FULL BENCH

Before Khosla, Dulat and Bishan Narain, JJ.

F. RADHE SHAM-ROSHAN LAL,—*Appellants.*

v.

F. KUNDAN LAL-MOHAN LAL,—*Respondents.*

Execution First Appeal No. 201 of 1952

1956

Jan, 19th

Code of Civil Procedure (V of 1908)—Sections 2(6) and 43—Constitution of India, Article 261(3)—Foreign decree—Execution—Judgment debtor not resident within the jurisdiction of Foreign Court not submitting to its jurisdiction expressly or impliedly or voluntarily appearing as defendant—Decree of the Foreign Court against him, whether can be executed—Court passing the Foreign decree ceasing to be a Foreign Court—Effect of—Interpretation of Statutes—Provision of Law not retrospective—Whether can affect substantive rights—Right to execute a decree—Whether a substantive right.

R.S.R.L. of Indore, brought a suit against K.L.M.L. of Ludhiana (Punjab). Notice sent to K.L.M.L. who did not appear and an *ex parte* decree was passed against them on 17th February, 1948. R.S.R.L. made an application for the transfer of the decree to a court at Ludhiana and a transfer certificate was granted on 21st September, 1950. Application for the execution of the decree was filed in the court of Senior Sub-Judge, Ludhiana, on 10th January, 1951. The Judgment-Debtor raised the objection that the decree could not be executed as the court which passed the decree was a Foreign Court to whose jurisdiction the Judgment-Debtor had not submitted and the decree was a nullity. The question for consideration before the High Court was whether the *ex parte* decree passed by a court at Indore, on 17th February, 1948, is capable of execution through a court in the State of Punjab, after it ceased to be a Foreign Court.

Held (per Full Bench), that the decree of the Court of Indore at the time it was passed was a decree of a foreign Court. The Judgment-debtors did not submit themselves to the jurisdiction of the Court and at that time the decree could not have been executed through the Court at Ludhiana. The subsequent change in the definition of the

"foreign Court" and in the provisions of section 43 of the Civil Procedure Code, did not make the decree capable of execution in Ludhiana, nor did the provisions of Article 261(3) of the Constitution remove the disability which attached to the decree. The judgment-debtors were not debarred from raising the plea that the decree was a nullity by reason of the fact that it was passed by a Court which had no jurisdiction to pass it. That plea was open to them still as the right to raise that plea was not taken away by subsequent legislation.

In order to determine whether a certain decree is or is not the decree of a foreign Court its nature at the time of its birth has to be determined and not at some subsequent date. Admittedly, the decree was passed on the basis of a foreign judgment and the subsequent change in the definition of a "decree" which came about on account of the rearrangement of territories cannot alter its character. Procedural law no doubt operates retrospectively but substantive law does not unless the statute specifically so provides. The right to execute a decree and the right to raise an objection to a decree are substantive rights. The right of the judgment-debtor to plead that a certain decree is a nullity cannot by any stretch of meaning be described as a procedural matter. It is a vested right in the judgment-debtor and it cannot be taken away by a provision of law which is not retrospective. On the date the decree was passed the judgment-debtor could have raised the objection that the decree was a nullity because it was a decree of a foreign Court. Any subsequent change in the law could not take away that right. The right which had accrued to the judgment-debtor continued after the law was changed and the old provisions were repealed. This disability could not be removed because a thing which is *non est* cannot become a positive, effective and legal entity. The decree of the Court of Indore was of no avail whatsoever in Ludhiana at the time it was passed and by the subsequent extension of the Civil Procedure Code to Indore, this decree could not become executable at Ludhiana.

Held also, that Judicial orders referred to in Article 261(3) of the Constitution are judgments or orders which are passed or delivered after the coming into force of the Constitution. The article has no retrospective operation.

Dulat, J., Contra.

Held, that the fact that a decree may have been obtained *ex parte* or after contest does not affect the matter, for the decree of a foreign Court whether *ex parte* or obtained after contest remains incapable of execution, while on the other hand the decree of an Indian Court, whether *ex parte* or otherwise cannot be refused execution. No principle of international law is really involved in the matter and the question is fully covered by the provisions contained in the Code of Civil Procedure.

