequential on such adjudication.

22. The opinion expressed in the last passage quoted above that the agreement intended to have

effect on the time or manner of the enforcement of the decree falls within Section 47 of the Code must be respectfully accepted as Such an agreement obviously relates to the execution of the decree itself; but if any term of such agreement has the effect of enhancing the decretal amount the question does appear to arise as to whether such term also relates to the execution of the decree as passed. Their Lordships referred to a statement by this court in Gobardhan Dass case, AIR 1932 Allahabad 273 (FB), that in numerous cases a compromise between the decree-holder and the judgment-debtor entered into in the course of execution proceedings which was duly recorded had been enforced and their Lordships evidently approved the practice. An analysis of the various cases in which such compromises were enforced reveals that the provisions of the old Code of Civil Procedure Act No. XIV of 1882 were different from those of the new Code of Civil Procedure Act 5 of 1908 and the cases decided under the old Act prior to this Act cannot afford proper guidance for cases arising after the new Code came into force.

23. Section 647 of the Code of 1882 as it originally stood was as follows :

"The procedure herein prescribed shall be followed as far as it can be made applicable in all proceedings in any court of civil jurisdiction other than suits and appeals." An explanation was added by Act VI of 1892 as follows :

"Explanation :- This section does not apply to applications for the execution of decrees, which are proceedings in suits".

The Code of 1882 had in Section 257A another provision which accounted for the trend of the earlier authorities. It was as follows :

"257A. Every agreement to give time for the satisfaction of a judgment-debt shall be void unless it is made for consideration and with the sanction of the Court which passed the decree, and such court deems the consideration to be, under the circumstances, reasonable."

"Every agreement for the satisfaction of a judgment-debt which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void unless it is made with the like sanction."

"Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus if any shall be recoverable by the judgment-debtor."

24. The above section provided that an agreement to give time for consideration could be sanctioned by the court which passed the decree which alone was competent to consider the reasonableness of the consideration. This provision was not retained as such in the Code of 1908. The first part of the section was adopted in an altered form in Order 20 Rule 11(2) which reads as follows :

"11(2) After the passing of any such decree the Court may, on the application of

the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by installments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise as it thinks fit."

25. According to this provision it is the court which passed the decree that can order postponement of payment, or installments on terms of interest, attachment of security and that too only with the consent of the decree-holder. Evidently the executing Court cannot do so.

26. It was in 1892 that this section had been introduced in the Code of 1882. In several earlier cases the question had arisen whether a court executing a decree could execute the decree as modified by any agreement or compromise between the parties.

27. In *Kristo Komul Singh v. Huree Sirdar*<sup>15</sup>, Sir Barnes Peacock presiding over a Bench of five Judges observed :

"It appears to me that a court of execution has no power to alter a decree of the Court which, passed it and that parties cannot after the law or a decree of court even by consent ..... If a man binds himself not to execute a decree within a certain period he must take care if he wished to execute the decree at all not to bind himself not to execute the decree for a longer period than that within which the law would allow him to execute it."

28. A Division Bench of the Calcutta High Court took the same view in *Ram Runjun Chuckerbutty v. Rajah Jowhurujumah Khan*<sup>16</sup>, Markby, J. observed

<sup>15</sup>13 Suth WR FB 44

<sup>16</sup>23 Suth WR 129

"The parties had no right to execute this decree upon the footing of the Kistbundee (subsequent agreement relating to installments) but that they must execute, if at all the original decree itself."

29. A Bench of five Judges of this court had occasion to consider the point in ILR 3 All 585 (FB). The parties for the payment of money, altered by agreement such decree as regards the mode of payment and interest. For many years such agreement was executed as a decree without objection being taken by the judgment-debtor. On the 1st March 1878 the holder of the decree applied for execution of such agreement. The judgment-debtor objected that such agreement could not be executed as a decree and the application should be dismissed. It was held by four Judges (Oldfield, J. dissenting) that such agreement could not be executed as a decree and the judgment-debtor was not estopped from objecting to its continued execution as a decree.

