
(1944) 04 AHC CK 0011

Allahabad High Court

Case No: None

Collector of Moradabad

APPELLANT

Vs

Kanhaiya Lal and Another

RESPONDENT

Date of Decision: April 13, 1944

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 47

Citation: AIR 1944 All 225 : (1944) 14 AWR 132

Hon'ble Judges: Sinha, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Sinha, J.

This is an appeal by a judgment-debtor against an order u/s 47, Civil P.C. The facts very briefly are these. On 30th November 1932, the respondents obtained a decree from the Court of the Subordinate Judge of Moradabad for Rs. 7878. Against this decree an appeal was preferred by the appellant to this Court. During the pendency of the appeal an application for stay of execution of the decree of the trial Court was made by the decree-holder. The judgment-debtor applied for stay of the proceedings in execution and the learned Subordinate Judge acceded to this prayer, but directed that Rs. 2000 be deposited by the appellant "as security in this Court within a month of this date to cover any loss which may possibly accrue to the decree-holder owing to the sale being stayed." He, however, made it clear that "an appeal is pending in the Hon'ble High Court from the decree which is being executed. I must, therefore, stay the sale under Order 41, Rule 6(2), Civil P.C."

2. The High Court modified the decree of the Court of first instance by its judgment of 13th September 1938. The modified decree stood at the figure of Rs. 5890. On 11th July 1939 the decree-holder applied for execution of his decree. He claimed a sum of Rs. 5966-3-0 on account of the decretal amount and Rs. 8662 on account of

interest at the rate of 1 per cent. per mensem. He also prayed that the sum of Rs. 2000 deposited as security by the judgment-debtor should be made over to him.

3. The main controversy centred round the question of interest. The decree itself did not award interest. The judgment-debtor objected that, as the decree was silent about it, it was not open to the decree-holder to claim any interest in the execution proceedings. The learned Civil Judge repelled the objection and has awarded interest at the rate of 6 per cent, per annum. In his opinion, the decree-holder lost the use of his money during this interval and he was entitled to interest in order to cover up that loss. Against this decree the present appeal has been preferred by the judgment-debtor. It has been argued by the learned junior Standing Counsel that, as the decree was silent, the decree-holder was not entitled to any interest in these proceedings. He has relied upon the case in *Varajlal v. Kastur Dharamchand* (98) 22 Bom. 42. The facts of that case were different. They were briefly these. A man named Kastur Dharamchand obtained a decree against Vanmali and attached a house in execution. One Verajlal Mulchand intervened u/s 278, Civil P.C., and applied that the house, if sold, should be sold subject to his mortgage. His application was dismissed and he thereupon brought a suit for a declaration that the house was not liable to sale in execution of Kastur's decree. That suit was dismissed by the Court of first instance, and pending the hearing of the appeal, he applied for and obtained, u/s 492 of the Civil P.C., an injunction on condition that he gave security for interest at 6 per cent, on Rs. 2000, the acknowledged value of the house. The appeal was dismissed ultimately. The decree-holder in execution claimed interest. It was held that he was not entitled to interest in execution of his decree; it was, however, made clear that the proper forum before which he could apply for interest was the Court in which the suit for declaration had been filed and which had granted the necessary injunction. In this case the forum is one and the same and the relief as regards interest is being claimed in that very Court. Another ruling has been cited by the learned Counsel for the appellant, [Vellathusseri Chakkala Kumpil Pankunni Menon Vs. Vellathusseri Chakkala Kumpil Raman Menon](#), . That case is only authority for the proposition that when a decree of a Court which awards mesne profits is silent as to interest, it is not open to the executing Court to fix the rate of interest and to execute the decree allowing interest. With, this proposition we respectfully agree, but we think that this authority does not offer any solution of the problem which awaits consideration in this case. The decree-holder is, therefore, entitled to interest and we hold accordingly.

4. The next question is, what is the period for which he is entitled to interest? The order of the learned Subordinate Judge by which he stayed the execution proceedings itself makes it clear that the operation of his order granting stay was to continue only during the pendency of the appeal in the High Court. The appeal in the High Court was decided on 18th September 1938. The present application for execution was made on 11th July 1939. On a strict interpretation of the order mentioned above, the only period for which the decree-holder would be entitled to

interest; was from 16th September 1933, to 13th September 1938, or, at the very outside, up to 11th. July 1989, when he made the present application for execution. The learned Civil Judge has, however, awarded him interest from 16th September 1933 to 11th July 1941. We think that in so doing he has made an error of law. We, therefore, modify the decree of the Court below by awarding interest to the decree-holder from 16th September 1933 to 11th July 1939, the date of the present application for execution. In other respects the appeal shall stand dismissed. We, therefore, modify the decree of the Court below as indicated above and direct the parties to receive and pay costs in proportion to success and failure.