

*Civil Petition.*

1869  
March 4.

Uttauram Manikram.....*Petitioner.*

Girdharlai Motiram.....*Opponent.*

*Limitation—Instalments—Decree payable by Instalments—Execution —  
Act. XIV. of 1859, sec. 20.*

When a decree awards payments by instalments, to be made at particular specified dates, the date when each instalment becomes due is to be deemed the date of the decree in respect of that instalment for the purpose of calculating the time within which execution may be issued to enforce payment of it.

This was an application to set aside an order of C. G. Kemball, District Judge of Surat, declining to execute a decree ordering payment by instalments.

The order of the District Judge was as follows :—

“ In this case it appears that Maniklal Govindram, the appellant, obtained a decree on the 24th of April 1861, against Gordhandas Motichand for the sum of Rs. 900, it being ordered therein that the amount should be liquidated by instalments of Rs. 150 per annum. A Darkhast was presented on the 25th January last for execution in respect of three instalments which respectively became due in Samvat 1921, 1922, and 1923 (the first having become payable on the 27th of February 1865), the decree-holder alleging that the prior instalments had been adjusted out of Court.

“ The Munsif threw out the application for execution on the ground that, as no proceeding had been taken to keep the decree in force within three years next preceding it, no process could issue under the provisions of the Limitation Act; and against that decision Maniklal now appeals. Two questions arise for consideration; namely, whether, assuming that private adjustments of the prior instalments had been made, the lower Court could, under sec. 206 of the Civil Procedure Code, take cognizance of such payments, so as to remove the case out of the Limitation Act, in other words, whether the payment out of Court was a proceeding which would keep the decree in force; and whether, in the event of the private adjustment being held not to be such a proceed-

1869

Utamron  
Manikram  
v.  
Girdharlal  
Motilal.

ing, by the fact of the decree-holder having neglected to take any proceedings in execution within the time prescribed by sec. 20 of the Limitation Act of 1857, he was put out of Court in respect of those instalments which are within time.

“With reference to the first question my opinion is adverse to the appellant’s claim. Sec. 20 of the Limitation Act clearly lays down, that no process of execution shall issue, unless some proceeding shall have been taken to keep the decree in force within three years next preceding the application for such execution, and sec. 206 of the Civil Procedure Code provides that ‘no adjustment of a decree in part or in whole shall be recognized by the Court, unless such adjustment be made through the Court or be certified to the Court by the person in whose favour the decree has been made or to whom it has been transferred.’

“No doubt on the face of it payment of a decree in part is such a proceeding as is contemplated in the section of the Limitation Act above quoted, but in order to render the payment legally sufficient to keep the decree alive it is essential that it should be made through the Court, or certified to the Court by the decree-holder, for without one or other of these acts the adjustment cannot be recognized. The object of sec. 206 of the Civil Procedure Code, as stated by the late Ramprasad Roy in his commentary, was ‘to stop at once the false pleas of payment which used to be constantly set up by debtors to evade the effects of decrees, and, in some instances, by decree-holders to avoid the operation of the Law of Limitation.’ The effect of a private adjustment is in fact *nil*, whether as regards the decree-holder or the judgment-debtor, neither can with any practical advantage plead payment out of Court. If the payments, which the appellant alleges were made, were true, it was the duty of the decree-holder, in order to protect himself, to observe the directions of the law, and he has only himself to thank for his want of caution. With regard to the second question I find I must also give it against the appellant. I was at first inclined to regard the decree for the payment of the

a amount decreed by instalments as not one decree but a series of decrees, each one coming into force on the distinct instalment falling due, giving to the decree-holder a distinct right in respect of each, but after reading the judgment of the Calcutta High Court in a precisely similar case. *Tilak Chunder Goocho v. Gour Monce Debee (a)*, I think it inexpedient to follow out my view. The appeal is dismissed with costs on the applicant."

1869

Utairam  
Mauikram  
v.  
Girdharlal  
Motiram.

The case was heard before Tucker and Gibbs, J.J.

*Pandurang Balibhadra* for the petitioner.

*Gopinath Saldashiv* for the opponent.

Tucker, J.—This is an appeal from an order made by the District Judge on an application for the execution of a decree to which sec. 20 of Act XIV. of 1859 was applicable.