30. The provisions of Section 257-A of the Code of 1882 made an agreement between a decree-holder and a judgment-debtor void unless it had the sanction of the Court which passed the decree. Such an agreement therefore could not be the basis of any suit at all and if the sanction of the court which passed the decree was obtained, the decree itself was modified. This alteration or

modification could not be made by the court executing the decree but only by the court which had passed it. This provision has been omitted from the Code of 1908 and therefore any agreement between the decree-holder and the judgment-debtor which has not been recorded under Order 21 Rule 2 and is not covered by Order 20 Rule 11(2) may now be enforced by a regular suit. It cannot be said that any hardship would result if such an agreement is not enforced by the executing court itself.

31. One of the reasons which weighed with the Privy Council in the Oudh Commercial Bank case was that there was nothing in the Code to restrict the power of the parties to enter into an agreement. But this would not justify an assumption that such an agreement may be executed as if it were a decree. It is true that in a pending suit the parties can enter into a compromise and if the compromise be lawful the Court has no option but to pass a decree in terms of the compromise. This view was taken in several cases, and Order 23 Rule 3 embodies this rule and says that the court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to the suit. This provision is not applicable to execution proceedings for Order 23 Rule 4 says :

"Nothing in this Order shall apply to any proceedings in execution of a decree or order."  
Thus it cannot be said of a court dealing with execution cases that it should pass a decree in accordance with an agreement or compromise between the parties. On the contrary this express statutory bar put down by Order 23 Rule 4 indicates that an agreement between the parties cannot be recognized and incorporated in a decree by the executing Court.

32. A ground which has sometimes persuaded Judges to take the view that an executing court may modify a decree on the basis of an agreement between the parties and proceed to execute such modified decree is that in recording the agreement the executing court is doing nothing but recording an 'adjustment' of the decree itself. The word 'adjustment' has not been used in Section 47. In order to fall within the ambit of Section 47 the question must be one relating to execution, discharge or satisfaction of the decree'. An adjustment may be either a discharge or satisfaction of the decree; but in either case the adjustment should be one which extinguishes in whole or in part the liability of the judgment-debtor under the decree. The word 'adjustment' has been used in Order 21 Rule 2. This rule says that where any money payable under a decree of any kind is paid out of court or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder the decree-holder shall certify such payment or satisfaction to the court whose duty it is to execute the decree. The word 'adjustment' appears to have been used in a sense akin to 'satisfaction' or 'payment'. Thus any action whereby the decree is satisfied in whole or in part to the satisfaction of the decree-holder may bring about an adjustment of the decree to that extent. If a fresh bond or promissory note is taken 'by the decree-holder from the judgment-debtor or from some other person in lieu of the decretal amount, the decree is satisfied in that manner, and though no payment as such is made, there is an adjustment which may be certified under Order 21, Rule 2 of the Code. But if an agreement between the parties has the effect of enhancing the

liability of the judgment-debtor it appears impossible to treat such agreement as bringing about any 'adjustment' of the decree. Instead of reducing it the parties increase the liability of the judgment-debtor by such agreement. The agreement will not result either in discharge or satisfaction of the decree and cannot be said to be related to discharge or satisfaction within the meaning of. Section 47 of the Code.

33. It remains to be considered as to whether the agreement may be treated as one relating to the execution of the decree. Questions as to when, where and how a decree may be executed appear to be questions relating to the execution of a decree. An agreement to pay an increased rate of interest in lieu of time for payment does not appear prima facie to be a matter relating to execution. In Gobardhan Dass case, AIR 1932 Allahabad 273, Sulaiman, C.J., examined the other grounds on which a compromise between the parties in execution proceedings has been sometimes held enforceable without any decree having been, passed in accordance with the compromise. His Lordship examined the proposition as to whether such a compromise merely fixes a mode of satisfaction, and as to whether the compromise must be enforced on the principle of estoppel discussing a number of cases on the subject he has observed that it is not possible to accept any of these as a valid ground. It appears unnecessary to repeat the reasons given by him in his elaborate judgment.

