at least a criminal Court would have to decide whether the landlord had or had not, without just or sufficient cause, cut off or withheld the essential supply or service previously enjoyed by his tenant. We do not, therefore, think that Mr. Justice Weston and Mr. Justice Shah intended to lay down that a complaint under sub-s. (4) cannot lie, unless an application has first been made to a civil Court for the restoration of the essential supply or service under sub-s. (2) of s. 24. The argument that the learned Magistrate could not convict the appellant under sub-s. (4) of s. 24 of the Bombay Rents, Hotel and Lodging House Rates Control Act, because the complainant-tenant had not first approached the Small Causes Court for the restoration of the supply of electric energy, cannot, therefore, be accepted.

[The rest of the judgment is not material to the report.]

Conviction and sentence affirmed.

K. B. S.

FULL BENCH

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, Mr. Justice Gajendragadkar, and Mr. Justice Dixit.

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Civil Procedure Code (Act V of 1908), s. 73—Rateable distribution—One decree against debtor himself and another decree against his legal representatives—Whether Judgment-debtor is same in both decrees—"Same judgment-debtor," meaning of—Liberal interpretation of expression.

A decree passed against M and sought to be executed against his legal representatives after his death and another decree obtained against M's legal representatives in a suit filed against M during his lifetime but continued against his legal representatives after his death, are both decrees passed against the 'same judgment-debtor' within the meaning of s. 73 of the Code of Civil Procedure, 1908.

Similarly, a decree passed against M and sought to be executed against his legal representatives after his death and another decree passed against the legal representatives of M in a suit filed against them

* Second Appeal No. 201 of 1947 with S. A. No. 202 of 1947.

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after M's death, are both decrees passed against the 'same judgment-debtor' within the meaning of the said s. 73.

Chhotalal v. *Nabibhai*,[1] and *Mulchand* v. *Shiddappa*,[2] followed.

Govind v. *Mohoniraj*,[3] and *Chunilal* v. *Broach Urban Co-operative Bank Ltd.*,[4] overruled.

Ram Krishnan Chettiar v. *Vishwanathan Chettiar*,[5] *Hoti Lal* v. *Chatura Prasad*,[6] and *Shiv Charan Das* v. *Ram Saran Das*,[7] approved.

Jahar Lal v. *Lalita Sundari*,[8] and *Hemlata Dasi* v. *Bengal Coal Co.*,[9] dissented from.

Bithal Das v. *Nand Kishore*,[10] referred to.

Although the Legislature has used the expression "the same judgment-debtor" in s. 73, the emphasis is more on what is realised in execution than on the identity of the judgment-debtor. What is to be distributed rateably are the assets and if the assets belong to the same person, then the principle of rateable distribution would be open to the judgment-creditor even though the judgment-debtors on record are different. The expression has to be construed in its own context, and when the context deals with the realisation of the assets, it is clear that the Legislature does not intend that it should be construed in a strict literal sense.

SECOND APPEALS against the decision of N. C. Vakil, Esquire, Assistant Judge, Dharwar, in appeals from the decision of S. S. Tallur, Esquire, Civil Judge, Junior Division, at Gadag.

Suit for money.

One Mudalingangouda of Jigalur in Gadag taluka of Dharwar district was indebted to several parties. The creditors obtained money decrees against the said Mudalinangouda under different circumstances and they formed three sets of decree-holders. The first set of decree-holders consisting of plaintiffs Nos. 1 to 4 and defendant No. 11 filed suits and obtained their decrees during the lifetime of Mudalingangouda. The second set of decree-holders consisting of defendants Nos. 1 to 5 filed suits during Mudalingangouda's lifetime, but he died during the pendency of those suits and therefore the decrees therein were passed against his legal representatives (defendants Nos. 12 to 15) to the extent of the assets of the deceased come to their hands. The last set of decree-holders consisting of defendants Nos. 6 and 7 filed suits after the death of Mudlingangouda against his legal representatives

(1) (1905) 29 Bom. 528.
(2) (1946) 48 Bom. L. R. 571 (F. B.).
(3) (1901) 3 Bom. L. R. 407.
(4) (1937) 39 Bom. L. R. 815.
(5) (1935) 59 Mad. 93 (F. B.).
(6) (1941) All. 77 (F. B.)
(7) (1943) 24 Lah. 497, (F. B.).
(8) [1930] A. I. R. Cal. 454.
(9) [1935] A. I. R. Cal. 738.
(10) (1901) 23 All. 106.

(defendants Nos. 12 to 15) and obtained like decrees against those legal representatives.

In execution of the aforesaid decrees, in all thirteen darkhasts were filed against defendants Nos. 12 to 15 but assets to the extent of Rs. 6,425 were realised only in the darkhast filed at the instance of the plaintiffs. On October 13, 1937, the executing Court passed an order for rateable distribution of the assets in favour of defendants Nos. 1 to 5 and defendants Nos. 6 and 7. In accordance with that order payments were made to different decree-holders on the 18th and 19th of that month.

On October 18, 1940, the plaintiffs filed the present suit against the defendants claiming a refund of the amounts which had been obtained on rateable distribution by the defendants Nos. 1 to 5 and 6 and 7 contending that their own decrees and the decrees of those defendants were not passed against the "same judgment-debtor" within the meaning of s. 73 of the Civil Procedure Code, 1908, inasmuch as the former were obtained against Mudalingangouda himself whereas the latter were passed against the legal representatives of the said Mudalingangouda.

The trial Court decreed the suit and that decree was confirmed in appeal by the Assistant Judge, Dharwar. The defendants thereupon appealed to the High Court.

The appeal came on for hearing on November 9, 1951, before a Bench consisting of Bhagwati and Chainani JJ. when their Lordships referred the following questions for the decision of a Full Bench:—

"1. Whether a decree passed against M and sought to be executed against his legal representatives after his death and another decree obtained against M's legal representatives in a suit filed against M during his lifetime but continued against his legal representatives after his death, can be said to have been passed against the same judgment-debtor within the meaning of s. 73 of the Code of Civil Procedure?

