
(1870) 03 CAL CK 0008

Calcutta High Court

Case No: Rule Nisi No. 177 of 1870

Khettra Mohan Baboo

APPELLANT

Vs

Rashbehari Baboo

RESPONDENT

Date of Decision: March 4, 1870

Judgement

Bayley, J.

The petitioner, Khettra Mohan Baboo, applied, on the 21st December 1869, praying that the order of the Subordinate Judge of Burdwan, dated the 2nd October last should be annulled and made consonant with the express stipulations in the bond to which his petition referred. The opposite party was called upon to show cause, and the case has, accordingly, been this day heard in the presence of the vakeels of both parties.

2. The admitted facts of the case are these:--

A bond for rupees 4,000, dated the 18th Bhadra 1272 (September 2nd, 1865), was executed, by Rashbehari Baboo and Surju Kumari Bibi, in favor of the petitioner. It was agreed therein that on failure to pay the entire amount, with interest at 12 per cent. per annum, by Sraban 1276 (July and August 1869), the same would be recovered without a suit. The words were The bond was registered under the provisions of Act XVI of 1864, on the 2nd September 1865. The money not having been paid as stipulated, the obligee applied to the Subordinate Judge of Burdwan, on the 1st August 1869, for the enforcement of the bond, under the provisions of the then procedure law in regard to registration,--viz., Act XX of 1866. The Subordinate Judge directed that the amount remaining unliquidated be paid by installments, with interest at the rate of rupees 6 per cent. per annum.

3. The question to be determined is, whether the Subordinate Judge had jurisdiction to alter the express terms of the bond, and direct that the amount covered thereby should be paid by installments, and at a lower rate of interest than that stipulated.

4. With regard to the question of interest, it is admitted by the opposite party that he is ready to pay it at the rate specified in the bond, viz. at the rate of rupees 12 per cent. per annum, up to the date of the decree.

5. On the other point, viz., whether the Subordinate Judge had jurisdiction to make the bond payable by installments, I am of opinion that he had not. It would appear that the Subordinate Judge had in view the provisions of section 194 of Act VIII of 1859, which enacts that the Court may, for any sufficient reason, order the amount of a decree to be paid by installments with or without interest. But that relates to the procedure in execution of an ordinary decree, and not to the specific terms of the Registration Law, section 51, Act XVI of 1864. It may be added that section 194, Act VIII of 1859, looks to the terms in which a decree may, at the discretion of the Court, be made, and not as to the enforcing or the execution of that decree. Section 51, Act XVI of 1864, however provides, "whenever the parties to a bond, or other written obligation, for the payment of money, shall, at the time of registering the same under the provisions of this Act, apply to the District Registrar or Deputy Registrar to record their agreement, that in the event of the bond, or other obligation as aforesaid, not being satisfied within the time stipulated, the amount may be recovered as hereinafter provided without a suit, it shall be the duty of the District Registrar or Deputy Registrar, after making such enquires as he may think proper, to record such agreement at the foot of the endorsement required by section 36, and such record shall be signed by the District Registrar or Deputy Registrar and by the parties to the bond or other written obligation as aforesaid." Now it is admitted that the bond itself declared that the money should be realizable without a suit, and that the parties proceeded to record the agreement under the terms of that section. Then, looking to the terms of section 52, we find that "a bond or other obligation for the payment of money registered, with such agreement as in the last preceding section mentioned, may be enforced without a suit by any Court which would have had jurisdiction to try a suit on such bond or other obligation for the recovery of the amount," &c. Now the bond was registered under the terms of section 51, Act XVI of 1864. But the law which was in force at the time when money became recoverable on default of payment at the time stipulated, was Act XX of 1866. Section 3 of Act XX of 1866 maintains transactions done under Act XVI of 1864; but some alteration is made by the latter law as to the procedure, for section 52 of that Act provides that "whenever the obligor and obligee of an obligation shall agree, that, in the event of the obligation not being duly satisfied, the amount secured thereby may be recovered in a summary way, and shall, at the time of registering the said obligation, apply to the registering officer to record the said agreement, &c., the registering officer, after making such enquiries as he may think proper, shall record such agreement at the foot of the endorsement," &c., &c., Then section 53 of the same Act provides,--"on production in Court of the obligation and of the said record signed as aforesaid, the petitioner shall be entitled to a decree for any sum not exceeding the sum mentioned in the petition, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by the Court." It is clear from the terms of sections 51 and 52, Act XVI of 1864, that the bond was to be enforced without a suit.