34. It appears therefore that while the Code contains no general restriction on the liberty of the parties to enter into a contract with reference to the rights and obligations under the decree the Code does not permit such contract to be enforced in execution proceedings by engrafting the compromise on the decree which is sought to be executed. Section 42 lays down that a court executing a decree shall have the same powers in executing such decree as if it had been passed by itself and Section 47 further provides that all questions relating to the execution, discharge or satisfaction of the decrees arising between the parties to the suit shall be determined by the court executing the decree. These provisions clearly define the limits of the powers of the executing court. Order 23 Rule 4 further clarifies the position when it makes the other rules in that Order (including rule 3 which deals with compromises between the parties), inapplicable to proceedings in execution of a decree or order. On a correct interpretation of R. 4 it would appear that no agreement or compromise can be entertained or recorded in execution proceedings as might be done during the pendency of the suit. The provisions of Order 20 Rule 11(2) indicate how the decree may be modified in regard to time for payment or installment even where the parties agree, only by the Court which passed the decree. Their Lordships of the Judicial Committee mentioned that in numerous cases a compromise between the decree-holder and the judgment-debtor entered in the course of execution proceedings was duly recorded and enforced. With utmost respect this recording of the compromise might have been possible before Order 23, Rule 4 appeared on the statute book. After this statutory provision it does not appear possible for any such compromise being recorded in execution proceedings and the question of its enforcement can therefore hardly arise. This aspect of the matter does not appear to have been placed before their Lordships.

35. In the light of the above observations it is clear that a compromise entered into between the parties in execution proceedings, by which a judgment-debtor undertook to pay interest at a rate higher than the decreed rate of interest, is not enforceable in proceedings for execution of the decree.

**Nigam, J.**

36. I have had the advantage of reading the judgments of my learned brothers Desai and Upadhyaya. I regret I am unable to agree with the answer proposed by them. I will briefly give my reasons for the different view taken by me.

37. The facts of this reference have already been stated in the judgment of Upadhyaya, J. and it is not necessary for me to repeat them.

38. I further agree with my learned brothers that the execution court cannot go behind or vary the original decree. If I may say so, a decree is only a judicial recognition of the rights of the parties. The statement that the execution court cannot vary the decree only means that the matter cannot be re-agitated and does not, in my opinion, in any manner limit the rights of the parties to enter into adjustments which can be recognized by the execution court. Before the decision of the Privy Council in 66 Ind App 84 it appears to have been, the view that such an agreement could be enforced only by a fresh suit. The decision of the Privy Council in the case referred to above, however, overruled the previous view expressed in the Full Bench decision of this Court in AIR 1932 Allahabad 273.

39. In that case their Lordships of the Privy Council were considering an appeal against a decision of the Avadh Chief Court which specifically relied on the Full Bench case of Gobardhan Das AIR 1932 Allahabad 273 (supra). Their Lordships stated :

"In view of the great difference of judicial opinion disclosed by the decisions of High Courts in India as to the effect in execution cases of bargains for time or other compromises a number of matters have been discussed by learned counsel on both sides. But the first matter for consideration under Section 48 of the Code is whether or not the appellants' application for sale is a "fresh application" or is to be regarded as merely ancillary to or incidental to the prosecution or continuation of the application of 1917 which had been reinstated in 1922."

Their Lordships decided :

"The substance of the matter must prevail over the form of the application which in their Lordships' opinion is not a fresh application as contemplated by Section 48."

Their Lordships further stated :

"This conclusion renders it unnecessary that their Lordships should examine other contentions of the parties save the contention upheld by the Chief Court that in any event interest cannot be recovered in execution of the decree of 22-1-1916 at more than 6% per cent..... Yet, if the Chief Court's view be right, the executing Court is wholly without jurisdiction to include even by agreement interest payable under an arrangement whereby the mortgaged property has been saved from a forced sale under the decree." Considering this question their Lordships stated.