2. Whether a decree passed against M and sought to be executed against his legal representatives after his death and another decree passed against the legal representatives of M in a suit filed against the legal representatives after M's death can be said to have been passed against the same judgment-debtor within the meaning of s. 73 of the Code of Civil Procedure?"

The judgment of the Court delivered by Bhagwati J. was as under:

BHAGWATI J. These are two second appeals against the decision of the learned Assistant Judge, Dharwar, dismissing

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the appeals and confirming the decrees passed by the learned Civil Judge (J. D.) at Gadag.

One Mudlingangouda was indebted to various parties. Plaintiffs Nos. 1 to 4 and defendant No. 11 filed suits against him and obtained money decrees against him during his lifetime. Defendants Nos. 1 to 5 also filed suits against him during his lifetime but during the pendency of these suits he died. His legal representatives were brought on record of these suits and decrees were ultimately passed in favour of defendants Nos. 1 to 5 against defendants Nos. 12 to 15 who were the legal representatives of the deceased Mudlingangouda limited to the extent of the assets of Mudlingangouda come to their hands. Defendants Nos. 6 and 7 filed their suits after the death of Mudlingangouda against the legal representatives of Mudlingangouda and they also obtained money decrees against the legal representatives of Mudlingangouda limited of course to the extent of the assets of Mudlingangouda come to their hands. There were thus decrees passed against Mudlingangouda during his lifetime in favour of plaintiffs Nos. 1 to 4 and defendant No. 11. There were decrees passed against his legal representatives in suits which were instituted against him during his lifetime but in which the legal representatives were brought on the record on his death pending the disposal of those suits in favour of defendants Nos. 1 to 5, and there were decrees passed against the legal representatives of the deceased Mudlingangouda in suits which were instituted after his death only against his legal representatives in favour of defendants Nos. 6 and 7. Thirteen darkhasts were filed against the legal representatives of the deceased Mudlingangouda and in the darkhast which was filed at the instance of plaintiffs Nos. 1 to 4, assets to the extent of Rs. 6,425 were realised and were in the custody of the executing Court. Defendants Nos. 1 to 5 and defendants Nos. 6 and 7 applied for rateable distribution of these assets under s. 73 of the Code of Civil Procedure on October 13, 1937. The executing Court passed an order for rateable distribution in favour of all these applicants. In accordance with the terms of this order payments were made to the respective parties on October 18 and 19, 1937. On October 18, 1940, the plaintiffs filed the suit out of which these appeals have arisen making defendant No. 11 also a party-defendant to the suit claiming a refund of the amounts which had been obtained on rateable distribution by defendants Nos. 1 to 5

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and 6 and 7, contending that the decrees which were passed in their favour were against Mudlingangouda himself but the decrees which were passed in favour of defendants Nos. 1 to 5 and Nos. 6 and 7 were passed against the legal representatives of the deceased Mudlingangouda, with the result that these decrees could not be said to have been "passed against the same judgment-debtor" within the meaning of the expression as used in s. 73 of the Code of Civil Procedure. It may be noted that defendant No. 2 had transferred his decree in favour of defendant No. 9, defendant No. 10 was the owner of defendant No. 5's shop and defendant No. 8 had been transposed as plaintiff No. 4. Defendants Nos. 12 to 15 were made party-defendants to the suit in their capacity as the legal representatives of the deceased Mudlingangouda and they were impleaded as party defendants in so far as they might be affected by the order ultimately passed by the Court in the suit.

On July 6, 1943, the trial Court at Gadag passed a decree in favour of the plaintiffs holding that the decrees against Mudlingangouda and the decrees passed against the legal representatives of Mudlingangouda could not be said to have been passed against the same judgment-debtor. This decision was taken to appeal and the learned Assistant Judge at Dharwar, who heard the appeal, following the decisions of this Court in *Govind* v. *Mohoniraj*[1] and *Chunilal* v. *Broach Urban Co-op. Bank, Ltd.*[2] dismissed the appeal and confirmed the decree passed by the trial Court. In the judgment which he delivered, the learned Assistant Judge adverted to a decision of the full bench in *Mulchand Kesaji* v. *Shiddappa*[3] which was also a decision on the construction of s. 73 of the Code of Civil Procedure, but which referred not to the question which arose directly for decision by him but to the question whether the decree which was passed against A, B and C and the decree which was passed against A alone could be said to be decrees passed against the same judgment-debtor. The full bench there, in *Mulchand Kesaji* v. *Shiddappa*,[3] put a liberal construction on the words "the same judgment-debtor" used in s. 73 of the Code of Civil Procedure and put great stress on the identity of property against which execution was sought rather than the identity of persons against whom decrees were passed *eo nomine*. The learned Assistant Judge appeared to have thought that though such liberal construction should as

(1) (1901) 3 Bom. L. R. 407. (2) (1937) 39 Bom. L. R. 815.
(3) (1946) 48 Bom. L. R. 571, F. B.

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well have been put in the matter of the decrees which came for scrutiny before him, he was concluded by the two decisions of our High Court reported in the case of *Govind* v. *Mohoniraj*[1] and in the case of *Chunilal* v. *Broach Urban Co-op. Bank Ltd.*,[2] above referred to. He, therefore, dismissed the appeal and confirmed the order passed by the trial Court. These second appeals have been filed by defendants Nos. 1, 3, 4 and 9 and by defendant No. 6 against that decision of the learned Assistant Judge and have come on for hearing and final disposal before us.