Held further, that the argument that the decmree in the present case must be deemed to be foreign decree is that the decree when made was the decree of a foreign Court and cannot change its character on account of subsequent political events which made the foreign Court in question an Indian Court, and that the amendment of section 43 of the Code of Civil Procedure is not meant to be retrospective and does not, therefore, affect the status of those decrees which were granted by a foreign Court prior to the amendment. Such a view is possible but the inconvenience in adopting such a view is so great that it should on that ground alone be rejected. The argument involved really comes to this. The Indore Court was a foreign Court before the 26th January, 1950, and became a Part B State Court only on that date and became a Court governed by the Code of Civil Procedure only on the 1st April, 1951. The decrees granted by the Indore Court prior to the 26th January, 1950, were, therefore, foreign decrees and could not be executed in any Court governed by the Code of Civil Procedure, even after the Indore Court became Part B State Court or even after the Code of Civil Procedure was made applicable. If the argument is sound it would logically follow that a decree granted by the Indore Court on the 25th January, 1950, could not be executed even in the Indore Court after the 26th January, 1950, or at any rate, after the 1st April, 1951, because the Indore Court had by then become a Court governed by the Code of Civil Procedure, just as the Court at Ludhiana was, and a decree granted even by the Indore Court prior to the 26th January, 1950, being a foreign decree would not be capable of execution in a Court governed by the Code of Civil Procedure. This would be an intolerable situation and on the ground of public convenience, therefore such a view ought not to be adopted. The decree in

this case must now be taken to be the decree of an Indian Court to which the Code of Civil Procedure fully applies and as such the decree cannot be refused execution merely because it was obtained *ex parte.*

Execution first appeal from the order of Shri Rajindar Singh, Senior Sub-Judge, Ludhiana, dated 14th August, 1952, dismissing the application for execution.

Case referred by Hon'ble Mr. Justice Harnam Singh, to Division Bench.

H. R. SODHI, for Appellant.

F. C. MITAL, for Respondents.

JUDGMENT

KAPUR, J. This matter has been referred to a Division Bench by my learned brother Harnam Singh J., because of the conflict of opinion between the Bombay High Court in *Bhagwan Shankar Surdi* v. *Rajaram Bapu Vithal Nanajkar* (1), and the Rajasthan Court in *Shah Premchand* v. *Shah Danmal*, (2). The appeal in this Court was brought by the decree-holder against an order of the Senior Subordinate Judge, Ludhiana, dated the 14th August, 1952, dismissing the application for execution. Kapur, J.

On the 17th February, 1948, firm Radhe Sham-Roshan Lal obtained a decree for Rs. 14,000 against firm Kundan Lal-Mohan Lal from the Court of a Subordinate Judge at Indore. The Maharaja of Indore signed a covenant with the Dominion of India on the 18th April, 1948, and on the 28th May, 1948, the State of Madhya Bharat was created by the merger of several States including Indore; Appendix XXXVII at page 252 in the White Paper on Indian States issued by the Ministry of States.

(1) I.L.R. 1952 Bom. 65 F.B.
(2) A.I.R. 1954 Rajasthan 4

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There is no term in this covenant in regard to pending proceedings. I should have mentioned that although firm Kundan Lal-Mohan Lal was served but they never submitted to the jurisdiction of the Indore Court. On the 21st September, 1950, the decree-holder obtained a transfer certificate for execution to the Ludhiana Court and on the 10th January, 1951, he made an application for execution. The execution Court held that although the decree could be transferred it was a decree of a foreign Court and could not therefore be executed.

According to Dicey on Conflict of Laws 'foreign judgment' means a judgment, decree, or order of the nature of a judgment which is pronounced or given by a foreign Court (page 345), and in an action in *personam* the Courts of a foreign country have jurisdiction where the party objecting to the jurisdiction of the Courts of such country has precluded himself from objecting thereto * *

* *(b) by voluntarily appearing as defendant in such action (page 352). In the Indian Civil Procedure Code, section 2(6) also 'foreign judgment' means the judgment of a foreign Court which is defined in section 2(5) to mean :

> "2(5) 'foreign Court' means a Court situate outside India and not established or continued by the authority of the Central Government."

Therefore when the decree was passed it was the judgment of a foreign Court as defined in Private International Law or in the Indian Civil Procedure Code and this was not controverted by the learned Advocate for the appellant. The question which has to be seen is whether a judgment which

had not an Indian nationality at the time when it was passed changes its nationality by anything which has subsequently happened or there is any provision for its naturalisation as an Indian Judgment. In a case where an order was passed in Lahore before the partition of India and was sought to be executed after the partition in Delhi. it was held that it continued to be an Indian Judgment, *Kishori Lal* v. *Shanti Devi* (1). A judgment therefore continues its old nationality until by statute or otherwise there is a change.

It was submitted by the appellant that under section 43 of the Civil Procedure Code the decree of the erstwhile Indore Court could be executed in Ludhiana. It may be necessary to give the history of section 43 from 1947 till today. Before the Adaptation Order of 1948, the words used were:—

> "Any decree passed by a Civil Court established in any part of British India to which the provisions relating to execution do not extend, or by any Court established or continued by the authority of the Central Government or the Crown Representative in the territories of any foreign Prince or State may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in manner herein provided within the jurisdiction of any Court in British India."

