

Messrs Governments concerned and not against any of the
 Jawahar Singh- persons to whom the goods were actually delivered.
 Sobha Singh

v.
 Union of India For these reasons I am of the opinion that the
 and others plaintiffs have failed to establish that any part of
 _____ the cause of action accrued to the plaintiffs at
 Bhandari, C.J. Amritsar. The order of the learned Single Judge
 must therefore be affirmed and the appeal dismissed.
 As the plaintiffs have already sustained a
 considerable loss on account of goods sent by them
 to Sheikhupura, I am of the opinion that the parties
 should be allowed to bear their own costs.

Bishan Narain,
 J.

Bishan Narain, J.—I agree.

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Bishan Narain, J.

CH. HARDIAL SINGH, (*Judgment-debtor*) Appellant

versus

RISALDAR MAJOR PARMODH SINGH AND OTHERS,—(*Decree-
 holders*) Respondents

Letters Patent Appeal No. 53 of 1952.

1956

April, 2nd

*Code of Civil Procedure (V of 1908)—Section 48—
 ‘Subsequent Order’—Meaning and Scope of—Execution
 proceedings—Parties entering into a compromise—Execu-
 tion application decided in accordance therewith—No sepa-
 rate order or direction for payment made—Effect of—Exe-
 cuting Court—Powers of—Whether competent to make a
 subsequent order within the meaning of section 48(I)(b)—
 Whether such an order can be enforced by fresh execution.*

*Held, that section 48, Civil Procedure Code, does not
 lay down that the order must expressly direct payment of
 money. If the substance of the order is to the effect that
 the judgment debtor is directed to pay money, it would
 be covered by section 48, Civil Procedure Code.*

Held, that reading the parties' statements before the executing Court, and the order of the Court that the statements be attested and record be made in the register, it is clear that the order directed payment in accordance with the terms of the parties' statements.

Held, that there is nothing in section 48 as amended by the Punjab Debtors' Protection Act to suggest that a subsequent order cannot be passed by an executing court. Under Order 20, Rule 11 (2), Civil Procedure Code, it is open to the original Court to amend the decree so as to postpone payment of the decretal amount or fix instalments with the consent of the decree-holder, and that would be a subsequent order within section 48, Civil Procedure Code. But neither this provision nor any other provision in the Civil Procedure Code excludes the jurisdiction of executing court to pass a similar order in similar circumstances.

Held, that the executing court is competent to pass a 'subsequent order' and such an order can be enforced by execution proceedings.

Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Kapur, dated the 18th November, 1952, passed in E. S. A. No. 479 of 1950—Risaldar Major Parmodh Singh and others v. Hardial Singh.

(Civil Suit No. 100 of 1948, decided by Shri Sham Lal, Senior Sub-Judge, Kangra, at Dharamsala, on 4th October, 1949, and Civil Appeal No. 94 of 1949, decided by Shri Chhakan Lal, District Judge, Hoshiarpur, on 19th April, 1950.)

I. D. DUA, for Appellant.

D. K. MAHAJAN, for Respondents.

JUDGMENT.

BISHAN NARAIN, J.—This is an appeal by the judgment-debtor under clause 10 of the Letters Patent from the Judgment of the learned Single Judge in Chambers who had decided against him on the finding that the decree-holder's application for execution dated the 1st October, 1948 was not barred by time under section 48, Civil Procedure Code.

J.

Ch. Hardial Singh
v.
Risaldar Major Parmodh Singh
and others
Bishan Narain,
J.

The facts relevant for the decision of this question are not in dispute. The suit was originally brought in the Court of the Senior Sub-Judge, Kangra. The defendant Chaudhri Hardial Singh applied to the Debt Conciliation Board, Kangra, and the Board brought about a settlement between the parties and according to that settlement a decree for Rs. 1,200 was passed against the defendant on the 16th October, 1939. Risaldar Parmodh Singh one of the decree-holders made three successive execution applications which were dismissed in 1941, 1944 and 1945 respectively. The fourth application was made on the 18th May 1945. The parties compromised the matter in the course of this application and the judgment-debtor agreed to pay Rs. 733 within six months and in case of default he agreed to pay Rs. 833 to the decree-holder. On the basis of this compromise the execution application was dismissed on the 27th August, 1946. The judgment-debtor, however, did not make any payment within six months and the decree-holder again applied for execution of the decree, and this time on the basis of the compromise on the 1st October, 1948. The judgment-debtor contested this application and pleaded that the execution of the decree was barred by time under section 48, Civil Procedure Code. This defence was ultimately rejected by the learned Single Judge in Chambers but he granted the judgment-debtor leave to appeal under clause 10 of the Letters Patent.