The decision of these second appeals turns on the construction to be put upon the words "passed against the same judgment-debtor" in s. 73 of the Code of Civil Procedure. When a decree is passed against a person, it is necessarily passed against him *eo nomine* though the decree may be passed against him personally or limited to the extent of the assets of a deceased person in his hands or to the extent of his interest in certain properties. It is nonetheless a decree passed against him and he would be the judgment-debtor against whom the decree has been passed. The definition of "judgment-debtor" is contained in s. 2 (*10*) of the Code of Civil Procedure where "judgment-debtor" is defined as any person against whom a decree has been passed or an order capable of execution has been made. This definition lays stress on the fact of the decree having been passed or the order capable of execution having been made against a person, and the definition has no relation whatever to the existence or otherwise of property which may be attached or realised in execution. If, therefore, strict regard be had to the wording of s. 73 and s. 2 (*10*) of the Code of Civil Procedure, the only meaning which could be given to these words "passed against the same judgment-debtor" would be that the decree should be passed against a person who is described in the decree as the judgment-debtor. A decree can be passed, as observed above, against a judgment-debtor personally or limited in the manner above stated. Nonetheless it would be a decree passed against that judgment-debtor, and the mode in which the execution of that decree can be obtained is a matter to be dealt with in execution and does not affect the question as to who is the person against whom the decree is passed or in other words who is the judgment-debtor in the decree.

[1] (1901) 3 Bom. L. R. 407. [2] (1937) 39 Bom. L. R. 815.

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This was the strict construction which was put upon these words "passed against the same judgment-debtor" in the two cases which were decided by our High Court, *Govind* v. *Mohoniraj*[1] and *Chunilal* v. *The Broach Urban Co-op. Bank, Ltd.*,[2] The facts of these cases were on all fours with the case before us and it was held that the decrees were not passed against the same judgment-debtor and therefore there was no question of rateable distribution amongst these several sets of decree-holders. When the case of *Chunilal* v. *The Broach Urban Co-op. Bank, Ltd.*, came to be decided the attention of the learned Judges was drawn to the fact that the Madras High Court in the full bench case of *Rama Krishna Chettiar* v. *Vishwanathan Chettiar*[3] had given a contrary decision and had held that a legal representative against whom a decree had been passed in respect of a deceased's estate and the deceased person against whom a decree was passed in his lifetime but which was sought to be executed against his property in the hands of his legal representative could be described as "the same judgment-debtor" within the meaning of s. 73 of the Code of Civil Procedure. In spite of the attention of the Court being drawn to that decision of the Madras High Court, the learned Judges preferred to follow the decision of our own Court in *Govind* v. *Mohoniraj*, particularly because the Code of Civil Procedure of 1882 was repealed and the present Code was enacted in 1908, seven years after that decision was pronounced by our appeal Court and yet Sir Lawrence Jenkins, who was himself a member of the special committee, did not think it necessary to make any change in the wording of s. 73 of the Code of Civil Procedure. This decision pronounced in the year 1937 has stood till date and if the principle of *stare decisis* was applicable, we would be reluctant to disturb the even course of decisions. The principle of *stare decisis*, however, applies where the questions of title to immoveable property are concerned or where citizens have guided themselves by the particular position laid down in law to their detriment so that a reconsideration of the decision would work great prejudice to them. When questions of distribution of assets come up before the Courts, there is no such inherent disability which would deter the Court from, if necessary, disturbing what till then has been understood to be the position in law. We are, therefore, not inclined to

[1] (1901) 3 Bom. L. R. 407. [2] (1937) 39 Bom. L. R. 815.
[3] (1935) 59 Mad. 93, F. B.

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apply the principle of *stare decisis* to the present position in regard to the construction of the words "passed against the same judgment-debtor."

On a construction of these words "passed against the same judgment-debtor" used in s. 73 of the Code of Civil Procedure, there was another series of authorities obtaining in our Court where the question arose in regard to decrees passed against A, B and C and decrees passed against A only, A being a common judgment-debtor in those decrees. In *Chhotalal* v. *Nabibhai*[1] a division bench of this Court, of which Sir Lawrence Jenkins himself was a member, held that s. 295 of the Code of Civil Procedure (which is the same as s. 73 of the Code of Civil Procedure of 1908) governed where the first decree was against three judgment-debtors and the decree on which the petitioner relied was against one of those three. Reliance was placed on the decision of the full bench of the Calcutta High Court in *Ganesh Das Bagria* v. *Shiva Lakshman Bhakat*,[2] which had been recently approved by the Allahabad High Court in *Gatti Lal* v. *Bir Bahadur Singh*,[3] and was in accord with the view of the Madras High Court in *Ramanathan Chettiar* v. *Subramania Sastria*.[4] Even though a different view had been adopted in *Nimbaji Tulsiram* v. *Vadia Venkati*,[5] that view did not find favour with the learned Chief Justice as it was a decision of a single Judge and was not binding on the division bench and the learned Judges declined to follow that decision out of deference to the concordance of opinions of the other High Courts as above mentioned. A contrary view was, however, adopted by Beamount C. J. in *Laxman Anant* v. *Govind Rambhat*[6] and it was held that on a true construction of s. 73 that it could not be said that a decree against the father and a decree against the father and the son were decrees against the same judgment-debtor. It appears that the decision in *Chhotalal* v. *Nabibhai* was not cited before Beaumont C. J. Nonetheless these two decisions were reached by different division benches of our High Court and this conflict had therefore to be resolved when a similar question cropped up before Mr. Justice Lokur and Mr. Justice Weston on February 28, 1945. In view of this conflict of decisions, a reference was made to a full bench of

(1) (1905) 29 Bom. 528.
(2) (1903) 30 Cal. 583, F. B.
(3) (1904) 27 All. 158.
(4) (1902) 26 Mad. 179.
(5) (1892) 16 Bom. 683.
(6) (1941) 43 Bom. L. R. 695.

this Court and the questions which were referred to the full bench in *Mulchand Kesaji* v. *Shiddappa*[1] were (p. 576):

"Where one creditor M has obtained a money decree against H and his two undivided sons, and another creditor S has also obtained a money decree against H alone but not against his sons, and assets are realized by the attachment and sale of the joint family property of H and his sons in execution of M's decree.

(1) is S entitled to a rateable distribution in the assets under s. 73 of the Civil Procedure Code, and (2) if so, is only H's share in the assets liable to rateable distribution, or are the entire assets liable to be distributed rateably (*a*) when S's decree is passed against H as the manager of the joint family or (*b*) when H's sons are under a pious obligation to pay off their father's debts?"