After the Adaptation Order of 1948 these words were as follows:—

> "Any decree passed by a Civil Court established in any area within the Provinces of India to which the provisions

(1) A.I.R. 1953 S.C, 441

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relating to execution do not extend, or by any Court established or continued by the authority of the Central Government or the Crown Representative in any Indian State, may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in manner herein provided within the jurisdiction of any Court in the Provinces."

After the Constitution there was Adaptation Order and then the words used were—

"Any decree passed by a Civil Court established in any area within the States to which the provisions relating to execution do not extend, or by any Court established or continued by the authority of the Central Government outside India, may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in manner herein provided within the jurisdiction of any Court in the States."

There was another Adaptation Order and then section 43 came to read as under:—

"43. *Execution of decrees passed by Civil Courts in part B States, in places to which this part does not extend or in foreign territory.*

Any decree passed—

(a) by a Civil Court in a Part B State, or

(b) by a Civil Court in any area within the part A State or part C State to which the provisions relating to execution do not extend, or

(c) by a Court established or continued by the authority of the Central Government outside India* * * * * * * * *

This amendment thus made the decrees passed by Courts in the newly created B States to be executable in India even though the Code had not been extended to these States. This section was again amended by section 8 of Act II of 1951 and now the section reads as under:—

> "Any decree passed by any Civil Court established in any part of India to which the provisions of this Code do not extend, or by any Court estalished or continued by the authority of the Central Government outside India, may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in the manner herein provided within the jurisdiction of any Court in the territories to which this Code extends."

It is submitted that it was the section as amended by the second Adaptation Order after the Constitution which governed the case because it was that section which was applicable on the 10th of January, 1951, when the execution started, but pending the execution on the 19th February, 1951, the present section came into force in India.

As I understand section 43 as it stood before the Act of 1951, it made the decrees of Courts of B States executable. But part B States themselves were the creation of the Constitution and the reference in my opinion was to decrees passed after the Constitution. And if the section is merely procedural and therefore retrospective then from the

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19th February, 1951, a new section was substituted and from that date the new section 43 becomes applicable which does not have any reference to part B States and therefore the only decrees executable would be those for areas mentioned in section 2 of the Act (II of 1951).

Similarly section 44 has undergone several changes and at the time when the application for execution was made it read as follows:—

> "44. *Execution of decrees passed by Revenue Courts in part B States*—
>
> The Government of a part A State or part C State may, by notification in the Official Gazette, declare that the decrees of any Revenue Courts in any part B State or any class of such decrees may be executed in the part A State or part C State, as the case may be as if they had been passed by Courts of that State."

And now under Act II of 1951 it reads as under:—

> "44. *Execution of decrees passed by Revenue Courts in places to which this Code does not extend*—
>
> The State Government may, by notification in the Official Gazette, declare that the decrees of any revenue Court in any part of India to which the provisions of this Code do not extend, or any class of such decrees, may be executed in the State as if they had been passed by Courts in that State."

The history of section 43 shows that originally, i.e., up to 1947, the decrees of Courts in those portions of British India to which the Code was not applicable were executable in the rest of British India, the adaptation order of 1948 only made verbal changes as they wanted to substitute British India by Provinces of India which by the Constitution became States. But even after the Constitution the Civil Procedure Code did not become applicable to the newly created States which came into existence as a result of their merging into groups. They had become India and were no longer princely States with a semi Independent Status. Decrees of these Courts of these States as created by the Constitution of 1950, were decrees "passed by Civil Courts established in any part of India" and not British India as it was in 1947 and therefore they were executable in exactly the same manner as decrees mentioned in Code in 1947. And that was the reason for this Adaptation. And when the Act of 1951 came into force the Code became applicable throughout India and the need for section 43 was reduced to the decrees of areas mentioned in section 2 of the Act of 1951.

The history of section 44 of the Code shows that it has always been complementary with section 43. Before 1937 the words used were "in the territories of any native Prince or State" which would have included Indore. In 1937 these words were replaced by "in any Indian State." And section 44-A was introduced to reciprocate the policy contained in Foreign Judgments (Reciprocal Enforcement) Act, 1933. But for the decrees passed by Courts in Indian States section 44 was applicable. The language used in the section after the Adaptation Order of 1948, produced no real change. The first Adaptation of 1950 introduced the words part B States and they still required a notification

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under section 44 to make the decrees of Courts in part B States executable. But when section 43 was amended by the second Adaptation Order of 1950, so as to give executability to decrees of such Courts, section 44 was further amended to restrict the necessity of a notification to decrees of Revenue Courts of part B States. And the position is practically the same after the Act of 1951. Decrees of all Courts in India to which the Code applies are executable in any part of India except those covered by section 2 of the Act of 1951 and, therefore, section 44 is restricted to decrees of Revenue Courts.