Shri Inder Dev Dua on behalf of the judgment debtor has pointed out that the decree in the present case was passed by the Debt Conciliation Board on the 16th October, 1939 and that in view of the amendment of section 48, Civil Procedure Code, by section 11 of the Punjab Debtors Protection Act, 1936, the period of limitation has

been reduced to six years, and has argued that the fresh application made on the 1st October, 1948 for execution of the decree passed on the 16th October, 1939 was barred by time. The decree-holder's reply, is that the order dated the 27th August 1946 made by the executing Court amounted to a subsequent order directing the judgment-debtor to make payment within six months of the 27th of August, 1946, and therefore the limitation started under section 48(1) (b) on the expiry of six months of that date. The learned Single Judge in Chambers has upheld both these contentions of the decree-holder. Both these conclusions are challenged in this appeal. Thus the questions to be decided in this appeal are (1) whether the order of the executing Court dated the 27th August 1946 amounts to a subsequent order under section 48, Civil Procedure Code, and (2) whether this order directs payment of money by a certain date within the provisions of that section.

Ch. Hardial
Singh
v.
Risaldar Major
Parmodh Singh
and others
Bishan Narain,
J.

I shall first deal with the second question. On the 27th August 1946, the decree-holder made the statement before the executing Court reading—

“After deducting Rs. 39 as the yearly *muafi* land revenue * * *
Rs. 833 is due from the judgment-debtor who has promised to pay within six months. If the judgment-debtor does not so pay within six months then I will be responsible for taking out execution and if the judgment-debtor pays within six months then deducting Rs. 60 out of Rs. 833 I shall realise Rs. 773 and if he does not pay within six months then I shall realise Rs. 833.

Ch. Hardial Singh
v.
Risaldar Major Parmodh Singh
and others

This statement was accepted by the judgment-debtor and the Court passed an order reading—
“The statement be attested, record be made in the register and papers consigned to the Record Room”.

Bishan Narain,
J.

Shri Inder Dev Dua on the basis of these proceedings argues that the order made by the executing Court does not direct payment and therefore it is not an order within section 48, Civil Procedure Code. For this purpose he has relied on *Haji Zaheer-ud-Din v. Mt. Amtur Rasheed* (1). In that case the executing Court consigned the application to the Record Room according to the statement of the parties under a compromise and it was held that this order did not amount to an order directing payment of money. The exact terms of the compromise, however, are not recited in the judgment and it is not possible to say exactly what the arrangement between the parties was. It was observed by Abdul Rehman, J., in that case that in the absence of any direction by the Court to the parties to receive and pay the money in accordance with the fresh contract arrived at between them, the order cannot be construed so as to contain a direction to pay money within section 48 of the Code. If the learned Judge intended to hold that the order must expressly direct payment before it can be construed to be an order within section 48, Civil Procedure Code, then with due respect I am unable to accept this view. Section 48, Civil Procedure Code, does not lay down that the order must expressly direct payment of money. If the substance of the order is to the effect that the judgment-debtor is directed to pay money then it would be covered by section 48,

(1) A.I.R. 1944 Lah. 106

Civil Procedure Code. Reading the parties' statement before the executing Court and the order of the Court that the statement be attested and record be made in the register, it is clear that the order directed payment in accordance with the terms of the parties' statements. This is in accordance with the decision of the Calcutta High Court in *Kartik Chandra Mukherji v. Bata Krishna Ray* (1). I am in respectful agreement with the decision of the Calcutta High Court. The execution application was disposed of on the basis of the statements of the parties and, therefore, the words directing payment in those statements became part of the order of the executing Court. I, therefore, hold that in the present case the order of the executing Court dated the 27th August, 1946 amounted to an order directing payment. This contention of the learned counsel for the judgment-debtor therefore fails.

Ch. Hardial
Singh
v.
Risaldar Major
Parmodh Singh
and others
Bishan Narain,
J.

This brings me to the question whether this order of the executing Court directing payment of money in six months can be considered to be a subsequent order within section 48(1) (b) of the Civil Procedure Code? There is no doubt that it was an order passed subsequent to the decree. The only question that requires consideration is whether such a subsequent order must be made by the Court that passes the decree or whether it can be made by an executing Court also. Section 48 as amended by the Punjab Debtors' Protection Act, so far as it is relevant to the present case would read—

“No order for the execution of the same decree shall be made upon any fresh application presented after the expiration of six years from where the

(1) I.L.R. 2 Cal. 373 at pp. 383-84

Ch. Hardial
Singh
v.
Risaldar Major
Parmodh Singh
and others
—
Bishan Narain,
J.

decree or any subsequent order directs
any payment of money * * *
to be made at a certain date * *
the date of the default in making the
payment * * * in respect of
which the applicant seeks to execute
the decree.”