In the referring judgment Mr. Justice Lokur observed (p. 573):

"......We prefer to take the same view not merely on the ground of uniformity or *stare decisis*, but we are of opinion that the expression 'passed against the same judgment-debtor' ought to be liberally construed. The object of s. 73 being to provide for rateable distribution of assets upon which two or more decree-holders have equal claims, the words "passed against the same judgment-debtor" must be interpreted as referferring more to the property which a judgment-debtor represents than to the person against whom execution has been sought."

This ratio was in effect adopted by the full bench in the judgment delivered by Mr. Justice Gajendragadkar. The learned Judge discussed the various authorities which were cited before the full bench and referred also to Maxwell on Interpretation of Statutes and Brooms Legal Maxims and to a decision of their Lordships of the Privy Council in *Shannon Realities* v. *Michel* (*Ville de*)[2] and observed (p. 578):

"...Therefore, reading the section as a whole by itself, apart from authorities, it seems to me that in case of decrees passed against more judgment-debtors than one the words 'against the same judgment-debtor' in s. 73 cannot be said to require the identity of all judgment-debtors, and that even if one or more of such judgment-debtors are common, the said section would apply."

The learned Judge further observed (p. 578):

"...Having regard to the object with which s. 73 was enacted and having regard to the very unreasonable consequences to which the narrow *eo nomine* construction would necessarily lead, I feel disposed to hold that a more liberal, though perhaps less literal, construction of the material words should be adopted."

Having adopted that cannon of construction the learned Judges of the full bench followed *Chhotalal* v. *Nabibhai* in

(1) [1946] 48 Bom. L. R. 571, F. B. (2) [1924] A. C. 185.

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preference to the opinion expressed by Beaumont C. J. in *Laxman Anant* v. *Govind Rambhat.* Towards the end of that judgment, however, it was further observed as under (p. 582):

"While referring to the decision in *Laxman Anant* v. *Govind Rambhat,*[1] I have cited the observations of Beaumont C. J. in regard to another question which often arises under s. 73; that question relates to cases where decrees are passed against the same person during his lifetime and against his personal representative after his death. In regard to that question the view which this Court took in *Govind Abaji Jakhadi* v. *Mohoniraj Vinayak Jakhadi*[2] has not so far been dissented from. On the contrary, it has been affirmed in *Chunilal* v. *Broach Urban Co-operative Bank Ltd.* In his referring judgment Mr. Justice Lokur has also mentioned this point and has pointed out that the view of this Court has been dissented from in Calcutta, Madras, Allahabad and Lahore. In that connection Mr. Justice Lokur has indicated that he would be inclined to construe the words "passed against the same judgment-debtor" in s. 73 'as referring more to the property which a judgment-debtor represents than to the person against whom execution has been sought.' I think it is necessary to state that this question has not been referred to the full bench in the present case and it is, therefore, not necessary for me to express any opinion on it."

The matter, therefore, rested in the full bench not expressing any opinion on the question that has cropped up now for decision before us.

It would be apposite at this stage to refer to certain observations of Strachey C. J. in *Bithal Das* v. *Nand Kishore*[3] which were quoted with approval by the learned Judges of the Madras High Court in the full bench case of *Rama Krishna Chettiar* v. *Kasi Vishwanathan Chettiar* (p. 110):

"...the object of the section is two-fold. The first object is to prevent unnecessary multiplicity of execution proceedings, to obviate, in a case where there are many decree-holders, each competent to execute his decree by attachment and sale of a particular property, the necessity of each and every one separately attaching and separately selling that property. The other object is to secure an equitable administration of the property by placing all the decree-holders in the position I have described upon the same footing, and making the property rateably divisible among them, instead of allowing one to exclude all the others merely because he happened to be the first who had attached and sold the property."

This ratio is very appropriate. When a decree is passed against a deceased person in a suit instituted and prosecuted against him to judgment, his legal representatives would have to be brought on record before that decree against him could

(1) (1941) 43 Bom. L. R. 695.
(2) (1901) 25 Bom. 494, s. c. 3 Bom. L. R. 407.
(3) (1900) 23 All. 106.

be executed. Section 50 of the Code of Civil Procedure allows that to be done. It says that

"Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased."

The object of this provision, in the case where the decree was passed against the deceased person himself, is to realise the decretal amount out of the properties, if any, left by the deceased and come to the hands of the legal representatives. Where a decree is passed against the legal representatives of a deceased person not only where the suit was originally instituted against the deceased person but was continued against his legal representatives on his death, the cause of action surviving, but also where the suit was instituted after his death, only against his legal representatives, the decree can be executed against the legal representatives under s. 52 of the Code of Civil Procedure. Section 52 says that "where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property." The object of execution, therefore, in both these cases either under s. 50 of the Code of Civil Procedure or under s. 52 of the Code of Civil Procedure is to realise the decree whether passed against the deceased or passed against the legal representatives of the deceased out of the properties belonging to the deceased which have come to the hands of the legal representatives of the deceased. This being the object, it would be frustrated if a distinction of the type which found favour with the learned Judges in *Govind* v. *Mohoniraj* and *Chunilal* v. *Broach Urban Co-op. Bank, Ltd.*, was held to be effective. No doubt on an *eo nomine* construction of s. 73 and s. 2 (*10*) of the Code of Civil Procedure it would be possible to uphold the distinction. If, however, the liberal construction which was sought to be put upon these words "passed against the same judgment-debtor" in *Mulchand Kesaji* v. *Shiddappa* was adopted, it would be possible to hold that all these decrees of the type mentioned above were passed against the same judgment-debtor and all the decree-holders would be entitled to come in and share in the rateable distribution of the assets.