Now the defendants never submitted to the jurisdiction of the Court at Indore and therefore, the Court had no jurisdiction over them. As is said in Cheshire on Private International Law at page 779:—

> "A foreign judgment is actionable only because it imposes an obligation upon the defendant, it follows that any fact which negatives the existence of that obligation is a bar to the action. One of the negativing facts must necessarily be that the defendant owes no duty to obey the command of the tribunal which has purported to create the obligation. There must be a correlation between the legal obligation of the defendant and the right of the tribunal to issue its command."

As the Indore Court had no jurisdiction under Private International Law over the defendant firm, it owed no duty to obey the order of that Court. Nor could the Ludhiana Court therefore act as its enforcing agent.

The form of the transfer certificate to be sent under Order 21 rule 6 of Civil Procedure Code, is given at page 1333 of Mulla's Civil Procedure Code. Thus the Executing Court in Ludhiana had to execute the decree of Indore of 1948. This decree remains the decree of that Court which was not a Court of a part B State as part B States did not exist then. It continued to be a decree of a Court of Indore State which was a foreign Court.

The next question which arises for decision is whether section 43 is merely procedural or also creates rights. The question whether the decree-holder can enforce his rights under the decree by execution as also by suit or only by a suit under section 13 of the Code is not a question of procedure but is a question of substantive law as it is a question of right of a decree-holder and if he has the right to enforce his rights under the decree of the Court at Indore by means of execution, the applicability of Order 21 is a question of procedure in which no one can have a vested right. See Maxwell on Interpretation page 201 (8th Edition). and In re Hales Patent (1), where this distinction between rights and procedure is shown. Therefore, what decrees can be enforced by execution and which by suit is not a procedural matter but one relating to rights of decree-holders and cannot, in my view, be affected by change in the law unless it is expressly retroactive.

If the contention that section 43, as it was before the Act of 1951, is retrospective, were to be accepted, on a foreign judgment the status of a judgment of an Indian Court would be conferred. Therefore an erstwhile British Indian subject who did not submit to the jurisdiction of a foreign Court would. become

(1) (1920) 2 Ch. 377

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bound by that decree and no defence on the merits of the case would be open to him and thus his vested rights would be affected by a subsequent change in the law. This would be sufficient to meet the argument in favour of retrospectivity.

It is to avoid hardships to decree-holders who had obtained decrees from Indian States that section 44 was enacted, the object of which was to give executability to decrees of Indian States so as to put them on a par with decrees of Indian Courts, and I have no doubt that the object was to apply this section to those cases where the standard of the judiciary approximated to Indian Standards or at least were not subject to the defects mentioned in section 13 of the Code. It was, in my view, for that reason that two sections in the Code were enacted one dealing with Indian States i.e. S. 44 and the other with foreign countries, i.e., section 44A.

Several cases have been relied upon by the appellant. Reliance is placed in the first instance on *Chunilal Kasturchand Marwadi* v. *Dundappa Damappa Navalgi* (1), where it was held that a decree passed by a Belgaum Court could be executed in Jamkhandi which at the time the decree was passed was an Indian "native" State but which became merged later on in the Province of Bombay and it was further held that the decree of a competent Court could be executed in Jamkhandi because it had become an Indian Court. This judgment was approved of by a Full Bench of that Court in *Bhagwan Shankar Surdi's case* (2), where a decree passed by the Sholapur Court against a resident of Akalkot was held to be executable in the latter Court because Akalkot had merged with Bombay and qua

(1) I.L.R. 1950 Bom. 540
(2) I.L.R. 1952 Bom. 65.(F.B.)

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Akalkot the decree of the Sholapur Court was no longer a foreign judgment. But how far *Kishori Lal's case* (1), would affect the correctness of this judgment will have to be considered. In this Court in *Dalel Singh* v. *Dhan Devi* (2), a decree passed by a Court in Nabha was held to be executable in the Punjab because of section 43 of the Code of Civil Procedure as it existed before Act II of 1951, on the ground that section 43 as it existed after the second Adaptation Order is retrospective. But this section itself has been repealed by Act II of 1951 and has been substituted by the present section which I have already given. If section 43 is to be retrospective then as at the time the judgment debtors appeared in the Ludhiana Court the present section was in force the execution will be governed by that law, which provides for the execution of decrees of Courts in areas to which Civil Procedure Code does not apply. Therefore, the section as it stands today would not be applicable to the decrees passed by Courts in part B States and the very notion of B Class States is a creation of the Constitution which it has been held by their Lordships of the Supreme Court to be prospective. If the view taken in the Letters Patent Appeal is made applicable then we would be giving retrospectivity to the Constitution which is contrary to the view taken by the Supreme Court amongst others in *Qasim Razvi's case* (3), *and Habeeb Mohammed's case* (4).

