

Mehr Chand - - - - - *Appellant*

*v.*

Shib Lal and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 6TH APRIL, 1948

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*Present at the Hearing :*

LORD SIMONDS  
LORD MORTON OF HENRYTON  
SIR MADHAVAN NAIR

[*Delivered by* SIR MADHAVAN NAIR]

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This is an appeal from a judgment and order of the High Court of Judicature at Lahore dated 8th June, 1943, varying a judgment and order of the Senior Subordinate Judge, Amritsar, dated 30th August, 1939.

The appeal arises out of an application made by the appellant under Section 144 of the Code of Civil Procedure against Paira Mal, since deceased, the father of the respondents, following the reversal of a decree which had been passed against him.

Section 144 of the Code of Civil Procedure is as follows:—

“ Where and in so far as a decree is varied or reversed, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.”

The appellant and Paira Mal were partners in a factory for the making of glass called the Northern India Glass Factory, Amritsar. As troubles arose in connection with the working of the factory, Paira Mal brought a suit on 6th January, 1923, against the appellant for the recovery of Rs.39,037-15-3 on account of principal and interest said to be due to him. Out of this sum, Rs.23,150 were claimed by Paira Mal under Cl.14 of the Deed of partnership, and Rs.14,543-2-3 on account of the price of the coal supplied by him to the factory.

On 23rd December, 1925, the Trial Court gave Paira Mal a decree for Rs.24,485. His claim for the price of coal was dismissed on the ground that a separate suit should be brought for that amount as it could not be recovered under Cl.14 of the Deed. Both parties appealed against the decree. The High Court reversed the decree and remanded the case to the lower Court for dealing with it as one for dissolution of partnership and for rendition of accounts. The High Court observed that the sum of Rs.14,543 the price of coal should be adjusted when accounts were taken between the parties. The judgment of the High Court in the appeals was passed on 19th December, 1932. It may be mentioned here that in the partnership action a final decree was passed for the sum of Rs.9,642-1-7 in favour of Paira Mal. Against this decision an appeal was filed before the High Court and that appeal was dealt with by the High Court in a separate Order.

Before the decree obtained by him on 23rd December, 1925, was set aside by the High Court, Paira Mal took out execution to realise the amount decreed in his favour by the Subordinate Judge. By proceedings in execution he was able to realise a sum of Rs.15,349-12-3 in cash by selling the factory, articles in it, by realising the arrears of rent due from the tenants of the six shops belonging to the appellant, and also by obtaining certain amounts of money by execution through Srinagar and Sialkot Courts. He also purchased the equities of redemption of the six shops already mentioned, and also of another shop, all of which had been under mortgage.

Under the restitution proceedings initiated under Section 144 of the Civil Procedure Code, the appellant was awarded by the Subordinate Judge on account of damages suffered by the execution of the decree before it was reversed in appeal, a sum of Rs.64,407 with interest, and a sum of Rs.7,474-11-0 which had been deposited by Paira Mal in Court. He was also allowed mesne profits and possession of the shops which had passed into the hands of Paira Mal. On appeal, the High Court reduced the said sum to Rs.15,650 with interest at 6 per cent. per annum from 30th August, 1939, to the date of realisation.

The Order passed by the High Court has been challenged by the appellant before the Board only with respect to a few items. These relate to:—

- (1) The reduction made by the High Court in respect of the arrears of rent of property of which Paira Mal took possession;
- (2) The award to the respondents by the High Court of interest on sums paid by Paira Mal or the respondents, to mortgagees of the properties and for repairs, and
- (3) The reduction of interest made by the High Court.

Mr. Rewcastle, the learned Counsel for the respondents, took the preliminary objection that the matters aforesaid are not to be regarded as a proper subject matter of appeal to His Majesty in Council, as they involved no question of principle and are merely items of accounting in the taking of partnership accounts and would fall within the principle laid down in the judgment delivered by Lord Romer in *Lala Hakim Rai v. Lala Ganga Ram*, which is referred to in the practice note in L.R. 69 I.A. 172, and which has been followed in *N.R. Kapur v. Murli Dhar Kapur* (L.R. 71 I.A. page 149); he therefore suggested that the appellant should not be allowed to proceed with the appeal.

Not being satisfied that they ought to deal with this appeal on the basis of the above mentioned principle their Lordships allowed the appeal to proceed and now deal with the several questions raised seriatim.

- (1) The arrears of rent:

The learned Subordinate Judge allowed almost the full amount of the arrears of rent claimed by the appellant from each of the tenants who were in occupation of the shops. The learned Judges of the High Court reduced the amount by decreeing only the sum actually realised by Paira Mal. Their Lordships are not satisfied that any principle has

been disregarded by the High Court in deciding the question. In the circumstances of the case, their Lordships think that the appellant is not entitled to get more than the sums actually realised from the tenants.

(2) Interest :

It was contended that the High Court erred in allowing rebate interest to the respondents on sums paid by Paira Mal or the respondents to the mortgagees from whom Paira Mal redeemed the properties in course of execution of the decree of the Subordinate Judge. In developing this argument their Lordships were taken through the method of computation of interest adopted respectively by the High Court and the Subordinate Judge as shown in the tables of calculation appearing in their respective judgments. Their Lordships after full examination are satisfied that the method followed by the High Court is in result the same as that adopted by the learned Subordinate Judge and is in the circumstances of the case fair and correct. They do not think that a proper case has been made out for displacing the calculations made by the High Court.

(3) Repairs :

This item relates to the sum allowed for repairs of the shops while they were in the possession of Paira Mal. It was submitted that one item of Rs.447-8-0 has been wrongly allowed to the respondents under this head. Their Lordships do not find any ground for disturbing the conclusions of the High Court on this question.

(4) The rate of interest :

The learned Subordinate Judge allowed interest at 1 per cent. per mensem on different items of money due to the appellant till the date of his order, with future interest at 6 per cent. per annum till realisation. The learned Judges of the High Court in reducing the rate of interest on the mesne profits and other items to 6 per cent. (the usual Court rate of interest) has given sufficient detailed reasons for the reduction made by them. On sums realised by Paira Mal by execution through Srinagar and Sialkot Courts the appellant has been allowed 9 per cent. for special reasons. Considering the reasons given by the learned Judges, their Lordships see no reason to disturb their decision as to the rate of interest.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council

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MEHR CHAND

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SHIB LAL AND ANOTHER

DELIVERED BY SIR MADHAVAN NAIR

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