Besides the full bench decision of the Madras High Court reported in *Rama Krishnan Chettiar* v. *Vishwanathan Chettiar* our attention was also drawn to a full bench decision of the

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Allahabad High Court reported in *Hoti Lal* v. *Chatura Prasad*[1]. Reliance was placed on behalf of the appellants on the judgment of the majority which upheld the liberal construction of the words "passed against the same judgment-debtor" in s. 73 of the Code of Civil Procedure. Mr. Murdeshwar, however, drew our attention to the minority judgment which upheld the view which has been so far adopted by our High Court in *Govind* v. *Mohoniraj* and *Chunilal* v. *Broach Urban Co-op. Bank, Ltd.* The Calcutta High Court had also approved of the Bombay view in *Hemendra Nath Chaudhari* v. *East Bengal Commercial Bank*[2] and *Hemlata Dasi* v. *Bengal Coal Co.*[3] and the Rangoon High Court had approved of it in *Sarju Sukul* v. *Dubay.*[4] The only other decision which we might refer to in this connection is the one reported in *Shiv Charan Das.* v. *Ram Saran Das*[5] which was also a decision of the full bench of that Court. We need not, however, go so far. It is sufficient to refer to the full bench decisions in *Rama Krishnan Chettiar* v. *Vishwanathan Chettiar* and in *Hoti Lal* v. *Chatura Prasad* and the Calcutta and Rangoon High Court decisions above set out. Untrammelled as we are by the principle of *stare decisis*, and having regard in particular to the full bench decisions of the Madras and Allahabad High Courts as also the observations which were made and the ratio which was adopted in our own full bench decision in *Mulchand Kesaji* v. *Shiddappa,* we feel that in spite of the tenor of the decisions of our High Court on the question which has cropped up before us, in *Govind* v. *Mohoniraj* and *Chunilal* v. *Broach Urban Co.op. Bank, Ltd.,* the question is of such an importance as to be canvassed by a full bench of this Court. We, therefore, refer the following questions for decision of a full bench.

1. Whether a decree passed against M and sought to be executed against his legal representatives after his death and another decree obtained against M's legal representatives in a suit filed against M during his life time but continued against his legal representatives after his death, can be said to have been passed against the same judgment-debtor within the meaning of s. 73 of the Code of Civil Procedure?

2. Whether a decree passed against M and sought to be executed against his legal representatives after his death and another decree passed against the legal representatives of M in a suit filed against the legal representatives after M's death can be said to have been passed

(1) [1941] A. I. R. All. 110, F. B. (2) (1936) 63 Cal. 92.
(3) [1935] A. I. R. Cal. 738. (4) [1940] Ran. 492.
(5) (1843) 24 Lah. 497, F. B.

against the same judgment-debtor within the meaning of s. 73 of the Code of Civil Procedure?

The reference was heard on January 17, 1952, by a bench consisting of Chagla C. J. and Gajendragadkar and Dixit JJ.

S. R. Parulekar, with *H. F. M. Reddy,* for the appellants.

G. P. Murdeshwar, with *U. S. Hattyangadi,* for respondents Nos. 1 to 5 and 8.

B. M. Kalagate, for respondent No. 11.

S. R. Parulekar.—The questions referred to the Full Bench relate to three kinds of decrees, viz.

(*i*) decree against M;

(*ii*) decree against M's legal representatives in a suit brought against M; and

(*iii*) decree against M's legal representatives in a suit brought against those legal representatives after M's death.

The point is whether all these decrees can be said to have been passed against the "same judgment-debtor" within the meaning of s. 73 of the Civil Procedure Code.

The literal words of the section are against me, but some Courts have put liberal construction on them, and laid more emphasis on the property which the judgment-debtor represents than on the person against whom execution is sought.

At first our High Court refused to adopt this liberal construction. See *Govind Abaji* v. *Mohoniraj Vinayak* [(1901) 25 Bom. 494]. But in a later case in *Chhotalal* v. *Nabibhai* [(1905) 29 Bom. 528], Sir Lawrence Jenkins, who was also a party to the previous decision, preferred to fall in line with the other High Courts. In that case one decree was passed against three judgment-debtors and another decree was passed one of the three and both the decrees were held to be against the same judgment-debtor.

Govind Abaji v. *Mohoniraj Vinayak* was again followed in *Chunilal Raichand* v. *Broach Urban Co-operative Bank* [I. L. R. (1937) Bom. 795]. But in *Mulchand Kesaji* v. *Shiddappa Gurubassappa* [I. L. R. (1947) Bom. 120 (F. B.)], our Court again reverted to the liberal construction of the section on the plea that the narrow *eo nomine* construction of the expression "same judgment-debtor" would necessarily lead to very unreasonable consequences.

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The Madras, Allahabad and Lahore High Courts have adopted the liberal construction which I am contending for. See *Rama Krishnan Chettiar* v. *Vishwanathan Chettiar* [(1935) 59 Mad. 93 (F. B.)]; *Hoti Lal* v. *Chatura Prasad* [I. L. R. (1941) All. 77 (F. B.)]

The Calcutta High Court is against me. See *Jahan Lal* v. *Lalita Sundari* [A. I. R. 1930 Cal. 454]; *Hemlata Dasi* v. *Bengal Coal Co.* A. I. R. 1935 Cal. 738]; and *Hemendra Nath* v. *East Bengal Commercial Bank* [(1936) 63 Cal. 923].

G. P. Murdeshwar.—I submit that no case has been made out to warrant departure from the decision in *Govind Abaji* v. *Mohoniraj Vinayak* which has held ground since 1901. S. 2 (*10*) of the Civil Procedure Code defines 'judgment-debtor' with reference to a person and not his property. Sameness of property is not the criterion of the rule of rateable distribution. The equitable view is that one who is diligent and comes first with his decree will be served first. Under the Code of 1859, the creditor who attached the property of the judgment-debtor first had a prior claim over the rival creditors. The object of the new section is to give rateable distribution as between decree-holders who are proceeding against the same judgment-debtor. I submit that the words used by the Legislature to carry out that object are very clear and there is no question of putting any liberal interpretation on them for ascertaining their meaning. If there was any doubt as to the meaning of the expression "judgment-debtor" the Legislature could have added an explanation to the section. As observed by Sir Lawrence Jenkins in *Govind Abaji* v. *Mohoniraj Vinayak,* it is useless to speculate on any other test than that which the section itself provides, and that test is stated in the plainest terms.