Besides a judgment which was a foreign judgment would not, except under any express provision to that effect be turned into an Indian judgment which is the rule laid down by their Lordships in *Kishori Lal's case* (1). The Calcutta High

(1) A.I.R. 1953 S.C. 441
(2) L.P.A. No. 24 of 1952
(3) 1953 S.C.A. 742
(4) 1954 S.C.A. 789

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Court in *Firm Shah Kantilal* v. *Dominion of India* (1), has discussed all these questions at a great length. Besides that there are the judgment of the Rajasthan and Mysore Courts in *Shah Prem Chand* v. *Shah Dhanmal* (2) and *H. M. Subharaya Setty and sons* v. *S. K. Palani Chetty and sons* (3).

There is also another question which arises and that is which law would be applicable to executions. The appellant submits that it would be the law at the time when the application was made which is contrary to the judgment of the Federal Court in *Lachmeshwar Prasad Shukul's case* (4), where reference is made to other judgments—*Quilter* v. *Mapleson* (5) and *Mukherjee* v. *Mt. Ram Rattan Kuer* (6).

I may here deal with two arguments which would arise as a result of the coming into force of the Constitution of India. One arises from Article 261 which deals with Public acts, records and proceedings. The Constitution is prospective and therefore it must be read in that light. This article reads as follows:—

"(1) Full faith and credit shall be given throughout the territory of India to Public Acts, records and judicial proceedings of the Union and of evey State.

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (i) shall

(1) A.I.R 1954 Cal. 67
(2) A.I.R. 1954 Rajasthan 4
(3) A.I.R. 1952 Mysore 69
(4) 1940 F.C.R. 84
(5) 9 Q.B.D. 672
(6) 63 I.A. 47

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be proved and the effect thereof determined shall be as provided by law made by Parliament.

(3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law."

Now all these clauses deal with something which is to be done in future and the use of the words "Union and every State" can be referable to judicial acts performed after the Union or States came into existence. And even clause 3 must be applicable to parts of territories of India and part B States have become parts of India as a result of the Constitution and not because of the Instruments of Accession or the Covenants as given in the White Paper on Indian States.

The second argument is based on Article 375 which may be quoted:—

"All courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial throughout the territory of India, shall continue to exercise their respective functions subject to the provisions of this Constitution."

This article continues the jurisdiction of all courts wherever they may be in the territories of India and the argument of prospectivity will be equally applicable to this article. Besides in section 2(5) the reference is to courts outside India e.g., the Court of the Political Agent at Sikkim and section 43 of the Code also refers to Courts outside India which are established or continued

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by the Central Government. This article therefore, which deals with Courts in India would not affect the argument as to the foreign nationality of the decree sought to be executed.

Kapur, J.

As the questions are of great importance and as a Division Bench of this Court has taken a view to the contrary I must refer this case to a Full Bench, and I direct that papers be placed before the Hon'ble the Chief Justice for the constitution of a Bench to decide this matter.

Bishan Narain, J.

BISHAN NARAIN, J.—I agree that this case should be referred to a larger Bench.

Judgment of the Full Bench

Khosla, J.

KHOSLA, J. This case has been referred to a Full Bench by Kapur and Bishan Narain JJ. because of the divergent views which some of the High Courts have taken regarding the interpretation of certain provisions of the law which are relevant for the decision of Execution First Appeal No. 201 of 1952.

The case has arisen in the following manner. Messrs Radhe Sham-Roshan Lal, a firm of Indore, which is now part of the State of Madhya Bharat, brought a suit in the Court of the Additional District Judge, Indore, against Messrs Kundan Lal-Mohan Lal, a firm of Ludhiana. Notices were sent to the defendant firm but there was no appearance on its behalf at Indore. The Court of Indore passed an *ex-parte* decree on the 17th of February, 1948. Soon after this an application for the transfer of the decree to a Court at Ludhiana was made and a transfer certificate

was granted on the 21st of September, 1950. An application for execution of this decree was presented before the Senior Subordinate Judge, Ludhiana, on the 10th of January, 1951. Objection was taken by the judgment-debtors that this decree could not be executed because the Court which passed the decree being a foreign Court to whose jurisdiction the defendants had not submitted the decree was a nullity, and the matter for our consideration is whether this *ex-parte* decree passed by a Court at Indore on the 17th of February, 1948, is capable of execution through a Court in the State of Punjab.