There is nothing in this section to suggest that such a subsequent order cannot be passed by an executing Court. It is true that under Order 20, Rule 11(2), Civil Procedure Code, it is open to the original Court to amend the decree so as to postpone payment of the decretal amount or fix instalments with the consent of the decree-holder and that would be a subsequent order within section 48, Civil Procedure Code. But neither this provision nor any other provision in the Civil Procedure Code excludes the jurisdiction of executing Court to pass a similar order in similar circumstances. There was a conflict of opinion in Courts in India on the question as to whether an executing Court could modify the decree on an agreement between the parties. This conflict was set at rest by their Lordships of the Privy Council in *Oudh Commercial Bank, Ltd. v. Thakurain Bind Basni Kuer and others* (1). Their Lordships in that case reproduced the following passage from *Gobardhan Das v. Dua Dayal* (2), reading—

“In numerous cases a compromise between the decree-holder and the judgment-debtor entered into in the course of execution proceedings, which was duly recorded, has been enforced.”

(1) I.L.R. 14 Luck. 192
(2) I.L.R. 54 All. 573

and proceeded to observe that in their opinion the practice, which is both widespread and inveterate, is not contrary to the Code. Thus their Lordships held that a decree could be modified by compromise in the course of execution proceedings. Thus the executing Court is competent to pass such an order and it is that order which is to be enforced during execution proceedings. In other words, the executing Court can only enforce a compromise duly recorded by it and could not enforce the original decree after the compromise which supersedes that decree. Obviously if the judgment-debtor carries out the terms of such a compromise it would not be open to the decree-holder to seek execution in terms of the original decree. In *D. S. Apte and another v. Tirmal Hanmant Savnur* (1), *Norman Macleod, C.J.*, observed—

Ch. Hardial
Singh
v.
Risaldar Major
Parmodh Singh
and others
Bishan Narain,
J.

“With great respect, I cannot see myself why the words ‘any subsequent order’ must be limited as if the words ‘by the Court which passed the decree’ were there. The words ‘any subsequent order’, to my mind, mean any order made by a competent Court.”

This observation was quoted with approval by a Division Bench of the Calcutta High Court in *Kartik Chandra Mukerji v. Bata Krishna Ray*, (2), and this view was also accepted in *Narendra Nath Ray Chaudhuri v. Heramba Chandra Ray Chaudhuri* (3). A contrary view, however, was taken in *Jurawan Pasi and others v. Mahabir Dhur Dube and another* (4), and in *Gobarhan Das v. Dau Dayal* (5). The decision of the Allahabad

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- (1) I.L.R. 49 Bom. 695
(2) I.L.R. (1937) 2 Cal. 373
(3) I.L.R. (1945) 2 Cal. 65
(4) I.L.R. 40 All. 198
(5) I.L.R. 54 All. 573 (F.B.)

Ch. Hardial Singh
 v.
 Risaldar Major Parmodh Singh and others
 ———
 Bishan Narain, J.

High Court was mainly based on the ground that an executing Court has no power to alter or vary the decree under execution and to substitute a new decree for it. This view of the Allahabad High Court was accepted as correct in *Lalji Dayadas and others v. Jugal Kishore* (1), and in *Hakim Nihal Husain v. Syed Ahmed* (2). This conclusion was, however, held to be unsound by the Privy Council in *Oudh Commercial Bank v. Thakurain Bind Basni Kuer* (3), and in view of this Privy Council judgment a Division Bench of the Allahabad High Court in *Partap Bahadur Sahi v. Hari Ram Marwari* (4), held that *Gobardhan Das v. Dau Dayal* (5), had been overruled by *Oudh Commercial Bank v. Thakurain Bind Basni Kuer* (3), and that section 48, Civil Procedure Code, was applicable to an order passed in execution proceedings. The Nagpur High Court has also changed its opinion and has taken the same view as has been taken by learned Judges in *Partap Bahadur Sahi v. Hari Ram Marwari* (4), *vide Meer Bismilla v. Jagannath and another* (6). Therefore, since 1939 all the High Courts have taken the view that a subsequent order as contemplated in section 48, Civil Procedure Code, can be passed by an executing Court.

