

Firm Aishi Ram-Asa Nand, through Asa Nand - - Appellant

v.

Firm Harkaran Das-Thakar Das, through Kishori Lal
and others - - - - Respondent

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 1ST FEBRUARY, 1943

Present at the Hearing:

LORD ROMER

SIR GEORGE RANKIN

SIR MADHAVAN NAIR

[Delivered by SIR MADHAVAN NAIR]

This is an appeal from an order of the High Court of Judicature at Lahore dated the 28th of January, 1938, in a Letters Patent Appeal, which reversed an order of the said High Court in appeal, dated the 23rd of February, 1937, which affirmed an order of the Senior Subordinate Judge, Gurdaspur, dated the 9th of April, 1935, in favour of the appellant before the Board.

The appeal arises out of an application presented to the Senior Subordinate Judge of Gurdaspur by the respondent under Order XXI, r. 2, of the Code of Civil Procedure, alleging that a decree of the High Court of Lahore dated the 6th of December, 1934, has been completely adjusted by a compromise dated the 8th of December, 1934, and that notice be issued to the appellant to show cause why the adjustment should not be recorded as certified.

The respondent is the judgment-debtor and is a firm known as " Firm Harkaran Das-Thakar Das ". The appellant is the decree-holder and is also a firm, its name being " Firm Aishi Ram-Asa Nand ". Thakar Das and Aishi Ram are described as the proprietors of the respective firms.

Order XXI, r. 2, C.P.C., is as follows:—

2.—(1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any Court executing the decree."

The first question for determination is whether the decree was adjusted by the alleged compromise, dated the 8th of December, 1934, made between the appellant and the respondent. This is a question of fact. If this question is answered in the affirmative then, a further question will have to be decided, viz., whether such compromise should be certified under Order XXI, r. 2, C.P.C. This is a question of law.

The facts are briefly these:—The appellant firm instituted a Suit against the respondent firm to recover Rs.13,180 on the basis of certain hundis executed by the respondent firm. The suit was dismissed by the trial Court. The appellant firm then preferred an appeal to the High Court. When it came on for hearing, it was represented that it had been compromised and an adjournment was asked for, to record the compromise. The case was accordingly adjourned. There is evidence to show that there was some talk of a compromise; but the negotiations fell through; and after hearing the appeal, the learned Judges set aside the decision of the trial Court and granted the appellant firm a decree for Rs.8,400 with interest at 6 p.c. from the 26th of January, 1925, till realisation with costs on Rs.9,974, in both the Courts. The decree was passed on the 6th of December, 1934. The amount due to the appellant firm under the decree on that date is stated to be about Rs.16,000.

On the 5th of January, 1935, the respondent firm filed in the Court of the Senior Subordinate Judge, Gurdaspur, the application under Order XXI, r. 2 (already mentioned), stating that on the 8th of December the above decree was compromised under a document by which the appellant firm had received in cash Rs.1,500 and agreed to secure a deed of hypothecation in respect of certain property for Rs.3,000 in satisfaction of the said decree. The decree having been thus discharged, the respondent prayed that the satisfaction of it might formally be confirmed.

The relevant portion of the alleged agreement dated the 8th of December, 1934, runs as follows:—

“ . . . A compromise about the entire amount of the decree passed on the appeal has been made . . . at Rs.4,500. . . . Aishi Ram shall receive the said sum of Rs.4,500 . . . from the firm of Harkaran Das-Thakar Das . . . A sum of Rs.1,500 . . . has been received in cash. In lieu of Rs.3,000 . . . Aishi Ram shall secure a deed of hypothecation in respect of one two-storeyed pukka house . . . ”

The document bears the signatures of Aishi Ram and Thakar Das, on behalf of their firms, and also of two witnesses, Madho Ram and Abdul Karim; it states it was written by Hans Raj. All these persons were examined as witnesses, except Abdul Karim, who was dead.

On receipt of the notice of the judgment-debtor's application, the appellant firm commenced proceedings in execution on the basis of the decree of the 6th of December, 1934.

On the 2nd of March, 1935, Aishi Ram on behalf of the appellant firm put in pleas denying the adjustment and the receipt of Rs.1,500. Therein he stated in effect that there was a talk of compromise of the appeal on the lines indicated in the document produced by Thakar Das, that he left “ in trust ” with Hans Raj the writer a signed document with no date on it, that the compromise did not materialise as no money was paid, that Thakar Das tore up a document which was not the one signed by him, and that the latter had now been produced as the completed document bearing the date, the 8th of December, simply with a view to cheat him.