The earliest decision of the Calcutta High Court is in *Gonesh Das Bagria* v. *Shiva Lakshman Bhakat* [(1903) 30 Cal. 583 (F. B.)], where it was held that a decree against X and Y and another decree against X, Y and Z were both decrees against the same judgment-debtors in so far as some at least of the judgment-debtors were common. It is not necessary that the two groups of the judgment-debtors should be identically the same. This principle has been adopted by our Court in *Mulchand Kesaji* v. *Shiddappa Gurubasappa* [I. L. R. (1947) Bom. 120 (F. B.)]. It is one thing to say that a decree against X is also a decree against X and Y, and another to say that

a decree against X is a decree against Y too. In the first case one person at least is common. What our Court[c] has done is to give extended meaning to the word 'same'. But what is now contended for wholly negatives the word unless resort is had to the concept of sameness of property.

My submission is that there is no concordant of opinions in the High Courts on the question and therefore there is no reason why the view expressed by Sir Lawrence Jenkins should be overruled.

S. R. Parulekar was not called upon in reply.

CHAGLA C. J. The answers that we have to give to the questions that have been referred to this Full Bench depend upon the correct interpretation which should be placed upon the expression "the same judgment-debtor" used in s. 73 of the Civil Procedure Code. The facts that lead up to this Full Bench may be briefly stated. Plaintiffs Nos. 1 to 4 obtained decrees against one Mudalingangouda. Defendants Nos. 1 to 5 also filed a suit against the same debtor. Pending suit he died and defendants Nos. 12 to 15 were brought on record as his legal representatives, and ultimately a decree was passed not against the debtor but against the legal representatives. Defendants Nos. 6 and 7 filed suits after the death of the debtor by bringing his legal representatives on record and a decree was also passed against the legal representatives. Plaintiffs Nos. 1 to 4 attached the property belonging to the debtor, there were also darkhast filed by the other decree-holders, and the question that arose was whether all the decree-holders were entitled to rateable distribution under s. 73. The contention of plaintiffs Nos. 1 to 4 was that the other decree-holders were not entitled to rateable distribution along with them. They had taken out execution first and the principle of rateable distribution did not apply inasmuch as the decrees in respect of which execution proceedings had been taken out by defendants Nos. 1 to 5 and defendants Nos. 6 and 7 were not decrees against the same judgment-debtor. In the execution Court defendants Nos. 1 to 5 and defendants Nos. 6 and 7 succeeded and in the proceedings under s. 73 the Court held that defendants Nos. 1 to 5 and defendants 6 and 7 were entitled to rateable distribution along with plaintiffs Nos. 1 to 4. Thereupon plaintiffs Nos. 1 to 4 filed a suit under sub-s. (2) of s. 73 claiming that defendants Nos. 1 to 7 were not entitled to rateable distribution and that plaintiffs Nos. 1 to 4 were entitled to a refund. The trial Court decreed

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the plaintiffs' suit. There was an appeal and the lower appellate Court held in favour of the plaintiffs, and from that decision two second appeals were preferred to this Court and these two second appeals are Second Appeals 201 and 202 of 1947. Therefore, we have here three kinds of decrees in respect of the assets of the same debtor. The assets which are held by the Court under s. 73 and which have to be distributed are the assets of Mudlingangouda. There is first a decree in favour of plaintiffs Nos. 1 to 4 which is against the debtor himself, then there is a decree in favour of defendants Nos. 1 to 5 which is against the legal representatives of the debtor, and there is a decree in favour of defendants Nos. 6 and 7 which is also against the legal representatives. There is hardly any distinction between the decree passed in favour of defendants Nos. 1 to 5 and defendants Nos. 6 and 7, because the decree is against the same judgment-debtor in the strict sense of the term, the only distinction being that in the case of the decree in favour of defendants Nos. 1 to 5 the suit was originally filed against the debtor himself and the legal representatives were brought on record *pendente lite*, whereas in the case of the decree in favour of defendants Nos. 6 and 7 the suit was originally instituted against the legal representatives of the debtor.

Now, if a strictly literal interpretation was to be placed upon the expression "the same judgment-debtor," it is clear that before s. 73 could apply there must be a complete identity of the judgment-debtor in all the decrees. The most that could be said on this interpretation is that where you have more than one judgment-debtor, the section would also apply provided the identity is maintained with regard to more than one judgment-debtor. In other words, you may have a decree against A and B and there may be another decree against A and B, and although the judgment-debtor is not one but more than one, there is a complete identity of the judgment-debtor. The real question before us is whether we should give to this expression a strict literal interpretation which would not permit of any departure under any circumstances. Courts and Judges have always differed when a question arises as to the construction of a section which admits of more than one interpretation. The one view rigidly held is that the sections of a statute must be literally construed, that the intention and the object of the Legislature must only be gathered from the language used by the Legislature, and it is not

permissible to the Court to speculate as to what the object of the Legislature was or what its intention was. Judges have gone to the length of pointing out that it would be hazardous for Courts to put themselves in the place of the Legislature and attempt to find out what the Legislature intended and interpret a section from that point of view. On the other hand, Courts and Judges have also taken the view that it is the duty of the Court to assist the Legislature in carrying out its object, in suppressing the mischief which it wants to suppress, in facilitating the remedy which it wants to provide against any evil. But that should not be done if it could only be done by doing violence to the plain language used by the Legislature. But subject to not doing violence it is open to the Court to give an extended or wider meaning to an expression used by the Legislature, if in doing so the Court is avoiding injustice, inconvenience or hardship.

Now, before we construe s. 73 it is necessary to bear in mind the history of this section and why the Legislature enacted it. In the Code of 1859 there was no provision for rateable distribution. Therefore, a judgment-creditor who was first in the field and who made an application for execution of his decree was entitled to satisfy his decree by the assets realised in that execution. It was only in 1882 that s. 295 was enacted, which corresponds to s. 73, and we can do no better than repeat the language of Strachey C. J. used in *Bithal Das* v. *Nand Kishore*,[1] in order to emphasise what the object of the Legislature was in enacting this section (p. 110):

> "...the object of the section is two-fold. The first object is to prevent unnecessary multiplicity of execution proceedings, to obviate, in a case where there are many decree-holders, each competent to execute his decree by attachment and sale of a particular property, the necessity of each and every one separately attaching and separately selling that property. The other object is to secure an equitable administration of the property by placing all the decree-holders in the position I have described upon the same footing, and making the property rateably divisible among them, instead of allowing one to exclude all the others merely because he happened to be the first who had attached and sold the property."