The learned counsel for the judgment-debtor has, however, based his argument on *Haji Zaheerud-Din v. Mt. Amtur Rasheed* (7), which I have already noticed while discussing the other point raised in this appeal. In that case Abdul Rahman, J., wrote the main judgment with which Harries, C.J., concurred. The learned Judge came to the

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- (1) A.I.R. 1931 Nag. 50
 (2) A.I.R. 1936 Oudh. 266
 (3) I.L.R. 14 Luck. 192
 (4) I.L.R. 1940 All. 536
 (5) I.L.R. 54 All. 574 (F. B.)
 (6) I.L.R. 1947 Nag. 25
 (7) A.I.R. 1944 Lah. 106

conclusion that an executing Court could not pass an order which can be considered to be a subsequent order under section 48, Civil Procedure Code, and for this purpose he relied on the dictum of the Privy Council in *Kirtyanand Singh v. Prithi Chand Lal Chaudhury* (1). The facts of that case were, however, very different. In that case there was a compromise decree for recovery of arrears of rent. Subsequently a lady filed an administration suit presumably in the interests of the judgment-debtor and a Receiver was appointed in this subsequent suit. The decree-holder made an application in the suit for the relief that the Receiver should pay the decretal amount or the decree-holder should be permitted to execute the decree. In this suit certain orders were passed and certain properties were sold but substantial amount remained due to the decree-holder. The decree-holder during all this time was also applying to the executing Court to execute his decree but apparently without much success. In the last application the judgment-debtor raised an objection that the execution of decree was barred by time under section 48, Civil Procedure Code. The decree-holder thereupon relied on certain orders which had been passed in the administration suit for extension of limitation. Their Lordships of the Privy Council, however, repelled this contention of the decree-holder and pointed out that the order in the administration suit was made in the absence of the judgment-debtor and was made at a time when no execution application was pending. Their Lordships then observed:—

“On the true construction of the section (48, Civil Procedure Code), the subsequent order must be an order in the suit in

(1) . A.I.R. 1933 P.C. 52

Ch. Hardial
Singh
v.
Risaldar Major
Parmodh Singh
and others

which the decree is made and an order which directs payment by the debtor or the surety of the money in respect of the judgment-debt. The order of the 31st January, 1920, satisfied none of these conditions."

Bishan Narain,
J.

In these circumstances it cannot be said that the Privy Council in that case held that an order which is covered by section 48, Civil Procedure Code, must be passed by the Court which had originally passed the decree and that such an order could not be passed in the course of execution proceedings of that decree. In fact, in that case their Lordships were not called upon to decide whether a duly recorded compromise in execution proceedings amounted to a subsequent order or not within section 48, Civil Procedure Code. It must be remembered that a judgment is an authority on the facts of that case and the general words used in this judgment cannot be considered to have laid down the proposition of law for which the appellant in the present case contends. It was observed by Earl of Halsbury, L.C., in *Quinn v. Leathem* (1):—

"Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found."

Since the decision in *Oudh Commercial Bank Ltd. v. Thakurain Bind Basni Kuer and others* (2), all

(1) 1901 A.C. 495, 506

(2) I.L.R. 14 Luck. 192

the Courts in India, as I have already indicated above, have taken the view that an order under section 48, Civil Procedure Code, can be passed by an executing Court and the decision to the contrary in the Lahore case cannot, with due respect, be considered to be in accordance with law. I find myself unable to follow the Lahore case.

Ch. Hardial
Singh
v.
Risaldar Major
Parmodh Singh
and others
Bishan Narain,
J.

For these reason, I am of the opinion that the words "subsequent order" in section 48(1)(b), Civil Procedure Code, include an order passed by the executing Court in execution proceedings and this conclusion is in accord with the view of Allahabad, Bombay, Calcutta and Nagpur Courts with which I respectfully agree.

The result is that the execution application filed in the present case on the 1st October, 1948, for enforcing the compromise, dated the 27th August, 1946, must be held to be within time and not barred under section 48(1)(b), Civil Procedure Code, as amended by section 11, Punjab Debtors' Protection Act. This appeal, therefore, fails and is dismissed with costs.

BHANDARI, C. J.—I agree.

Bhandari, C.J.

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Bishan Narain, J.

SHRI LADLI PERSHAD JAISWAL,—Appellant

versus

THE COLLECTOR, KARNAL,—Respondent

Letters Patent Appeal No. 41 of 1953.

East Punjab Utilization of Lands Act (XXXVIII of 1949)—Sections 5 and 11—Lease granted under—Collector whether can cancel such lease and take possession by force.

195b
April, 16th