

secure reasonable revenue for the local body for its administration which is perhaps necessary in the interest of our democratic society. The classification made in the impugned notification would thus seem to be based on an intelligible principle having a reasonable relation to the subject of providing revenue for the local self-Government administration by imposing a modest amount of tax on trades, professions or callings. I am thus of the view that merely because certain persons broadly falling in one of the groups in the notification in question are otherwise financially unequal, does not attract the challenge on the basis of Article 14. It may also be pointed out that this Article prohibits a conscious discrimination and not a hardship which may ensure from the working of a tax measure which is otherwise within the constitutional competence of the law-giver. Nothing has been shown in the case in hand disclosing any conscious discrimination considered in the background of the object of imposing professional tax. The observations in the unreported case of *Dr. Kahan Chand* do not lay down a different rule of law.

Daulat Ram and  
others  
v.  
Municipal Com-  
mittee Tankan-  
wali and others  

---

Dua, J.

For the foregoing reasons, this appeal fails and is hereby dismissed but without costs in this Court.

B.R.T.

APPELLATE CIVIL

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

GOPAL CHAND BHALLA,—Appellant.

versus

GOBIND SARUP AND ANOTHER,—Respondents.

Letters Patent Appeal No. 5 of 1959.

Code of Civil Procedure (Act V of 1908)—S. 48 (1)(b)  
—“Subsequent order”—Order passed by executing Court directing payment of decretal amount by instalments or at a future date—Whether amounts to “subsequent order”.

1962

December, 19th.

*Held*, that an order passed by the executing Court directing the payment of the decretal amount by instalments or at a future date amounts to a "subsequent order", within the meaning of section 48 (1)(b) of the Code of Civil Procedure, 1908.

Case-law discussed.

*Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment of Hon'ble Mr. Justice A. N. Grover passed in Execution Second Appeal No. 468 of 1956 on 22nd October, 1958, affirming that of Shri Tirath Dass Sehgal, District Judge, Gurdaspur, dated the 3rd March, 1956 whereby he affirmed that of Shri Dev Raj Saini, Sub Judge 1st Class, Batala, dated 26th May, 1955.*

H. R. SODHI, U. S. SAHNI & AMRIT PAL SINGH, ADVOCATES, for the Appellants.

H. L. SARIN, M. S. JAIN AND K. K. CUCURRIA, ADVOCATES, for the Respondents.

## ORDER

Harbans Singh, J.      HARBANS SINGH, J.—The facts necessary for the disposal of this appeal may briefly be stated as under: Gobind Sarup obtained a decree against Gopal Chand and Jaswant Kumar for a sum of Rs. 1,414 together with costs and future interest at 6 per cent per annum, on 25th of March, 1941. Execution proceedings were taken and on 14th of May, 1949, the judgment-debtors agreed to pay the decretal amount by instalments of Rs. 30 per mensem. Only a few instalments were paid and there was a default whereupon the decree-holder took out the execution again on 31st of July, 1951. Gopal Chand preferred objections and during the pendency of these proceedings there was again a compromise between the decree-holder on the one hand and Gopal Chand, Judgment-debtor on

the other. As a result of this compromise, the executing Court passed the following order on 24th of November, 1951:—

Gopal Chand  
Bhalla

Gobind Sarup  
and another

“The balance of the decree will be paid in monthly instalments of Rs. 40. In case of default of payment of two instalments the balance will be realisable in lump sum according to law. The first instalment will be paid on the 24th December, 1951. The objection petition will stand dismissed. The execution application will be consigned to the record room as partly satisfied to the extent of Rs. 385-2-0.”

Harbans Singh, J.

The execution application, out of which the present appeal has arisen, was filed on 13th of November, 1954, for the recovery of the future interest. The decree-holder claimed that he was entitled to a sum of Rs. 1,128-10-0. Objections were taken to this by Gopal Chand, Judgment-debtor as a result of which a number of issues were settled. We are only concerned with issues Nos. 1 and 2, which were as follows:—

- (1) Is the execution application barred by time ?
- (2) Is the decree-holder not entitled to claim interest ?

The trial Court dismissed the execution application but the learned District Judge held both the issues in favour of the decree-holder. On a further appeal filed by the judgment-debtor, a learned Single Judge of this Court affirmed the order of the lower appellate Court.

With regard to the question whether the decree-holder was entitled to recover the interest or

Gopal Chand  
Bhalla  
v.  
Gobind Sarup  
and another  
Harbans Singh, J.

not, the main point urged before the learned Single Judge, was that in the execution application filed on 31st of July, 1951, in which a compromise was entered into, there was no mention in column 7 of the application as to the amount of interest calculated on that day and that in the *kafiat* appended by the office it was stated that Rs. 1,265 were due and, interest was never calculated even in the calculation of the office. The argument was that, in fact, the judgment-debtor should be taken to have entered into a compromise for payment of this specific amount of Rs. 1,265 and that impliedly the parties agreed that no interest would be charged. The learned Single Judge went into this question and came to the conclusion that there was nothing in the statements of the parties relating to the compromise from which it could be inferred that interest was given up, and that, in any case, the lower appellate Court, on a consideration of the relevant material having come to the conclusion that interest was never abandoned by the decree-holder, the finding was a finding of fact which was unassailable in second appeal. Though this point was urged before us by the learned counsel for the judgment-debtor, yet it is obvious that finding, which could not be challenged in second appeal, is not open to attack in the Letters Patent Appeal at all.