"The authority relied upon by the learned Judges of the Chief Court is ILR 54 All 573 : AIR 1932 Allahabad 273, and the principle invoked is that the original decree cannot be altered or varied by the parties even with the sanction of the Court and that in any case mere consent of the parties cannot confer such a jurisdiction on the executing Court. This line of reasoning is not without support from other decisions of the Indian High Courts though authority and practice to the contrary is also to be found. On this difficult and important question, their Lordships are not in agreement with the view taken by the Chief Court. They do not consider that it takes sufficient account of the facts that the Code contains no general restriction of the parties liberty of contract with reference to their rights and obligations under the decree and that if they do contract upon terms which have reference to and effect the execution, discharge or satisfaction of the decree, the provisions of Section 47, involve that questions relating to such terms may fall to be determined by the executing Court.... No doubt an adjustment, if not recorded under Order 21 Rule 2, cannot be recognised by any Court executing the decree. The compromise of 1927 however was recorded: it was an adjustment even if it was something more and it contained the terms upon which the adjustment was agreed to. It was not an attempt to bring under the decree a liability extraneous to the mortgage or the mortgage suit of *Pradyumna Kumar Mullick v. Dinendra Mullick*<sup>17</sup>, Their Lordships see nothing in the Code requiring them to hold that had the judgment-debtor paid the agreed instalments punctually the appellants, after 1927, could have executed the decree for the whole sum outstanding contrary to the terms of the compromise. Nor do they think it reasonable that such a compromise, if enforced by the executing Court, should not be enforced as a whole. They are not prepared to regard a fair and ordinary

<sup>17</sup>64 Ind App 302 at p. 308 : (AIR 1937 PC 256 at p. 259)

bargain for time in consideration of a reasonable rate of interest as an attempt to give jurisdiction to a Court to amend or vary the decree. Such a bargain has its effect upon the parties rights under the decree and the executing Court under Section 47 has jurisdiction to ascertain its legal effect and to order accordingly. It may or may not be that any and every bargain which would interfere with the right of the decree-holder to have execution according to the tenor of the decree comes under the term 'adjustment' : on that their Lordships do not pronounce. Nor will they here consider what consequences would flow from a finding that a particular bargain for time was not an adjustment. In the absence of

express statutory authority it is not possible in their Lordships' view to regard Order 20, Rule 10, as excluding any possibility of the parties coming to a valid agreement for time to which the Court under Section 47 will have regard. The rule does not apply to all decrees; but only to decrees for the payment of money in so far as they are of that character."

After referring to the limitation of six months for such application to the court which passed the decree, their Lordships stated :

"But this provision.....affords no sufficient ground for holding that the Code makes parties wholly incompetent to come to an arrangement for time enforceable in execution proceedings..... If it appears to the Court, acting under Section 47 that the true effect of the agreement was to discharge the decree forthwith in consideration of certain promises by the debtor, then no doubt the Court will not have occasion to enforce the agreement in execution proceedings, but will leave the creditor to bring a separate suit upon the contract, if, on the other hand, the agreement is intended to govern the liability of the debtor under the decree and to have effect upon the time or manner of its enforcement, it is a matter to be dealt with under Section 47. In such a case to say that the creditor may perhaps have a separate suit is to misread the Code, which by requiring all such matters to be dealt with in execution discloses a broader view of the scope and functions of an executing Court..... They are of opinion that In the present case the compromise can and should be enforced in these execution proceedings."

40. This decision is an authority for the view that such an agreement does not vary the decree. The parties are only coming to a compromise bargaining for time and it was obviously the intention of the parties that the agreement should govern the liability of the debtor under the decree and have effect upon the time and manner and its enforcement. It was thus clearly a matter to be considered under Section 47 of the C.P.C.

41. To say that such a question cannot be considered by the execution court and falls beyond the true scope of Section 47 inasmuch as the agreement amounts to a variation of the original decree and does not amount to an adjustment is, as stated by their Lordships, against the broader view of the scope and functions of an executing court as disclosed by the provisions of the Code of Civil Procedure. In my humble opinion such an agreement concerns the mode of satisfaction of the decree and is covered by the words relating to the execution, discharge or satisfaction of the decree" occurring in clause (1) of Section 47 of the C.P.C., and such an agreement could, therefore, be enforced by the execution court and not by a separate suit. It is not suggested that such an agreement is not valid or that the parties were not entitled to agree to enter into think kind of a contract. The only question that really arises in this reference is whether this kind of an agreement is to be enforced by the execution court or by a separate suit. For a decision of that question the true scope of the powers of an execution court (quite distinct from the question that

it has no power to vary the original decree) has to be considered and it appears to me that there is the whole weight of the authority of the Judicial Committee, of the Privy Council for the proposition that the scope of the authority of the execution court extends to the determination of such questions and also the enforcement of such agreement.

