upon a reference when after accepting the reference, he applies his mind and does something in furtherance, in execution of the work of arbitration. The view taken by the Calcutta High Court in *Messrs Bajranglal Laduram's* case was approved.

I, thus, find that Lt.-Col. G. S. Ghumman had entered upon the reference on the 15th of February, 1955, and since the award was given by him beyond the period of four months thereafter, on the 14th of July, 1955, it was a nullity. Of course, the time for giving the award can be extended by the Court, but no such prayer seems to have been made to the learned Subordinate Judge. Even in the course of hearing of this appeal, no application for extending the time (assuming that such an application was competent at the appeal stage) has been moved. The award being a nullity could not be made a rule of the Court. I, accordingly, accept the appeal, and set aside the order of the trial court and the arbitrator's award dated 14th of July, 1955. The appellant shall be entitled to the costs of this appeal.

B.R.T.

LETTERS PATENT APPEAL

Before D. Falshaw, C. J., and Mehar Singh, J.

UMRAO SINGH,—*Appellant.*

versus

NIKKU MAL GUPTA,—*Respondent.*

L.P.A. No. 45-D of 1962.

1965

March, 2nd.

Code of Civil Procedure (V of 1908)—S. 60(1)(ccc)—Proviso—Whether in conflict with S. 60(3)—Sub-section (3)—Whether renders the Proviso inoperative—Proviso to clause (ccc)—"Any other law"—Meaning of — "Debts sought to be recovered"—Meaning and scope of — Whether include "judgment debt" or "decretal debt"—Residential house of judgment-debtor attached in execution of a money decree—Judgment-debtor by compromise with decree-holder creating charge on that house—Such charge—Whether can be enforced by decree-holder—Registration Act (XVI of 1908)—S. 17—Deed of compromise creating charge on immovable property of more than Rs. 100 presented to Court—Whether requires registration.

Held, that there is no inconsistency or conflict between the proviso to clause (ccc) of sub-section (1) and sub-section (3) of section 60 of the Code of Civil Procedure, 1908, and the latter provision does not render that proviso inoperative. The two stand apart and deal with different aspects. The proviso has no concern with a judgment debt or decretal debt and the question of its enabling a judgment-debtor to create a charge so as to contract out of the exemption in clause (ccc) does not arise. The proviso deals with a charge created on property for the debt sought to be recovered, which, in consequence of an action for its recovery, becomes a judgment debt or a decretal debt, while sub-section (3) concerns a different act of a debtor agreeing to waive the benefit of an exemption under section 60. This is the position after a money decree has been passed and the debt of the judgment-debtor has emerged in that decree, whatever may be the position before such a decree is passed. After such a decree there is no inconsistency or conflict between the proviso to clause (ccc) and sub-section (3). At this stage the proviso to clause (ccc) does not apply and if there is any agreement by the judgment-debtor to waive an exemption under section 60, it obviously falls under sub-section (3).

Held, that the expression 'the debt sought to be recovered' in the proviso to clause (ccc) of sub-section (1) of section 60 of the Code of Civil Procedure means a debt recoverable by action and has not within its scope a "judgment debts" or "decretal debts". In fact a judgment debt or decretal debt is not within the scope of the expression 'debts' as used in sub-section (1) of section 60.

A decree-holder, in execution of his money decree, attached the house of the judgment-debtor and the judgment-debtor, by a compromise, offered to pay the decretal amount in instalments and further agreed that the house shall remain attached and be charged with the amount payable under the decree so that in case of default in payment of any instalment, the decree-holder would be at liberty to recover the amount by the sale of the house. The judgment-debtor committed default in the payment of instalments and the decree-holder brought out execution to have the house sold in enforcement of his charge, and the question arose whether the proviso to clause (ccc) applied.

Held, that there was no charge created on the house of the judgment-debtor by him for the debt for which the decree-holder obtained a money decree against him subsequently. So proviso to clause (ccc) does not apply to his case. After the decree, the debt due from the judgment-debtor to the decree-holder, has merged in the decree, and has become a judgment debt or decretal debt, and as such at this stage it is not within the scope of the proviso to clause (ccc). Once

that proviso does not apply to the present case, the decree-holder cannot rely upon the charge said to have been created by the judgment-debtor on the house to deny the judgment-debtor the benefit of the exemption in clause (ccc). On this consideration, if the attached house of the judgment-debtor is his only main residential house, it is not liable to attachment and sale in execution of the decree-holder's decree against him.

