

1884

MALHÁRI  
v.  
NARSO  
KRISHNA.

“Following the Allahabad High Court case, referred to above, I have rejected the applicant’s prayer, but contingent on the orders of the High Court.”

There was no appearance in the High Court on behalf of either party.

The judgment of the Court was delivered by

KEMBALL, J.—Although a Subordinate Judge invested under Act X of 1869, sec. 28, with Small Cause powers acquires the jurisdiction of two Courts, he does not become the Judge of two Courts, but remains the Judge of a Subordinate Court.

## APPELLATE CIVIL.

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

1884  
November 28.

DAVLATSING VALAD DA'YA'RAM, PLAINTIFF, v. PA'NDU VALAD  
CHANDRA'BHA'U AND TWO OTHERS, DEFENDANTS.\*

*Civil Procedure Code Act XIV of 1882, Sec. 257 A—Agreement—Judgment-debt—Sanction of Court—Contract void—Principal—Surety.*

An agreement entered into to pay interest not awarded by a decree in addition to the sum decreed without the sanction of the Court which passed the decree is void under section 257 A. of the Code of Civil Procedure, Act XIV. of 1882, so far as it operates in satisfaction of the judgment-debt.

When the void part of an agreement can be properly separated from the rest, the latter does not become invalid; but where the parties themselves treat debts—void as well as valid—as a lump sum, the Court will regard the contract as an integral one, and wholly void, upon which neither the principal nor the sureties can be sued.

THIS was a reference under section 617 of the Code of Civil Procedure, Act XIV of 1882, from Ráv Sáheb D. G. Ghárpuré, Subordinate Judge (Second Class) at Yával.

He stated the case as follows :—

“The plaintiff sues on an instalment bond (exhibit 3) dated April 26, 1882, executed by defendants Pándu and Zendu, their deceased father, Chandrábháu, and by Bhoju, the deceased father of defendant Dágdu, for the recovery of the first two instalments thereunder due, with interest.

\* Civil Reference, No. 37 of 1884.

“The bond is admitted by Pándu and Zendu, and is proved to have been executed by the deceased Chandrábháu and Bhoju. The consideration mentioned in it is as follows:—

“The deceased Chandrábháu and Bhoju owed to plaintiff Rs. 340-10-0 under an instalment-bond dated January 7, 1877. A cow, worth Rs. 33, was given to plaintiff by them in part satisfaction of it, and the debt was thereby reduced to Rs. 307-10-0. Subsequently out of this sum three instalments, each of Rs. 30, fell due, and plaintiff sued them in this Court (No. 847 of 1881) for the recovery of Rs. 90, the amount of the said over-due instalments, with interest Rs. 37, and obtained a decree against them for Rs. 127 with costs. A portion of the said private debt of Rs. 307-10-0 having thus been converted into a judgment-debt, the private debt was reduced to Rs. 217-10-0. Deceased Chandrábháu, having been arrested in execution of that decree, paid off plaintiff’s costs under it, including those of execution, and settled the matter amicably in the following way. The judgment-debt of Rs. 127 was added to the balance of the private debt Rs. 217-10-0, and to the amount of one rupee then advanced by plaintiff to Chandrábháu—thus making the entire debt Rs. 345-10-0. Rs. 34-6-0 were added to this sum as interest in advance, making, in all, Rs. 380. The deceased Chandrábháu then as principal, and Zendu and Pándu, his sons, and the deceased Bhoju, as sureties, executed a bond in plaintiff’s favour for the satisfaction of that sum of Rs. 380 by nineteen instalments, and this is the bond which forms the subject of the present suit.

“No satisfaction of the decree in Suit No. 847 of 1881 has admittedly been certified to the Court by the plaintiff, and no sanction, such as that contemplated by section 257 A. of the Civil Procedure Code, was obtained to the bond. Plaintiff, however, contends that the bond, although for the satisfaction of a judgment-debt by instalments and interest not allowed by the decree, is yet not invalid under the said section 257 A., because that section applies only to contracts between persons who are parties to the decree, and not to contracts made by judgment-debtors with others not such parties. The bond sued upon, he says, is not simply between plaintiff, the judgment-creditor, on the one

1884

DAVLAINING

v.  
PÁNDU.