The decision of this matter raises the questions what is a foreign decree and what is a foreign Court, and what is the nature of the decree passed by a foreign Court and whether that decree is good against a person who does not submit himself to the jurisdiction of that foreign Court. There has been a change in the political complexion of the different states and Indore which was originally a native State became part of what are now known as part B States, and in April, 1951, the provisions of the Civil Procedure Code, were extended to all Part B States. The question is, therefore not free from difficulty, and it was argued before us at considerable length and a large number of decided cases were cited before us. The main arguments advanced on behalf of the decree-holder may be analysed as follows:—

1. The Court of Indore may have been a foreign Court *vis-a-vis* the defendants on the date the decree was passed but by subsequent legislation the Court ceased to be a foreign Court and therefore this decree can be executed by a

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Court at Ludhiana. The consideration of this point will involve a reference to the definition of "foreign Court" as given in section 2(6) of the Civil Procedure Code;

2. Section 43 of the Civil Procedure Code was amended and by virtue of the provisions of the amended section this decree can be executed in the Punjab; and
3. Article 261(3) of the Constitution makes the decree of the Indore Court capable of execution at Ludhiana.

It is quite clear that a decree passed by a Court in one country is of no effect in another country if the first country is to be considered a foreign country *vis-a-vis* the second one. For instance, a decree passed by a Court in France cannot be executed in India for the simple reason that France is a foreign country and unless there is some special provision in the law of India decrees passed by Courts in France may be treated as wholly null and void in this country. This is one of the first principles of International Law. The matter is discussed in Dicey's Conflict of Laws, Chapters 11 to 17. Rule 68 stated in Chapter 12 is in the following terms—

> "Rule 68.—In an action *in personam* in respect of any cause of action, the courts of a foreign country have jurisdiction in the following cases:—
>
> *First Case.*—Where at the time of the commencement of the action the defendant was resident or present in such country, so as to have the benefit, and be under the protection, of the laws thereof.

Second Case.—(Semble) where the defendant is, at the time of the judgment in the action, a subject or citizen of such country.

Third Case.—Where the party objecting to the jurisdiction of the courts of such country has, by his own conduct, submitted to such jurisdiction, i.e., has precluded himself from objecting thereto—

(a) by appearing as plaintiff in the action or counterclaiming; or

(b) by voluntarily appearing as defendant in such action; or

(c) by having expressly or impliedly contracted to submit to the jurisdiction of such courts."

It is quite clear that if the Court at Indore is to be treated as a foreign Court rule 68 applies and the decree at the time it was passed could not have been executed in Ludhiana because the defendants were not resident in Indore. They did not by their own conduct submit themselves to the jurisdiction of the Indore Court, nor did they voluntarily appear as defendants in the suit. It is not necessary to dilate upon this point further because the definition of a "foreign judgment" and a "foreign Court" as given in section 2(5) and (6) of the Civil Procedure Code makes the point quite clear. Section 2(6) says that "foreign judgment" means the judgment of a foreign Court, and section 2(5) says that

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a "foreign Court" means a Court situate beyond the limits of the Provinces which has no authority in the Provinces and is not established or continued by the Central Government. (I am giving the definition of the "foreign Court" according to the law as it stood on the 17th of February, 1948, the date when the decree was passed.) The term "Province" has been defined in section 3(45) of the General Clauses Act and means "a Presidency, a Governor's Province, a Lieutenant Governor's Province or a Chief Commissioner's Province". Indore at that time was not part of the territory of any such entity and, therefore, Indore was situated beyond the limits of the Provinces. The Court of Indore was admittedly not established or continued by the Central Government on the 17th of February, 1948, and therefore, the Court of the Additional District Judge of Indore was clearly a foreign Court *qua* Ludhiana on the date of the decree. Therefore, on that date the decree could not have been executed at Ludhiana. It is to be observed that there were no reciprocal arrangements whereby the decrees passed by the Court at Indore could be executed at Ludhiana or the decrees passed by a Court at Ludhiana could be executed at Indore. Such reciprocal arrangements are sometimes made under the provisions of section 44A of the Civil Procedure Code, but there being no reciprocal arrangement in the present case the decree of the foreign Court of Indore was not capable of execution at Ludhiana on the date it was passed.

The question, however, arises whether any subsequent change in legislation removed the disability attaching to the decree and made it capable of execution in Ludhiana. The point urged is that the amendment of section 2 and section 43 of the Civil Procedure Code removed that disability. The

execution application was made on the 10th of January, 1951. On that date section 2 (5) ran as follows:—

> " 'foreign Court' means a Court situate outside India and not established or continued by the authority of the Central Government."
>
> "....."