When Aishi Ram was examined with respect to his signature on the document he admitted that he was at Batala on the 8th December and that he had signed it; but added that when he signed it, the paper was blank, there were no stamps on it and that the signatures of the witnesses were not there.

Thakar Das, when examined on the same date, supported the contents of the document and added that the payment of Rs.1,500 had been recorded in his books of account.

On the above pleadings the Senior Subordinate Judge framed four issues, of which those material to the appeal are issues 3 and 4, which are as follows:—

Issue No. 3. “ Whether the decree-holder firm agreed to accept Rs.4,500 in full settlement of the decree passed by the High Court on the 6th December and after the date of that decree and accepting a sum of Rs.1,500 agreed to receive the balance by mortgage of the house of the judgment-debtor ”?

Issue 4. “ Whether even if issue is affirmed the document in question bars the execution application ”?

Both parties gave both oral and documentary evidence in support of their respective cases.

When he was examined as his own witness, Thakar Das, in addition to what he had already said on the 2nd of March, stated that the terms of the compromise were settled on the 6th of December, although they were reduced to writing on the 8th. He also stated, "we travelled together from Lahore and settled the terms on arrival at my house on the same date . . ." In support of the plea of payment with respect to Rs.1,500, the witness produced an "account appearing at Leaf No. 53 of the Rokar Bahi" (cash book) under date corresponding to 8th December, 1934. On the "credit" side of it, a sum of Rs.2,229-14-6 is shown as "Balance in the Rokar". Obviously with reference to this amount, the witness stated "on the 1st December I credited Rs.2,000 in my Rokar from 'Ghar Khata' (private account). On the 22nd December I debited Rs.500 to the Ghar Kata". From the "debit" side, it appears that a sum of Rs.1,500-0-0 was "paid to Bhai Aishi Ram-Asa Nand". It was also noted under this entry on the debit side that "The balance of Rs.3,000 (three thousand) agreed to be recovered on the security of a house. No interest to be charged for two years. Thereafter it shall be charged at Re.0-12-0 per cent." This entry is shown as "witnessed by:—Madho Ram" and "written by:—Hansraj".

Madho Ram, the only attesting witness of the document alive, has been believed by the High Court only to this extent, viz., that "he admits that the stamps had been affixed on the document when he had signed it". In other respects his evidence appeared to the learned Judges "to be false" and "full of improbabilities". Hans Raj, the writer of the document, stated that on its execution the judgment-debtor refused to pay the amount to the appellant, that thereupon he refused to sign the entry in his Register and waiting for a little time went away leaving the document in the possession of the judgment-debtor, saying that he would not be bound by the compromise.

In the evidence given as his own witness, Aishi Ram somewhat changed the position he had taken up in his statement, dated 2nd of March, 1935. There he had stated that he had signed a blank document which was neither dated nor stamped; but in his evidence he admitted that there was writing on the document when he signed it. He stated in cross-examination, "The document dated 8th December, 1934, is signed by me. I signed the paper about the 8th or the 11th month of the English calendar. The document was written up to above the below (blue?) line which I have now marked on this paper. The four stamps were there . . . Thakar Das had also signed, but none of the attesting witnesses had signed . . ." The original document is not before their Lordships, but what was contained above the line which he marked on the paper is thus stated by the learned Judges of the High Court:—

" . . . The substantive part of the document consists of ten or eleven lines only. Up to the 7th line everything material, viz., the fact of the compromise as well as the fact of his having received Rs.1,500, and his having agreed to take a simple mortgage of a house and 2 shops is mentioned . . ." The witness however stuck to his original statement that he was not paid Rs.1,500 and the compromise was not completed.

The Senior Subordinate Judge recorded the following findings on Issues 3 and 4:—

Issue 3. "I have fully considered the case and in spite of the inconsistent statements of the decree-holder Aishi Ram I have absolutely no hesitation in concluding that there was no compromise on the 8th of December and that a sum of Rs.1,500 was never paid to the decree-holder." After discussing the evidence he further stated, "on the whole therefore and in spite of the inconsistent statements of Aishi Ram I have absolutely no doubt that the document was not drawn up after the 6th December but sometime in November when the appeal was pending and was subsequently dated and entered in the register of the scribe." It will be observed that this finding is in consonance with Aishi Ram's earlier statement.

