

CALCUTTA HIGH COURT

Monmohan Sanyal

Vs

Khalishkhali Co-Operative Bank

(B.K. Mukherjea, J.)

12.01.1937

JUDGMENT

(B.K. Mukherjea, J.)

1. This is a judgment-debtor's appeal arising out of an execution proceeding. The appellant borrowed some money from the respondent bank. On his failure to pay off the debt the respondent submitted the dispute and the arbitrators made an award in favour of the respondent on 21st November 1927 under the provisions of the Co-operative Societies Act (Act II of 1912). The respondent bank made several applications in the Court of the Munsif at Satkhira for execution of this award as a decree of the said Court under Rule 22, Clause 7 of the Rules framed under Section 43, Co-operative Societies Act. The last petition for execution was filed in 1931. The appellant thereupon pleaded an adjustment and wanted to have it recorded under C. 21, Rule 2, Civil P.C. The dispute between the parties in the execution case was settled by a compromise under which the appellant undertook to pay the money due under the award by several instalments spread over a period of nine years. It was also settled by the compromise that if the appellant failed to pay three consecutive instalments in time, the respondent bank would have the right to realise the entire money by execution. The Court before whom this petition of compromise was filed accepted this compromise and dismissed the execution case in terms of the compromise. The appellant, however, did not pay the instalments as agreed upon in the compromise. The respondent bank thereupon made an application on 20th December 1935 for realization by execution of the money due to them under the award as adjusted by the compromise.

2. The appellant objected to the execution mainly on the ground that the terms of the compromise were not enforceable in execution and that the only remedy of the decree-holder was to enforce those terms by a separate suit. The Courts below have overruled the objection of the judgment-debtor and have ordered the execution to proceed. The only point for determination in this appeal is whether the decree-holder is bound under the law to enforce the terms of the compromise by a separate suit and is not entitled to realise the decretal amount by execution. When after the decree parties agree that the decretal amount would be paid by instalments and the Court accepts a compromise and dismisses an execution case, the Court must be deemed to have directed that the payment of the amount decreed should be made by instalments under Order 20, Rule 11(2) of the Code. It is true that the petition on which the order for payment of

the decretal amount by instalments was made, was not made within six months of the decree, but if an order of instalments is made on a time barred application it is not a nullity. The proper remedy of the person who objects to the order is to take appropriate steps for getting that order set aside and so long as that order is not set aside it is binding on him. The order of the executing Court directing the payment of the decretal amount to be made in instalments with the consent of the parties in the present case therefore clearly comes within the provisions of Order 20, Rule 11(2) of the Code and is therefore executable in the present execution proceeding.

3. Again if by the compromise there was an adjustment of the decretal amount within the meaning of Order 21, Rule 2 of the Code, there was no inherent want of jurisdiction in the executing Court over the subject matter and the parties by agreement had the right to arrange their own procedure and to give jurisdiction to the Court to adopt that procedure: see *Pisani v. Attorney-General for Gibraltar*¹ and the case in *Hridoy Mohan Sanyal v. Khagendra Nath Sanyal*. By the compromise the parties agreed that the decretal amount would be paid in several instalments and in default of payment of three consecutive instalments the entire decretal amount would be realisable by execution and not by a separate suit. The respondent bank asks the Court for realization of the decretal amount by execution, that is the procedure agreed upon between the parties at the time of the compromise and it cannot be said that it would be illegal to allow the decree-holder to adopt this procedure for the realization of his just dues. We are therefore of opinion that the Courts below were right in ordering this execution to proceed. The appeal is accordingly dismissed with costs hearing fee being assessed at one gold mohur.

Cases Referred.

1(1874) 5 P C 516