Held, that the written compromise between the parties creating a charge on immovable property of more than rupees one hundred squarely falls under clause (b) of section 17 of the Indian Registration Act, 1908 and, if not registered, it has to be excluded from evidence under section 49 of the very Act, unless clause (vi) of sub-section (2) of section 17 applies to the case. Where in the order passed on the written compromise no mention is made of the charge created on the immovable property, clause (vi) of sub-section (2) of section 17 does not apply.

Letters Patent Appeal under Clause 10 *of the Letter Patent of the Punjab High Court against the decree, judgment and order of the Hon'ble Mr. Justice S. B. Capoor, dated* 18*th April*, 1962, *in E.E.A. No.* 152-D *of* 1961 *allowing the appeal.*

T. C B. M. LAL, ADVOCATE, for the Petitioner.

C. P. AGGARWAL, AND K. DAYAL, ADVOCATES, for the Respondent.

ORDER

MEHAR SINGH, J.—The appellant, Umrao Singh, obtained a money decree for Rs. 8,800 against the respondent, Nikku Mal Gupta, on June 15, 1957, on the basis of a promissory note. In execution of the decree, the appellant obtained attachment of a house of the respondent. On October 24, 1958, the parties entered into a compromise and made an application to the executing Court in the wake of it. In that application the parties gave the terms of the compromise. The appellant accepted a certain payment and agreed payment of the balance by instalments, with a condition that in the event of default as stated in the application, the balance of the amount would be realisable in lump sum and that the house would remain attached and the appellant would be able to realise the balance of the decretal amount by its sale. It further recites that till the satisfaction of the decree the house would remain charged with the balance of the decretal amount. On that application the learned Judge in, the

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executing Court on October 24, 1958, made this order—'Parties have entered into another agreement, Rs. 500 having been paid and Rs. 500 being payable on the 15th November, 1958, and thereafter Rs. 250 per mensem for twelve months; then Rs. 500 per mensem till satisfaction. In default of an instalment, the balance to be recoverable immediately. Dismissed.' The order of the executing Court makes no reference to the charge on the house.

The respondent made a default in the payment of instalments. The appellant proceeded with another application to execute the decree for the balance of the decretal amount praying for realisation of the same by the sale of the house. The respondent made an objection application under clause (ccc) of the proviso to sub-section (1) of section 60 of the Code of Civil Procedure that the attached house is his only main residential house and is thus exempt from attachment and sale in execution of the money decree against him of the appellant. Clause (ccc) in proviso to sub-sectoin (1) of section 60 has been inserted by a local amendment in Punjab, which is in force in Delhi also. The proviso with this new clause, so far as relevant here, reads—

> "Provided that the following properties shall not be liable to such attachment or sale, namely:—
> (ccc) one main residential house and other buildings attached to it (with the material and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to a judgment-debtor other than an agriculturist and occupied by him; provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered."

The Punjab amendment has further inserted this sub-section (3), after sub-section (2), of section 60—

> "(3) Notwithstanding any other law for the time being in force, an agreement by which a debtor agrees to waive any benefit of any exemption under this section shall be void."

The learned Judge in the executing Court, by his order of September 30, 1961, came to the conclusion that there is a valid charge on the house and it is not exempt from attachment and sale, obviously applying proviso to clause (ccc). He, therefore, ordered sale of the house.