In our opinion, it is necessary to emphasise more the second object, viz., the equitable administration of the property, and if that aspect is borne in mind, then there should not be much difficulty in placing what I might call a liberal interpretation upon the expression "the same judgment-debtor" in s. 73. Although the Legislature has used the expression "the same

[1] (1900) 23 All. 106.

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judgment-debtor," it is clear that what is emphasised in s. 73 is more what is realised in execution than the identity of the judgment-debtor. What is to be distributed rateably are the assets, and if the assets belong to the same person, then it is difficult to see why the principle of rateable distribution should not be open to the judgment-creditor. Did the Legislature really intend that although the assets realised were of the same debtor, merely because the judgment-debtors on the record were different, the principle of rateable distribution should not apply. It is difficult to come to that conclusion unless the language is so plain that we would feel that we were doing violence to it by placing this more liberal interpretation upon the expression "the same judgment-debtor." In our opinion the expression "the same judgment-debtor" must be construed in its own context, and, as I said before, when the context deals with the realisation of the assets and when judgment-creditors are more concerned with the assets they realise for the purposes of satisfying the decree than with the identity of the judgment-debtor, it is clear that the Legislature did not intend that the expression "the same judgment-debtor" should be construed in a strictly technical sense.

Now, this full bench has been necessitated by the fact that there are two judgments of this Court which have taken the contrary view. The first is the judgment of Sir Lawrence Jenkins C. J. and Mr. Justice Chandavarkar in *Govind* v. *Mohoniraj*[1] and it is needless to say that as far as this Court is concerned any view expressed by so eminent a Chief Justice as Sir Lawrence Jenkins is entitled to the highest respect, and if we differ from the view taken by Sir Lawrence Jenkins we should be satisfied that there is very good reason for doing so. That was a case which was identical with the case which we have to consider, and Sir Lawrence Jenkins and Mr. Justice Chandavarkar took the view that when there was a decree against one Bhau Babaji and the other against his son Kashinath, it could not be said that the judgment-debtors were the same for the purpose of s. 73 although the son Kashinath was sued as the legal representative of his father. In giving this decision Sir Lawrence Jenkins pointed out that it was useless to speculate as to any other test than that which the section itself provides and that test is stated in the plainest terms, and he thought the matter could not be carried further than

[1] (1901) 3 Bom. L. R. 407.

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by saying, "So far as the present case goes it is enough to say that the money decrees must be against the same judgment-debtor," and as they were not, in the opinion of the learned Chief Justice, s. 295 corresponding to s. 73 did not apply. With respect, if the learned Chief Justice had adhered to this view in the subsequent decision to which we shall presently draw attention, then indeed it would have been difficult for us to depart from the principle laid down by the learned Chief Justice that in construing s. 73 we must give to it the strictest literal interpretation. In *Chhotalal* v. *Nabibhai*[1] s. 73 again came up for consideration before that learned Chief Justice and Mr. Justice Aston. There the first decree was against three judgment-debtors and the other decree was only against one of these three, and the question was whether these two decrees could be considered to be against the same judgment-debtors for the purpose of s. 73, and the learned Chief Justice in his judgment held that s. 73 applied, and he did so, as he pointed out in his judgment, for the sake of uniformity because a full bench of the Calcutta High Court in *Gonesh Das Bagria* v. *Shiva Laxman Bhakat*,[2] a divisional bench of the Allahabad High Court in *Gatti Lal* v. *Bir Bahadur Singh*[3] and a divisional bench of the Madras High Court in *Ramanathan Chettiar* v. *Subramania Sastrial*[4] had taken the same view. The learned Chief Justice, it may be interesting to note, does not express any opinion of his own nor does he refer to his earlier judgment in *Govind* v. *Mohoniraj*. But once this view was accepted by our High Court, it is difficult to understand how we can now be called upon to adhere to a literal interpretation of s. 73. In our opinion, if at all, it is doing more violence to the language used in s. 73. It is straining the section much more when you hold that a decree against A and B is the same as a decree against A, B and C, or that in both the decrees the judgment-debtors are the same. How can it possibly be urged that in that case there is a complete identity of the judgment-debtors? At least in the view we are taking it is possible to suggest that there is identity of the judgment-debtor from the fact that the property attached belongs to the same debtor. But in the former case the property even is not the same and the judgment-debtors are not the same and yet our High Court in *Chhotalal* v. *Nabibhai* took the view that in a case like that s. 73

(1) (1905) 29 Bom. 528.
(2) (1903) 30 Cal. 583, F. B.
(3) (1904) 27 All. 158.
(4) (1902) 26 Mad. 179.

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would apply. This judgment was followed by another divisional bench in *Chunilal* v. *Broach Urban Co-op. Bank, Ltd.*[1] In a later judgment this view was questioned, and therefore a full bench had to be constituted in *Mulchand Kesaji* v. *Shiddappa,*[2] which re-affirmed the view taken by this Court in *Chhotalal* v. *Nabibhai*. Although Sir Lawrence Jenkins had not given expression to the principle which underlay his decision, the full bench clearly enunciated the principle and the principle was that you must give to s. 73 a liberal interpretation consistently with the object which the Legislature intended to carry out by enacting that section. In the judgment of my brother Gajendragadkar J. the learned Judge points out how impossible it is to give in all cases a completely literal interpretation to the expression "the same judgment-debtor" used in s. 73. As he points out, there is no doubt that before s. 73 can be applied it must also be shown that the same identical, judgment-debtor occupies the same legal character in all the decrees. Therefore, if a strict interpretation was called for, then a decree against the same judgment-debtor holding different legal capacities would still be a decree falling under s. 73. It has never been suggested—and it cannot be suggested—that that is the true position under s. 73, and the full bench upheld the decision in *Chhotalal* v. *Nabibhai* on the ground that a literal construction which insists upon the identity of all the judgment-debtors would clearly tend to defeat the very object with which s. 73 was enacted. Therefore, that is the principle which the full bench laid down. What we are going to do to-day is really applying the same principle, but to a different set of facts. We are asked by Mr. Murdeshwar, who appears for the plaintiffs, to put a strict literal construction upon the expression "judgment-debtor" used in s. 73, and we are not inclined to accept that contention because in our opinion such a construction would defeat the very object for which s. 73 was enacted.