Issue 4. In view of two decisions of the Lahore High Court reported in 1931 A.I.R. Lahore page 608 and 1934 A.I.R. Lahore page 679 the Senior Subordinate Judge held that the alleged compromise, even if proved, was executory and that therefore no adjustment could be recorded as certified. In the result the judgment-debtor's application under Ord. XXI r. 2, C.P.C. was dismissed.

On appeal, Jailal J. agreeing with the view of the Senior Subordinate Judge on Issue 4 dismissed the case; but on a further appeal, a Divisional Bench of the High Court (Addison and Din Mohammad JJ.) without expressing any opinion on the question of law, sent the case back to him for decision on the facts.

After examining the evidence, the learned Judge came to the conclusion agreeing with the Senior Subordinate Judge, "there can be no manner of doubt on one point that Rs.1,500 was not paid to the decree-holder as was stipulated." As regards the execution of the document he held differing from the Senior Subordinate Judge, that it was written out and signed by the parties on the 8th December, 1934, but it was a condition precedent that it would become effective only on payment of Rs.1,500 by the judgment-debtor to the decree-holder and as the judgment-debtor did not pay this amount to the decree-holder immediately (he) left repudiating the whole transaction and declined to sign the register of the scribe Hans Raj . . . There was no completed adjustment between the parties." In this view he dismissed the appeal.

The case was again taken up in appeal before the Division Bench under the Letters Patent. The learned Judges (Addison and Din Mohammad JJ.) differing from the opinion of Jailal J. held that "the decree-holder has not been able to establish that no payment had been made to him as acknowledged by him in the deed." The gist of their reasoning may be stated in their own words as follows: "Considering that the onus as admitted by the decree-holder's Counsel lay on him to prove that he had not received the amount which he had acknowledged to have received over his own signature and also taking into view the falsehood to which the decree-holder has resorted to get over the fact of his own signature, the statement of the judgment-debtor Thakar Das as corroborated by his son who was admittedly present at the time as well as by the entry in his Bahir (Account Book) is enough to prove that the sum of Rs.1,500 as alleged in the document had been paid to the decree-holder and this being so, the adjustment was complete and the decree-holder is bound by it". In the face of this finding they stated that "the issue 4 did not come for decision."

The learned Judges accordingly set aside the decision of Jailal J. and ordered that the adjustment should be certified and also that the judgment-debtor should take immediate steps to carry out the rest of the obligations contained in the deed of adjustment.

At the hearing of the appeal before the Board the respondent has not appeared; but Mr. Parikh, the learned Counsel for the appellant, has carefully taken their Lordships through the entire record.

The first matter for consideration is whether a sum of Rs.1,500 was paid by the judgment-holder to the decree-holder as alleged by him. Mr. Parikh has argued the appeal on the footing that in the document bearing the date 8th of December, 1934, Aishi Ram has stated that he has received Rs.1,500 from the judgment-debtor. But his case is that though it is so stated in it, what actually happened was, that the judgment-debtor refused to make the payment, and thereupon, the decree-holder left the document in his possession and refused to sign in the register of the scribe who wrote it. It is common ground that the mortgage document has not been executed by the judgment-debtor. For these reasons, it is argued that the decree has not been extinguished by a valid adjustment.

The respondent's contention in the lower Courts was that after the appeal was decided at Lahore on the 6th of December, the parties travelled together back to Batala, that an agreement between them as incorporated in the document was reached, as a result of which it was executed on the 8th of December, that Thakar Das paid Rs.1,500 to the decree-holder in the

presence of witnesses and has made an entry to that effect in his account books. Thakar Das has stated in his application under Order XXI, r. 2, C.P.C. that he was always prepared to execute a deed of mortgage as provided for in the document.

Aishi Ram is described as an old man of 70 years. That he has made self-contradictory statements has been rightly noticed by all the learned Judges. For the appellant firm to succeed, Aishi Ram has, no doubt, to show that the sum of Rs.1,500 was never paid to him by Thakar Das. Both parties have led evidence on the point, and all the relevant facts are before the Board. Their Lordships have now to consider what inferences should be drawn from them.

Besides the conflicting testimony of Aishi Ram and Thakar Das, the material evidence as regards the payment of Rs.1,500 consists of the entry in respect of it in the "cash book" of Thakar Das, the testimony of Hans Raj, the writer of the document, and the statement in the document itself which is decidedly against the decree-holder.