42. I may also point out that this view has been accepted in all the subsequent rulings cited by the learned counsel for parties. To refer only to cases of this Court: in *Bhiki Mal Murari Lal v. Kundan Lal*<sup>18</sup>, Thomas, C.J., followed the view taken in the Privy Council and held that the decision of the Full Bench case in AIR 1932 Allahabad 273 (supra), was no longer the good law. He stated at p. 108 :

"This decision however can no longer be regarded as sound law in view of the decision of the Privy Council in 1939 All LJ 481 ."

In *Chhatra Pati v. Hari Ram*<sup>19</sup>, a Division Bench of this Court held after referring to the decision in AIR 1932 Allahabad 273 (supra) :

"This decision cannot now be regarded as good law in view of a recent decision of the Privy Council which is against this case." After quoting from that decision their Lordships stated :

"There can therefore be no doubt that the compromise which was entered into between the parties was enforceable in execution proceedings."

In the same year, though earlier, in point of time, a Full Bench of this Court in *Mahendra Rao v. Bishambhar Nath*<sup>20</sup>, also followed the Privy Council decision in 66 Ind. App 84 (supra). At P. 273 it was stated :

"It is thus clear that their Lordships recognised the jurisdiction of an executing Court to record an adjustment entered into between the decree-holder and the judgment-debtor. This is what has been done in the present case and the rights of the parties have got to be determined in accordance with the agreement of 19th October, 1926. On this application of compromise being presented before the Court, the Court was pleased to sanction the compromise (certain minors were involved in it) and ordered that the case be struck off as the parties had compromised. On the authority of the Privy Council decision it cannot now be contended that the compromise between the parties filed in execution proceedings cannot be recognized."

These were the decisions prior to coming in force of the Constitution. I would,

<sup>18</sup> AIR 1940 All 107    <sup>20</sup> AIR 1940 All 270

<sup>19</sup> AIR 1940 All 423

however, like to submit that I find no reason for taking a contrary view as regards the powers and functions of an executing court as conferred on it under Section 47 of the C.P.C. The parties arrive at a compromise in relation to their obligations under the decree. They do not vary the terms of the decree. Certain additional conditions are super imposed, but that does not mean that a new decree is substituted. In the present case the decree-holder had an absolute right of executing his decree. The judgment-debtor was not entitled to any time. In an ordinary case a party may secure an adjournment of the hearing on payment of certain costs. If the costs are not paid, a formal order may be prepared and the money realized on the execution side. It does not appear to me that if such a situation arises in an execution proceeding, the execution court would frame a formal order which would be enforced by some other execution court or be the subject of a fresh suit for I do not think the execution court would (acting as an execution court) pass any decree. I do not think it could be held that the execution court would have no authority to enforce its order for payment of costs. Similarly if instead of agreeing to pay specific amount the judgment-debtor agreed to certain terms and obtained time for payment, I see no reason why the terms of that agreement be not enforced by the execution court itself. Here I am not raising the question whether the terms can be enforced in view of Section 74 of the Contract Act. The question is whether the agreement could be looked into by the execution court or whether, being an attempt to vary the original decree and technically not an adjustment under Order 21, Rule 2 of the C.P.C., the execution court would be altogether barred from looking into the agreement and whatever rights the decree-holder has under, such agreements must be enforced by a separate suit. I am of the opinion that there is absolutely no reason why the execution court be not considered to have the power of looking into that agreement and also enforcing it.