Now, turning to the other High Courts, we have a full bench decision of the Madras High Court in *Rama Krishna Chettiar* v. *Vishwanathan Chettiar,*[3] which has placed a more liberal construction upon s. 73 than the view taken by Sir Lawrence Jenkins in *Govind* v. *Mohoniraj*. To the same effect

[1] (1937) 39 Bom. L. R. 815.
[2] (1946) 48 Bom. L. R. 571, F. B.
[3] (1935) 59 Mad. 93, F. B.

is the judgment of the Allahabad High Court, also in a full bench in *Hotilal* v. *Chatura Prasad.*[1] There the liberal view was upheld by the majority, but Mr. Justice Bajpai who delivered the minority judgment pleaded for a strict literal construction to be placed upon the expression "the same judgment-debtor" used in s. 73 and pointed out the dangers of the Courts speculating as to what the intention of the Legislature was. It may be pointed out that Mr. Justice Bajpai was not prepared to accept the strict literal view as far as the facts similar to those in *Chhotalal* v. *Nabibhai* were concerned. The Lahore High Court also in *Shiv Charan Das* v. *Ram Saran Das*[2] has taken the same view as the Madras and Allahabad High Courts. As far as the Calcutta High Court is concerned it has taken the contrary view. There is a judgment of Rankin C. J. sitting singly reported in *Jahar Lal* v. *Lalita Sundari.*[3] With very great respect, the only opinion expressed by the learned Chief Justice in this judgment is (p. 455):

> "...It appears to me that the test is whether the two decrees were passed against the same person."

Obviously, that is the test supplied by the section. The difficulty arises as to how to construe that test. There is no difficulty as far as the language is concerned. Then there is a subsequent judgment of the Calcutta High Court in *Hemlata Dasi* v. *Bengal Coal Co.*[4] That is a judgment of divisional bench which has taken the same view as the earlier decision of the Calcutta High Court. But with respect to the Calcutta High Court they seem to have overlooked the view that that Court took as to the interpretation of s. 73 in the full bench decision in *Ganesh Das Bagria* v. *Shiva Lakshman Bhakat.*[5] It seems to us, again speaking with very great respect, that that High Court having gone as far as *Gonesh Das Bagria's* case seemed to have paused and refused to, what they considered, extend further the meaning of "the same judgment-debtor" used in s. 73. But in our opinion if it is possible for the Court to take the view that was taken in *Gonesh Das Bagria* v. *Shiva Lakshman Bhakat* we do not see why it is not possible to take the view which was taken by *Rama Krishna Chettiar* v. *Vishwanathan Chettiar,*[6] *Hoti Lal* v. *Chatura Prasad*[7] and *Shiv Charan Das* v. *Ram Saran Das.*[8]

[1] [1941] All. 77, F. B.
[2] (1943) 24 Lah. 497, F. B.
[3] [1930] A. I. R. Cal. 454.
[4] [1935] A. I. R. Cal. 738.
[5] (1903) 30 Cal. 583, F. B.
[6] (1935) 59 Mad. 93, F. B.
[7] [1941] All. 77, F. B.
[8] (1943) 24 Lah. 497, F. B.

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In our opinion, therefore, the answers that we should give to both the questions put to us are in the affirmative. We are also of the opinion that *Govind* v. *Mohoniraj*[1] and *Chunilal* v. *Broach Urban Co-op. Bank, Ltd.*,[2] were wrongly decided and they must be considered to be overruled.

Answers accordingly.

M. W. P.

[1] (1901) 3 Bom. L. R. 407. [2] (1937) 39 Bom. L. R. 815.

APPELLATE CRIMINAL

Before Mr. M. C. Chagla, Chief Justice.

1952 Feb. 1.

PALLONJI N. MEHTA *v.* STATE.*

Indian Railways Act (IX of 1890), ss. 47, 70, 113—Rule 39 (b)† framed by railway under administrative power—Rule requiring holder of season ticket to sign it and mention his age on it—Validity of rule.

Although a Railway Company may, apart from s. 47 of the Indian Railways Act, 1890, frame a rule in the exercise of its general powers of administration to regulate its own traffic, the rule to be valid must satisfy two conditions: first, the rule must not be inconsistent with any provision of the statute or any rules framed under s. 47; secondly, the rule must not be unreasonable. Railway Authority cannot, however, by a rule so framed provide that if the rule is contravened, the person contravening shall be liable to a particular penalty. The power to impose penalties is a power which only the Legislature may exercise, and the Railway Authority has no such power delegated to it. It is only when a rule is framed under s. 47 that, by its very terms, the rule may provide any penalty for its breach.

The G. I. P. Railway framed a rule, viz. Rule 39 (*b*) which provided that a season ticket would not be valid unless it was signed in ink by the person in whose favour it was issued and his age was entered in

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* Criminal Revision Application No. 1242 of 1951.

† The rule reads as under:

R. 39 (*b*). "A Season Ticket will not be valid unless it is signed in ink by the person in whose favour it is issued and his age is entered in the space provided. Any person who is unable to sign his name in any language may however affix his left thumb impression in the space for the signature. If a passenger is found travelling with a Season Ticket wherein these conditions have not been fulfilled, he will be liable to pay the excess charge mentioned in Rule 46 in addition to the ordinary single fare for the distance mentioned in the Season Ticket."