1884  
 DAVLATSIKING  
 v.  
 PÁNDU.

hand, and Chandrábháu and Bhoju, the judgment-debtors, on the other, but was also executed by Pándu and Zendu, who were not judgment-debtors under that decree. Again, he urges that he is willing and ready to enter satisfaction of the decree just now before the final order is passed in this case (exhibit 8), and that after such satisfaction the bond cannot be held to be without consideration.

"I feel considerable doubt upon both of these points, and as such bonds are matters of daily occurrence in Mofussil Courts, think it advisable to refer them to the High Court for an authoritative decision, giving such Courts a correct guide in their daily working and practice" \* \* \*

The Subordinate Judge referred to the following cases:—*Yella Chetti v. Minusami Reddi*<sup>(1)</sup>; *Ganesh v. Abdullabeg*<sup>(2)</sup>; *Pándurang v. Náráyan*<sup>(3)</sup>; and submitted the following questions for decision:—

"1. Whether the portion of the bond sued upon, relating to the judgment-debt, is not invalid under section 257 A. by reason of its having been executed by judgment-debtors and also by others not such debtors.

"2. Whether such portion of the bond is not invalid if satisfaction of the decree, which plaintiff is just now willing and ready to enter, is entered accordingly.

"My opinion upon both the points is that the bond is valid if plaintiff enters satisfaction of the decree.

"This case being within the Small Cause jurisdiction of this Court, no appeal from a decree in it will lie."

There was no appearance in the High Court on behalf of either party.

The judgment of the Court was delivered by

SARGENT, C. J.—The agreement, so far as it operates in satisfaction of the judgment-debt obtained in Suit No. 847 of 1881, is void as regards Chandrábháu under section 257 A. of the Code of Civil Procedure,—interest, which was not allowed by the decree

(1) I. L. R., 6 Mad, 101.

(2) Printed Judgments for 1884, p. 129.

(3) Printed Judgments for 1884, p. 25.

having been added to the amount of the said debt. This would not invalidate the rest of the agreement if the part which is void could be properly separated from it. The parties, however, have treated the two debts as a lump sum, and under these circumstances we think the contract must be regarded as an integral one. The agreement being void, the action against the present defendants, who are only sureties, also fails.

*Order accordingly.*

## APPELLATE CIVIL.

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

JA'VERMAL HIRA'CHAND, APPLICANT, *v.* UMA'JI  
HAYABATI, OPPONENT.\*

1884  
November 23.

*Civil Procedure Code, Act XIV of 1882, Sec. 341—Decree—Execution—Transfer—Assignment.*

The transferee of a decree is not entitled to have execution as of right like the original decree-holder; if, however, the transfer be by assignment, and in writing, section 232 of the Code of Civil Procedure, Act XIV of 1882, enables the transferee to apply for, and the Court to proceed to execution in the manner therein provided.

THIS was a reference under section 617 of the Code of Civil Procedure (XIV of 1881) made by Rāv Sáheb V. K. Joglekar, Subordinate Judge of Pátas, who stated the case as follows:—

“ A conciliation agreement purporting to have been executed before Mr. Gopál Annáji, the Conciliator of Bárámáti, between one Sháligrá́m Táráchand and one Umáji bin Hayabati was ordered to be filed in Court on the 26th of November, 1880. The said agreement on the date it was ordered to be filed in Court commenced, under section 45 of the Dekkhan Agriculturists' Relief Act, (XVII of 1879), to take effect as a decree.

“ 2. One Javermal Hiráchand on the 9th of June, 1884, presented a *darkhast* for the execution of the said agreement, alleging that it was orally assigned to him by the said Sháligrá́m Táráchand.

\* Civil Reference, No. 40 of 1884.