The respondent filed an appeal against the order of the learned Judge of the executing Court and a learned Single Judge of this Court has, by his order of April 18, 1962, accepted the appeal holding that there is no valid charge on the house, and remanded the case back to the executing Court with a direction to proceed to dispose of the objection application of the respondent after deciding whether or not the attached house is the main residential house belonging to the judgment-debtor and is occupied by him. There were two arguments that were urged before the learned Judge. The first argument was that any agreement by the respondent as judgment-debtor to waive benefit of the exemption under clause (ccc) is void in view of the new sub-section (3) to section 60 as inserted by the Punjab amendment. The learned Judge was of the view that there appears to be some inconsistency between the proviso to clause (ccc) and sub-section (3). He observed that it is necessary to reconcile both the provisions and he could not accept the argument that sub-section (3) makes the proviso to clause (ccc) inoperative and that when sub-section (3) refers to 'any other law', it must be presumed to refer to a law other than the provision immediately preceding in the Code of Civil Procedure itself. Although the learned Judge does not say so in so many words, but what the learned Judge has observed comes to this, that a judgment-debtor may agree to waive the benefit of clause (ccc) by an agreement creating charge on the property, otherwise falling under that clause, under the proviso to that clause. The second argument before the learned Judge prevailed that the compromise application creating a charge of the value of more than rupees one hundred required registration under section 17 of the Indian Registration Act, 1908 (Act 16 of 1908), and not being registered is not admissible in evidence under section 49 of that Act, so that it does not prove the charge on the house. It is on the acceptance of the second argument that the learned Judge accepted the appeal of the respondent and made the order under appeal. In this appeal the same two arguments are for consideration.

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On the first argument, I agree with the learned Judge that 'any other law' in sub-section (3) refers to a law other than the provision immediately preceding, that is to say, other sub-sections of section 60 of the Code of Civil Procedure. But it does not follow from that that there is anything in the proviso to clause (ccc) whereunder a judgment-debtor may agree to waive the exemption in that clause. Sub-section (3) of section 60 makes clear the intention of the Legislature that any agreement to waive any benefit of any exemption under section 60 shall be void. It would be anomalous if, while so providing in clear language, the Legislature may be imputed the intention that, in spite of sub-section (3) or the policy underlying that sub-section, a judgment-debtor may still waive such an exemption under the proviso to clause (ccc). That proviso, to my mind, does not in terms admit of any such waiver and does not apply to a stage when a judgment-debtor may waive the benefit of the exemption under clause (ccc). It applied to a stage before any such question can ever arise. It means that it applies to a stage before the decree. The charge referred to in it is a charge created for 'the debt sought to be recovered'. The question is what is the meaning and scope of this expression 'the debt sought to be recovered' in the proviso to clause (ccc)? According to sub-section (1) of section 60, the property liable to attachment and sale in execution of a decree includes, among other types of property, debts belonging to the judgment-debtor. The expression 'debts' in this sub-section does not include in its meaning a 'judgment debt' or 'decretal debt', for, although a judgment debt or a decretal debt is liable to attachment in execution of a decree, it cannot be sold in such execution. This is specifically provided in Order 21, rule 53. So a judgment debt or decretal debt is not within the scope of the expression 'debts' as used in sub-section (1) of section 60. In *Tiruvengada Chari* v. *Vythilinga Pillai* (1), it has been held that decree for money obtained by a judgment-debtor is not a debt which can be attached and sold, and in *Satramdas-Kishinchand* v. *Manghoomal-Hakumal* (2), it has been held, in considering an argument that a judgment debt or decretal debt is a debt attachable as such under order 21, rule 46, that 'in the case of a decretal debt, however, the debt merges in the decree, and where a

(1) (1883) 6 Mad. 418.
(2) A.I.R. 1944 Sind. 68.

special procedure is provided for the attachment in execution of a decretal debt, it should, we think, be followed, for apart from other consideration, an anomalous position would arise if only the debt were attached and the decree remained free. The learned advocate for the applicants argued that if the debt were attached under rule 46, it followed also that the decree would be attached too. That, however, is an argument against his own case, for it would be doing indirectly that for which rule 53, specifically provides'. The word 'debt' is to be given the same meaning in the very same section, that is to say section 60. So the word 'debt' in the expression 'the debt sought to be recovered' in clause (ccc) of the proviso to sub-section (1) of section 60 is not a judgment debt or decretal debt. It is a debt recoverable by action and this expression thus concerns a stage before a decree for such a debt is obtained in the action. In *Rex* v. *Leon* (3), at page 141, it has been observed that 'it is right to say that there is some authority for saying that the word 'debt' in a statute means an actionable debt.' In *Thomas* v. *Hudson* (4), at pages 371 to 373 (page 519 of 153 E.R. 511), the observations of Alderson B., bring out clearly the distinction between a debt recoverable by action and a judgment debt. The expression 'judgment debt' or 'decretal debt' has a wider meaning and scope than the word 'debt'. The word 'debt' is confined to a debt recoverable by action, but extending also to a sum recoverable in an action on contract, which the learned Baron points out is popularly called a debt. A judgment debt or decretal debt would also include within its meaning and scope a judgment for money in an action of tort, in other words, it would include a judgment debt arising out of an action for damages in tort. A claim for damages is obviously not a debt. But when a judgment or a decree for it is given, then it becomes a judgment debt. Before a judgment or a decree is given in such an action, the damages claimed are not a debt recoverable. Thus, if proviso to clause (ccc) of sub-section (1) of section 60 is to apply to a judgment or decretal debt, it would apply to such a judgment or decretal debt arising out of an action in tort for damages. But a claim for damages in such an action is not a debt recoverable. So, in my opinion, the expression 'the debt sought to be recovered' in the proviso to clause (ccc) has