Nothing can be clearer than the terms of the agreement on this point. There is then, I think, under the laws cited, no power in the Subordinate Judge to alter the terms of the agreement as contained in that bond. It becomes of itself a decree, and under the terms of the law such a decree is not capable of variation in the making or in the execution of it. The bond specifies that if the money be not paid within the time stipulated, the bond is to be enforced as a decree and being so enforced, the property of the debtor, &c., shall be attached and sold.

6. In this view I am of opinion that it was beyond the power of the Subordinate Judge to do otherwise than accept the bond so registered under the provisions of sections 51 and 52, Act XVI of 1864, as a final decree, as it stood, and not as one as to which he could make the amount payable by installments, or lower the rate of interest stipulated.

7. I would, therefore, reverse the order of the Subordinate Judge and remand the case to him, that he may dispose of it according to this view of the provisions of sections 51 and 52, Act XVI of 1864, and of section 52, Act XX of 1866. The petitioner must get his costs of this Court.

Sir C.P. Hobhouse, J.

I agree in the order that Mr. Justice Bayley has passed in this case. I remark that the bond in this instance was specially registered under the provisions of section 51, Act XVI of 1864; and that, in accordance with the rules for such special registration, an agreement was recorded that, in the event of the bond not being satisfied within the time stipulated, the amount was to be recovered, as hereinafter provided, without a suit. Then the hereinafter provision is to be found in section 52 of the same Act. That section provided that the bond should "be enforced without a suit by the Court having jurisdiction to try such a suit," and it further provided that the bond should be enforced as a decree in a suit, "under the rules applicable to the execution of decrees in the Court having jurisdiction. There was a further provision showing how an application for the enforcement of the bond was to be made. But Act XVI of 1864 was repealed by Act XX of 1866, except as is provided by section 3 of the last Act, "as regards things duly done" under the first Act. Then by section 53, Act XX of 1866, it is provided that the obligee of any such bond as we have been discussing (i.e., a bond which shall have been specially registered, whether under Act XVI of 1864 or under this Act), must, before he could act upon the bond, present a petition to the Court which had jurisdiction to try the question of the bond. Then when this petition had been presented, there is further laid down under this section a procedure by which, on the production of the obligation and of the agreement, the petitioner is declared entitled to a decree for any sum not exceeding the sum mentioned in the petition, together with interest at the rate specified in the bond to the date of the decree. The bond, therefore, in this instance, would, by an act duly done under the provisions of Act XVI of 1864, have been held to have the force of, and to be enforceable as, a decree, the full amount of which was declared to be due, and to be capable of execution as if it had been a decree, provided only that the amount of the bond was not

satisfied by a certain day. These were the provisions of Act XVI of 1864. The amount of the bond was not satisfied on the date specified, and therefore, by the provisions of that Act, from the moment of such non-satisfaction, the bond, it seems to me, must have been held to be a document which would have been at once capable of execution as if it were a decree in the Court having jurisdiction to execute such decree. But by the provisions of Act XX of 1866 the procedure seems to have been somewhat altered. The petitioner could not at once, it seems to me, with reference to the provisions of that Act, apply for the execution of the bond as if it were a decree, but he was bound, in the very words of the Act, and with reference to the special agreement entered into in the matter of the bond, to produce the bond before the Court; and although he was then entitled to a decree for the amount due upon the bond, still he could not recover that amount until the Court had actually given him a decree. But the Court, in my judgment, was not the less bound to give him a decree in the words of the bond. The bond said that if the amount of it was not paid by a certain date, the whole amount was to be considered due. The Court, therefore, was, it seems to me, bound to declare such amount due, and had not jurisdiction to declare that such amount should be paid by installment, instead of declaring that it should be paid all at once.