The main argument addressed by the learned counsel for the appellant was relating to the question of limitation. The question involves the interpretation of sub-section (1) of section 48 of the Civil Procedure Code. This may be reproduced with advantage—

“48(1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for

the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from—

Gopal Chand  
Bhalla  
v.  
Gobind Sarup  
and another

Harbans Singh, J.

- (a) the date of the decree sought to be executed, or
- (b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree."

There is no doubt that the last execution application filed in 1954, was more than twelve years after the date of the decree and, consequently, it would be within time only if it falls within clause (b) of sub-section (1) of section 48, and the order passed by the executing Court in the year 1951, as a result of the compromise between the parties can be treated as a "subsequent order" directing payment of the money at recurring periods. There can be no manner of doubt that the relevant order of the Court did direct the payment of the decretal amount by instalments of Rs. 40 per mensem and was an order falling within clause (b). The argument of the learned counsel for the appellant, however, was that the order referred to in sub-clause (b) of sub-section (1) of section 48 is an order passed by the Court which decided the suit and not an order passed by the Executing Court. He referred to sub-rule (2) of rule 11 of Order 20 of the Civil Procedure Code which is to the following effect:—

"After the passing of any such decree the Court may, on the application of the

Gopal Chand  
Ehalla

v.

Gobind Sarup  
and another

Harbans Singh, J.

judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest. \*

\* \* \* \*

It was urged that the Court which can pass such an order is apparently the Court passing the decree, and not the executing Court and, consequently, an order passed by the executing Court directing the payment at recurring periods would not extend the period of limitation for the execution of the decree. Main support for this contention was sought to be drawn from the observations made in a Full Bench decision of the Allahabad High Court in *Gobardhan v. Dau Dayal* (1). These observations are at page 281 (column 1) of the report as follows:—

“Though the words “subsequent order” in section 48 are more general and the operation of the section cannot be confined to the particular orders passed under Order 20, rule 11, the order under Order 20, rule 11 can be passed by the original Court only. An executing Court as such cannot make an order which would operate as a ‘subsequent order directing payment of the decretal amount on a certain date’.”

Apart from the fact that this view was held in *Bhiki Mal Murari Lal v. Kundan Lal and another* (2), as having been impliedly overruled by a decision of the Privy Council in *Oudh Commercial Bank v. Th. Bind Bansi Kuer* (3), it runs counter to that taken by a majority of the other High

(1) A.I.R. 1932 All. 273.  
(2) A.I.R. 1940 All. 107.  
(3) A.I.R. 1939 P.C. 80.

Courts. In *Nihal Husain v. Syed Ahmed* (4), King C. J., following this Full Bench decision of Allahabad High Court and not following *D. S. Apte v. Tirmal Hanmant Sasnur* (5), and *H. Fealding v. Janki Das & Sons* (6), took a similar view. The head-note runs as follows:—

Gopal Chand  
Bhalla

v.

Gobind Sarup  
and another

Harbans Singh, J.

“An executing Court as such has no power to make an order which would operate as a ‘subsequent order’ within the meaning of section 48, sub-section (1)(b) directing payment of the decretal amount on a certain date or on certain dates. The subsequent order must be an order made by the Court which passed the decree and not an order made in the course of execution. Hence an order passed by an executing Court regarding the realisation of a decretal sum by means of instalments does not amount to a subsequent order within the meaning of section 48.”

Besides these, reliance was placed before the learned Single Judge as well as before us on a Division Bench ruling of the Lahore High Court reported in *Haji Zaheer-ud-Din v. Mt. Amtur Rasheed* (7). The facts of this case are, however, distinguishable and they do not help the appellant in this case. In that case an order passed by the executing Court did not embody the terms of the compromise nor did it direct the payment of the decretal amount by instalments. It only noticed that there was a compromise between the parties and in view of that compromise the proceedings were consigned to the record room. Abdur Rahman, J., delivering the

(4) A.I.R. 1936 Oudh 266.  
(5) A.I.R. 1925 Bom. 503.  
(6) A.I.R. 1926 Lah. 465.  
(7) A.I.R. 1944 Lah. 106.

Gopal Chand  
Bhalla  
v.  
Gobind Sarup  
and another  
Harbans Singh, J.

judgment of the Bench, clearly observed that the order "does not direct any payment of money at a certain date or at recurring periods although it does take notice of and refers to the compromise between the parties arrived at on that date". In fact, reference was made to an earlier Division Bench decision, to which Shadi Lal, C. J. was a party, reported as *Banarsi Das v. Ramzan* (8), and that case was distinguished on facts. In *Banarsi Das's* case it was specifically held that an order passed by the executing Court to pay the decretal amount by instalments on compromise has the result of extending time under section 48(1)(b). Head-note (a) runs as follows:—

"The parties to an execution agreed that the decretal amount should be paid by instalments and the Court accepted the compromise and consequently passed an order striking off the execution proceedings. Held that the Court, when accepting the request of the parties, intended that the decretal amount should be payable by instalments, that section 48(b) of the new Code applied and the order which it passed was in essence and substance one made under section 210 of the Civil Procedure Code (now Order 20, rule 11) which extended the period of limitation."

In fact, *Banarsi Das's* case was followed by Jai Lal, J. in *Bhagwant Singh v. Santa Singh and another* (9). The High Court of Travancore Cochin in *Kuriakko v. Kurian Pylee* (10), also took a view similar to the one taken by the Full Bench of the Allahabad High Court, referred to above. In its

(8) A.I.R. 1923 Lah. 381.

(9) A.I.R. 1933 Lah. 758.

(10) A.I.R. 1953 Tra. Cochin 394 at P. 397.

















