

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kimball.*

1884  
February 7.

PA'NDURANG RA'MCHANDRA CHOWGHULE, PLAINTIFF, v.  
NA'RA'YAN AND ANOTHER, DEFENDANTS.\*

*Decree, adjustment of, out of Court—Civil Procedure Code (XIV of 1882), Sec. 258—  
Contract—Consideration.*

The plaintiff held a decree against the defendant, and in execution of it attached the defendant's property. A compromise was then made by which the defendant executed to the plaintiff the bond sued upon, in satisfaction of the judgment-debt. The compromise, however, was not certified to the Court.

*Held* that the bond was without consideration. The adjustment of the decree, not having been certified to the Court, was not binding on the plaintiff and, therefore, constituted no valid consideration.

UNDER section 617 of the Civil Procedure Code this case was submitted for the opinion of the High Court by Ráo Sáheb S. M. Chitalé, Second Class Subordinate Judge of Mahád.

The plaintiff Pándurang sued the defendants for Rs. 25, being principal and interest due on a bond dated the 10th December 1879. The defendants admitted the execution of the bond, and claimed a set-off of Rs. 5 on account of service rendered to the plaintiff by the first defendant's brother.

It appeared from the bond and from the examination of the plaintiff's pleader that the first defendant had owed to the plaintiff a judgment-debt under decree No. 601 of 1878, and that the plaintiff had taken out execution for the recovery of it by attachment of the defendant's property. At the time of the attachment a compromise was made, by which it was agreed that the judgment-debtor (defendant No. 1) should execute to the judgment-creditor (plaintiff) the bond now sued upon, in satisfaction of the judgment-debt,—defendant No. 2 becoming a surety. The compromise or adjustment of the decree was not certified to the Court. The Subordinate Judge referred the following questions:—

1. Whether the consideration for the bond was the satisfaction of the decree No. 601 of 1878? 2. Whether the Court could

\* Civil Reference, No. 56 of 1883.

recognize the adjustment which had not been certified to it?

3. Whether the bond was void for want of consideration?

The Subordinate Judge was of opinion that (1) the satisfaction of the decree was the consideration for the bond; (2) that the Court could not recognize the adjustment or satisfaction, as it had not been certified to it; and (3) that the bond was void for want of consideration.

There was no appearance of parties in the High Court.

SARGENT, C. J.—We think that the Subordinate Judge was right in holding that the bond was void without consideration. The adjustment of the decree not having been certified to the Court, was not binding on the plaintiff, and, therefore, constituted no valid consideration.

1884

PANDURANG  
RĀMCHANDRA  
CHOWGHULE  
v  
NĀRĀYAN.

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.*

HARGOVAN PARBHUDA'S, DECREE-HOLDER *v.* HIRA' HARIBHAI,

JUDGMENT-DEBTOR.\*

*February 7.*

*Decree—Collector—Execution of a decree by Collector—Irregularities in execution sale—Power of a Civil Court to interfere.*

When a decree is sent to a Collector for execution, the Civil Court ought not to control his proceedings, unless it is set in motion by one of the parties to the execution proceedings.

*Quære.*—Whether a Civil Court can, of its own motion, control the proceedings of the Collector to whom a decree has been sent for execution.

UNDER section 617 of the Civil Procedure Code (XIV of 1882) this case was submitted for the decision of the High Court by Rāo Sāheb M. B. Hora, Second Class Subordinate Judge of Anklesvar.

Hargovan obtained a decree against Hirā for Rs. 460 and costs, and applied for the execution of it in 1882. His application was granted, and the decree was sent to the Collector of Broach for execution. On the 12th April, 1883, the Māmlatdār of Anklesvar under the orders of the Collector put up for sale some immoveable property belonging to the judgment-debtor. At that

\* Civil Reference, No. 63 of 1883.