(3) (1945) 1 K.B. 136.
(4) (1845) M and W 353=153 E.R. 511.

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not within its scope a judgment debt or decretal debt. In this approach that proviso has no concern with a judgment debt or a decretal debt and the question of its enabling a judgment-debtor to create a charge so as to contract out of the exemption in clause (ccc) does not arise. There is no inconsistency or conflict between the proviso to clause (ccc) and sub-section (3) of section 60 in such circumstances and the latter provision does not render that proviso inoperative. The two stand apart and deal with different aspects. The proviso deals with a charge created on property for the debt sought to be recovered which, in consequence of an action for its recovery, becomes a judgment debt or a decretal debt, and sub-section (3) concerns a different act of a debtor agreeing to waive benefit of an exemption under section 60. This, I consider, is the position after a money decree has been passed and the debt of the judgment-debtor has merged in that decree, whatever may be the position before such a decree is passed. After such a decree there is no inconsistency or conflict between the proviso to clause (ccc) and sub-section (3). At this stage the proviso to clause (ccc) does not apply and if there is any agreement by the judgment-debtor to waive an exemption under section 60, it obviously falls under sub-section (3). In the present case there was no charge created on the house of the respondent by him for the debt for which the appellant obtained a money decree against him subsequently. So, proviso to clause (ccc) does not apply to his case. After the decree, the debt due from the respondent to the appellant, has merged in the decree, and has become a judgment debt or decretal debt, and as such at this stage it is not within the scope of the proviso to clause (ccc). Once that proviso does not apply to the present case, the appellant cannot rely upon the charge said to have been created by the respondent on the house to deny the respondent the benefit of the exemption in clause (ccc). On this consideration, if the attached house of the respondent is his only main residential house, it is not liable to attachment and sale in execution of the appellant's decree against him.

The other question is one of the registration of the written compromise between the parties creating the charge on the house of the respondent. It is common ground that the value of the property is more than rupees one hundred and it is not denied that unless clause (vi) of sub-section (2) of section 17 of Act 16 of 1908, applies to

the case, the written compromise between the parties squarely falls under clause (b) of sub-section (1) of that section, and it not being registered, has to be excluded from evidence under section 49 of the very Act. Sub-section (2), with clause (vi), of section 17 of that Act reads—

> "(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding."

The order made by the executing Court on the compromise application of the parties has already been reproduced above. It does not refer at all to the creation of a charge on the house in question. But the learned counsel for the appellant refers to *Robert Skinner* v. *Mrs. James Skinner* (5), and says that since that order was passed pursuant to the compromise between the parties, it may be taken that the compromise has been incorporated in the order. The case relied upon by the learned counsel proceeds on its own facts, which are not parallel to the present case. In this case the learned Judge in the executing Court, after saying that parties had entered into another agreement, recites such of the terms of the compromise which he made part of his order and has specifically omitted the matter of charge on the house. In the circumstances what has been specifically omitted cannot be read as having been incorporated in that order. In repelling this approach the learned Judge relied upon *Fazal Rasul Khan* v. *Mohd-ul-Nisa* (6), in which the learned Judges have pointed out that an order such as 'decree passed in terms of the compromise' would be utterly incomprehensible without reference to the compromise and, therefore, the compromise could be regarded as embodied in the decree; but an order that the parties have compromised and the suit is, therefore, dismissed is quite comprehensible and intelligible without reference to any particular form of compromise and the particular compromise which led to the dismissal cannot be said to have been in any way embodied in the

(5) 91 P.R. 1915.
(6) A.I.R. 1944 Lah. 394.