It is alleged that Indore is not outside India and therefore it is no longer a foreign Court. It is further contended that the change in section 43 also had the effect of removing this disability. The change in the law, however, was not retrospective and it did not alter rights and liabilities which existed prior to the change. In order to determine whether a certain decree is or is not the decree of a foreign Court we have to determine its nature at the time of its birth and not at some subsequent date. Admittedly, the decree was passed on the basis of a foreign judgment and the subsequent change in the definition of a "decree" which came about on account of the rearrangement of territories cannot alter its character. Procedural law no doubt operates retrospectively but substantive law does not unless the statute specifically so provides. The right to execute a decree and the right to raise an objection to a decree are substantive rights. The right of the judgment-debtor to plead that a certain decree is a nullity cannot by any stretch of meaning be described as a procedural matter. It is a vested right in the judgment-debtor and it cannot be taken away by a provision of law which is not retroactive. On the date the decree was passed the judgment-debtor could have raised the objection that the decree was a nullity because it was a decree of a foreign Court. Any subsequent

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change in the law could not take away that right. The right which had accrued to the judgment-debtor continued after the law was changed and the old provisions were repealed.

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At the time the suit was brought against the defendants they knew that unless they submit themselves to the jurisdiction of the Court at Indore no decree passed by that Court could be effective against them and their liability as determined by the Indore Court could have no consequences detrimental to them. They were therefore justified in ignoring the summons issued to them. They stayed away and felt no necessity to defend the plaintiff's claim. This was not a matter of procedure. By the subsequent change in law a person who was not liable under a decree could not become liable. The subsequent change in the law had the effect of unifying the area which now forms part of the territory of India, but there is no indication either in the Constitution or in any of the amending statutes which would show that the Legislature intended to upset existing rights and liabilities or create fresh ones. The defendants were not therefore deprived of their right to plead that the decree of Indore was a nullity.

The various changes which took place in the wording of section 43 of the Civil Procedure Code have been set out in the referring order of Kapur, J., and it is not necessary for me to set them out again. I have indicated quite clearly that these changes did not act retrospectively and did not adversely affect the right of the judgment-debtors to plead the defect in the decree passed by the Court of Indore.

A matter of a similar nature came up before the Supreme Court in *Janardhan Reddy and others* v. *The State* (1). In that case a judgment was passed by the High Court of H. E. H. the Nizam of Hyderabad in December, 1949, i.e., before coming into force of the Constitution. An application to the Supreme Court was made for leave to appeal against this judgment and their Lordships of the Supreme Court held that no leave could be granted under Article 136 of the Constitution because the judgment and sentence of the Court of Hyderabad could not be considered a judgment and sentence "passed by a Court within the territory of India". The application for leave to appeal was made after the Constitution came into force. Their Lordships observed—

> "The territory of the Government of H.E.H. the Nizam was never the territory of India before 26th January, 1950 and, therefore, the judgment and sentence passed by the High Court of H.E.H. the Nizam on the 12th, 13th and 14th December, 1949, cannot be considered as judgment and sentence passed by a Court within the territory of India."

The rule laid down in this judgment applies to the case before us and applying this rule it is clear that the decree of the Court of Indore cannot, because of the amendments in section 2 and section 43 of the Civil Procedure Code, be considered as a decree by a Court in India or even by a Court of a Part B State because at the time the decree was passed there was no such thing as a Part B State.

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The learned counsel for the appellant relied upon a number of cases of which only one or two are really relevant. The others are clearly distinguishable. *Bhagwan Shankar* v. *Rajaram Bapu Vithal* (1), is not a case in point because there a decree was passed by a Court at Sholapur *ex parte* against a resident of Akalkot. Execution at Akalkot was sought after the Constitution came into force when Akalkot had become merged in India. The distinguishing feature was that the decree was passed by a Court in India or in British India or in the Provinces of India, whichever definition of section 43 be taken. This decree was therefore capable of execution in the Provinces or the States. After the Merger Akalkot became a part of the territory of India and therefore the decree was clearly capable of execution at Akalkot. The Full Bench decision of the Madhya Bharat High Court in *Brajmohan Bose Benimadhav* v. *Kishorilal Kishanlal* (2), which approved of the earlier decision *Firm Lunaji Narayan and another* v. *Purshottam Charan and another* (3), was a case of a similar type. There too the decree was passed by a Court situate in British India and execution was sought in Gwalior State after the Constitution. Indeed, all the cases cited in support of the decree-holder's claim were cases in which the decrees had been passed by Courts which were situated in what was originally British India and was subsequently Part A States. Execution of these decrees was sought in the area which was foreign territory before 1947 and which became Part B State after the Constitution. There is in my view an essential difference in the nature of