43. Now I would refer to two cases of this Court subsequent to coming in force of the Constitution of India. In the case of *Ram Sewak v. Ram Sahai*<sup>21</sup>, a learned single Judge of this Court after referring to Order 21, Rule 2 of the C.P.C., stated :

"No doubt the Rule contemplates a case of payment or adjustment out of Court and not in the presence of the Court itself. But this fact does not materially alter the duty of the Court. Where in the execution proceedings of a decree the parties agree in the presence of the Court or out of Court that the decree may be executed in a particular manner, there is nothing to prevent the court from recording the adjustment between the parties. In execution proceedings the law does not fetter the right of parties to enter into contracts or arrive at compromises. Where a contract or compromise relating to the execution, discharge or satisfaction of a decree has been arrived at, the Court is bound to look into it and to take note of it under Section 47, C.P.C., provided that it has been recorded by the Court as directed by Order 21, Rule 2, C.P.C."

Reliance was then placed on the Division Bench ruling in *Gaya Pershad v. Ram Charan*<sup>22</sup>, Again in the case of *Durga Prasad v. Mst. Ganga Dei*<sup>23</sup>, another learned

<sup>21</sup> AIR 1952 All 169

<sup>23</sup> AIR 1958 All 387

<sup>22</sup> AIR 1940 All 184

single Judge of this Court accepted

the rule of law laid down by the Privy Council in the case of 66 Ind App 84 (supra) and followed it. In the case of *Harbans Narayan Singh v. Uma Shankar Prasad*<sup>24</sup>. Fazl Ali, J., expressed himself thus at p. 70 :

"Thus when the case upon which the learned advocate for the appellants places so much reliance is carefully read and analyzed, it will be clear that it is no authority for the view that the executing court has no jurisdiction to order the payment of the decretal amount by installments even if the decree-holder and the judgment-debtor enter into a compromise which provides for the payment of the decretal amount by installments. As I have already said, such compromise would fall under the provision of Order 21, Rule 2 and the executing Court will be quite competent to make an order in the terms of the compromise."

44. Again in *Meghraj Ramkaranji v. Kesarimal Rikhabchand*<sup>25</sup>, a Bench of the Nagpur High Court held :

"Agreements to compromise a claim to execute a decree may be divided into three classes. In the first class of agreement, the decree-holder agrees to give up all his rights under the decree on the judgment-debtors' doing something or other, and there is no adjustment until the judgment-debtor has done whatever he promised. The second class of agreement is where the decree-holder agrees to give up all his rights under the decree in return for a promise by the judgment-debtor to do something or the other; on the recording of such an adjustment, the decree becomes fully satisfied and the decree-holder can enforce the fulfillment of the judgment-debtor's promise only by a separate suit..... The third, class of agreement is one in which the parties agreed that the decree shall be modified in some way or other and that the decree-holder shall be entitled to execute the decree as modified but not the original decree. The question of the class in which the compromise falls is a question of fact." Again in paragraph 6 it was stated :

"The question then remains whether the parties to a decree can, by agreement, vary that decree and ask the Court to record such an agreement and whether the Court will then have jurisdiction to execute that agreement."

Relying on the Privy Council decision it was held :

"That it was open to the parties to the decree in this case to agree that the decree should be executed by placing Meghraj in possession and that the executing Court therefore had jurisdiction to place him in possession."

45. It is true that in the case of *Jai Narain Ram Lundia v. Kedar Nath*<sup>26</sup>, it has been held that the execution court cannot vary the conditions of the decree. But in that case

<sup>24</sup> AIR 1942 Pat 68

<sup>26</sup> AIR 1956 SC 359

<sup>25</sup> AIR 1948 Nag 35

neither the Privy Council case referred to above nor the scope of the authority of the execution court under Section 47 of the C.P.C., I submit, came up for consideration.

46. On a consideration of the rulings above I am of opinion that it is within the scope of the authority of the execution court in Section 47 of the C.P.C., to entertain and give effect to such a compromise. As pointed out by the Privy Council in its decision, to take a contrary view would be against the broader view of the scope and functions of an executing Court. I would, therefore, answer the question refrained by us in the affirmative and hold 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 decreed rate of interest, is enforceable in a proceeding for execution of the decree.

47. BY THE COURT :-Our answer to the question referred to us by the Division Bench is 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 decretal rate of interest, is not enforceable in a proceeding for execution of a decree. Return the record to the Division Bench concerned with our answer.

Answered in the negative.