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decree. The learned Judges then observed that the compromise in the latter case requires registration and if it is not registered the compromise is inadmissible. This case not only completely negatives this particular argument of the learned counsel for the appellant, but the whole of his argument that the compromise in the present case, though unregistered, is still admissible to prove the charge. So that section 17(2) (vi) of Act 16 of 1908 does not help the appellant in so far as the order of the executing Court is concerned. The learned counsel for the appellant then refers to *Prabh Dyal* v. *Gurmukh* (7), *Khair-ul-Nisa* v. *Bahadur Ali* (8), *Murli Dhar* v. *Gobind Ram* (9), *Mt. Jeo* v. *Jaimal Singh* (10), *Mohamad Ali Khan* v. *Shujat Ali Khan* (11), *Hari Chand* v. *Maghi Mal* (12), *Mt. Jai Lagi* v. *Alliance Bank of Simla Limited* (13) and *Walaiti Ram* v. *Shadi Ram* (14), and contends that where an application is made to a Court on a paper bearing stamp saying that the parties have entered into a compromise and the suit is either dismissed as withdrawn or dismissed or decreed in the wake of the compromise, then such an application does not require registration under section 17 of Act 16 of 1908 and where the decree is passed in the terms of the compromise, it is not necessary that the compromise should be bodily transcribed in the order of the Court or in the decree. All these cases were before the amendment of clause (vi) of subsection (2) of section 17 of Act, 16 of 1908 in 1929. At that time, under section 17(2)(vi) of that Act 'decrees and orders of Courts and awards' were exempt from registration, but the amended section 17(2)(vi) is not the same. So all these cases are not helpful in the decision of the present case. The facts of the present case are more near to *Fazal Rasul Khan's case*, which is a case under the

(7) 98 P.R. 1902.
(8) 27 P.R. 1906.
(9) 20 P.R. 1914.
(10) A.I.R. 1915 Lah. 240.
(11) A.I.R. 1917 Nag. 1.
(12) 78 P.R. 1917.
(13) A.I.R. 1930 Lah. 855 (2).
(14) (1935) 154 I.C. 1049.

amended section 17(2)(vi) of this Act. The learned counsel for the appellant has further contended that, in any case, the application for compromise was never intended to be a document of title between the parties and it was merely a memorandum prepared for presentation to the Court of an oral agreement creating charge on the house previously arrived at between the parties. So it did not require registration. For this also, he seeks support from some of the cases already referred to above. Every document, obviously, must proceed on the parties agreeing to its terms before it is reduced to writing, but that does not mean that every such document is a recital of a past completed transaction. It depends upon the circumstances of a particular case whether a particular document is not by itself a document of title but is merely a memorandum of a title already orally created. For that, evidence is necessary. Here, just an argument has been urged not supported by any evidence. But even under the unamended section 17(2)(vi) of that Act, it was held by Sulaiman, J., in *Chhajju* v. *Gokul* (15), that an unregistered compromise has no binding effect as a document which purports or operates to create or extinguish any right or interest in immovable property worth rupees one hundred, for such a document is compulsorily registrable. So there is no substance in this argument on the side of the appellant.

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The consequence is that this appeal of the appellant fails and is dismissed with costs.

D. FALSHAW, C.J.—I agree.

Falshaw, C.J.

K.S.K.

APPELLATE CIVIL

Before D. Falshaw, C.J., and Mehar Singh, J.

DAULAT RAM,—*Appellant*

versus

MAHABIR PARSHAD AND OTHERS,—*Respondents*

Regular First Appeal No. 84-D of 1958

1965

March, 3rd.

Code of Civil Procedure (V of 1908)—Order 41, Rule 4 and Order 22, Rule 3—Joint decree in favour of plaintiffs-respondents—Shares of each not specified in the decree—Ratio of shares in the decree ascertainable—Appeal against the decree—

(15) A.I.R. 1923 All. 338.