To show that he had funds with him to pay Rs.1,500 to the decree-holder, Thakar Das relied on the credit entry in his cash account of the sum of Rs.2,229-14-6. He stated that he credited on the 1st December Rs.2,000 "in my 'Rokar' (cash account), from 'Ghar Khata' (private account)" but the Ghar Khata has not been produced. A striking feature in connection with the entry relating to the actual payment of Rs.1,500 must be mentioned. It is somewhat singular that in an ordinary cash book, while noting credits and debits, the witness should have considered it necessary to state below the item in question, the rest of the terms of the compromise; the need for such a note is not clear and unless explained, it seems to be altogether out of place in such a book. What is more, the statement is also witnessed by Madho Ram and Hans Raj, neither of whom when examined was asked any question to explain his association with it. It will be remembered that Madho Ram is the attesting witness and Hans Raj is the writer of the document. Madho Ram did not mention anything about the payment in his evidence; while Hans Raj definitely stated that no money was paid to Aishi Ram. In the circumstances, the entry respecting the payment of Rs.1,500 raises a grave suspicion whether it was not made deliberately to support what appears to be a false case. In connection with this, their Lordships would draw attention to another feature in the account book, noticed by the Senior Subordinate Judge. He remarks, "The whole of this period of the 1st to the 22nd December covers two or three pages of the Rokar Bahi which appears to have been written up subsequent to the 8th of December after the document of that date had come into existence". The learned Judges of the High Court have not made any comment on this observation of the Senior Subordinate Judge. With all due respect to them their Lordships cannot ignore the significance of his remark; it confirms the view which they have already expressed that the material entry in the account book appears to be very suspicious. In their Lordships' opinion it cannot be relied upon to prove that the sum of Rs.1,500 was paid to Aishi Ram.

To proceed, the evidence of Hans Raj throws considerable light on what seems to have actually happened. He is a witness of the judgment-debtor. He stated in effect that Aishi Ram signed and the witnesses attested the document on the understanding that the sum of Rs.1,500 would be paid to Aishi Ram immediately, but as the amount was not paid as expected by him, he went away and refused to sign his register. To the extent to which his testimony supports the inferences which their Lordships are prepared to draw as correct from the rest of the evidence in the case, it may be accepted.

It is a part of the respondent's case that Aishi Ram was at Lahore when the appeal was heard on the 6th of December and that he and Aishi Ram travelled together from Lahore, arriving the same evening at Batala, where the document was executed on the 8th. There is no evidence to prove that Aishi Ram was at Lahore on the 6th, or that they travelled together to Batala. It is true, Aishi Ram admits that he was at Batala on the 8th of December, but he denies that he went to Lahore "for the date of the hearing" on which date he says he was at Batala.

There cannot be any doubt that Aishi Ram has made contradictory statements regarding the execution of the document. In one place he said that he signed the document when it was blank; in another place, that he signed after everything material to the respondent's case had been written—as pointed out by the High Court. But the case has to be considered in the light of the entire evidence and the fair probabilities; when so considered, their Lordships for the reasons they have given are not satisfied that the sum of Rs.1,500 mentioned in the document as having been received by Aishi Ram, was ever paid to him. On this point their Lordships find themselves in agreement with the finding of the Senior Subordinate Judge and Jailal J.

In the circumstances disclosed by the evidence what appears to have happened is this:—The document in question was written and signed by the parties on the 8th of December, on the definite understanding that the sum of Rs.1,500 would be paid immediately, but as the amount was not paid as expected, Aishi Ram went away, repudiating the agreement. Aishi Ram by making a false statement with regard to the execution of the document has attempted to account for its possession by Thakar Das. Thakar Das has tried to support his plea of payment, by making false entries in his account book; and to make his case appear natural and real, he has stated falsely that after the hearing of the appeal the parties travelled together to Batala discussing the compromise, and had it written and signed on the 8th of December. On the whole, their Lordships have come to the conclusion that as the sum of Rs.1,500 intended to be paid immediately on the execution of the document was not actually paid, there was no effective compromise and as such, there was no valid adjustment to extinguish the decree.

In the above view, the question of law raised by Issue iv does not arise for decision.

In the result, their Lordships will humbly advise His Majesty that the decree of the High Court of Lahore dated the 28th of January, 1938, should be set aside and that passed by the said Court, dated the 23rd February, 1937, should be restored. The respondent will pay the appellant the costs of this appeal, and of the appeal the decree in which has now been set aside by the Board.

In the Privy Council

FIRM AISHI RAM-ASA NAND, through
ASA NAND

vs.

FIRM HARKARAN DAS-THAKAR DAS,
through KISHORI LAL AND OTHERS

DELIVERED BY SIR MADHAVAN NAIR

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