The petitioner held a decree payable by instalments, of which the first three instalments have been satisfied, he alleges, by payments out of Court. The fourth instalment only became due on the 27th of February 1865, and the petitioner applied to the Munsif's Court at Balsar, on the 25th of January 1868, to issue process to enforce the payment of the fourth instalment, and of all subsequent instalments which had accrued due.

The Munsif held that, as no proceeding had been taken to keep the decree alive within three years immediately preceding the present application for execution, no process could issue. He, therefore, rejected the petitioner's application, and his order was affirmed by the District Judge, on appeal, on the same grounds.

In this decision, the District Judge considered it right to follow a ruling of a Divisional Bench of the High Court at Calcutta, *Tiluck Chunder v. Gour Monce Debee* though he was apparently not entirely convinced of the soundness of the interpretation of the law which had been pronounced.

We have very carefully considered the reasons given by the learned Judges at Calcutta (Justices Loch and L. S.,

(a) 6 Cal. W. Rep. Mis. R. 92.

1869  
 Utamram  
 Manikram  
 v.  
 Girdharlal  
 Motiram.

Jackson), for the judgment pronounced by them in the case which the District Judge has cited, but they are not satisfactory to our minds. It appears to us that when a decree awards payments by instalments to be made at particular specified dates, the date when each instalment becomes due must be held to be the date of the decree with respect to that particular instalment, and for the purpose of enforcing the payment of that instalment. It would be obviously very inequitable, if a period of limitation were to commence to run against a decree-holder from a date earlier than the earliest date at which it would have been possible for him to obtain payment of a particular instalment, and we cannot suppose that the Legislature could have intended a result which would be so plainly opposed to all ordinary ideas of justice.

It has been already pointed out by the learned Chief Justice at Calcutta, Sir Barnes Peacock, (b) and has been noticed by different Judges of this High Court and of the High Courts in other Presidencies that, according to the literal wording of sec. 20, no process of execution could ever issue to enforce a judgment even within a week from the date of it, unless some proceeding were taken to enforce or keep it in force within three years next preceding the application for execution. The framers of this section have omitted to declare a term within which the first application must be presented and apparently considered that there must always have been a previous proceeding, even anterior to the first one. In like manner they appear to have overlooked that there were decrees, by which payments were directed to be made at dates different from and later than the date on which the decree was passed. The *reductio ad absurdum*, to which a literal construction of this section would lead, has caused the Chief Courts in all the Presidencies to reject this construction, and to interpret the section in accordance with what appeared to the several Judges, who have adjudicated on the matter, to have been the real meaning of the Legislature, so far as it could be gathered from the general purport of the Act ;

(b) 7 Calc. W. Rep. Civ. R. 515, cases 445 of 1866 and 719 of 1866.

and it seems to us with respect to the question immediately under our consideration, that it will be right for us to follow a similar course.

The judgment of the Calcutta Court, from which we have expressed our dissent, was passed with reference to a decree to which sec. 21 Act XIV. of 1859 alone applicable; and, though the arguments of the learned Judges was founded on the language of both secs, 20 and 21, yet, strictly speaking, their decision must be considered as a judicial interpretation of sec. 21 only. In Bengal it has been ruled that these sections must be construed together, but at Bombay we have not been able to concur in this view; and there have been several recent rulings of this Court (c), which declare that each of these sections must be read and interpreted as conveying separate and distinct rules with reference to different classes of decrees. There are no words in sec. 20 which prescribe that the date, on which a decree has been passed, is to be the starting point from which the term of limitation is to run, and, in the absence of such words, it is a legitimate and reasonable construction that, in decree payable by instalments, the date, when each separate instalment first becomes due, is the date, from which the term of limitation must be held to commence, and consequently an application for execution made within three years from that date will be within time.

Under this view, we reverse the orders of the District Judge and Munsif, and direct that process of execution issue with reference to all the instalments of which execution has been sought which come within the rule we have laid down.

GIBBS, J.—Concurred.

(c) 3 Bom. H. C. Rep. A. C. G. 177, and 5 Ibid. 102.

1869  
Uttamra  
Manikram  
v.  
Girdharlal  
Motiram.