(1) A.I.R. 1951 Bom. 125
(2) A.I.R. 1955 M.B. 1
(3) A.I.R. 1955 M.B. 225

the reverse case which is under consideration before us. I have stated above what the distinguishing feature is. A decree passed by a Court where the Civil Procedure Code applied could be executed throughout the territory of British India or Provinces as defined in section 3 (45) of the General Clauses Act (X of 1897) or Part A States as defined in the Constitution. This decree was therefore executable anywhere in India. The territory of India was extended by the merger of the native States and those States became subject. to the law which prevailed in India. In course of time the provisions of Civil Procedure Code were extended to them and therefore a decree which was a good decree in India became a good decree in the area of native States also, whereas the opposite case was quite different. The decree passed by a Court of a native State was never a good decree as far as India was concerned. It was a nullity where the defendant had not submitted himself to the jurisdiction of the Court. This disability could not be removed because a thing which is *non est* cannot become a positive, effective and legal entity. The decree of the Court of Indore was of no avail whatsoever in Ludhiana at the time it was passed and by the subsequent extension of the Civil Procedure Code to Indore this decree could not become executable at Ludhiana.

There are two cases which are on all fours with the present case, and in both of them it was held that the decree could not be executed in India. In *The Owners and Partners of the firm named Shah Kantilal* v. *Dominion of India* (1), Mukharji. J., was considering an *ex parte* decree passed by a Court in Baroda State in October,

(1) A.I.R. 1954 Cal. 67

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1948. He held that this decree could not be executed in Calcutta. The matter is discussed at great length in this judgment and the law has been stated by Mukharji, J. in very clear terms. While dealing with the provisions of section 43 of the Civil Procedure Code he observed—

> "It provides that such decrees may be executed in the manner provided by the Civil Procedure Code within the jurisdiction of any Court to which the Code extends. I am satisfied on the construction of section 43, Civil Procedure Code, that it does not help execution of Okhamandal Court decree by this High Court."

The learned Judge refers to the principles of private international law relating to decrees of foreign Courts and then he goes on to deal with Article 261 of the Constitution with which I shall deal presently. I find myself in complete agreement with Mukharji. J., upon all the points stated by him.

Another case is *Maloji Rao Narsingh Rao* v. *Shankar Saran and others* (1), which is also a Single Bench case heard by the Allahabad High Court on the original side. Brij Mohan Lall, J., discussed the whole question very thoroughly and cited almost all the rulings having a bearing on the point. He was dealing with the case of an *ex parte* decree passed in November, 1948 by the District Judge of Gwalior. This decree was transferred to Uttar Pradesh for execution and he held that the decree could not be executed because it was a decree of a foreign Court when it was passed and the disability was not removed

(1) A.I.R. 1955 All. 490

by any subsequent change in law. While dealing with section 43 of the Civil Procedure Code and the amendment made by Act II of 1951 the learned Judge observed—

> "In view of this section, as it stood prior to the amending Act 2 of 1951, the decree-holder had a right, subject to the safeguards hereinafter mentioned, to put the decree in execution in the State of Uttar Pradesh. Since Act 2 of 1951 repealed this provision and substituted another in its place, the repeal did not take away the right which the decree-holder had acquired prior to the repeal. This right was reserved by S. 6 (c), General Clauses Act. But it is to be seen what that right was. The right was that the decree-holder could make an application to any Court in the State of Uttar Pradesh for execution. But at the same time the judgment-debtors had a right to plead that the decree which was being enforced against them was not a decree of a competent court. Section 44, Evidence Act, gives a right to a party to show that any judgment which is relevant or which the other party has proved against him was delivered by a court not competent to deliver it. This right had not been taken away by S. 43, Civil Procedure Code * * * * *
>
> If it is now held that that decree has become final and binding, it will mean that they (the judgment-debtors) have been denied an opportunity of meeting

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the decree-holder's claim on merits. Obviously it could not have been the intention of law to bring about such drastic changes and to deprive the judgment-debtors of the valuable right of meeting the decree-holder's claim on merits. I am, therefore, of the opinion that the right to treat the decree as a nullity, which has been described in some of the cases * * * * * * as an immunity from the decree, has been kept intact by virtue of S. 6 (c), General Clauses Act."

The learned Judge goes on to say—

"It is, therefore, obvious that the right of treating the decree as a decree of domestic court which the decree-holder now puts forward is a right given by the repeal of an Act and not by an Act of State. This aspect of the case appears to have been overlooked in most of the rulings cited by the learned counsel for the decree-holder."

The only other case which is relevant is a Division Bench decision of this Court in *Dalel Singh* v. *Shrimati Dhan Devi* (1). In that case a decree was passed by a Court at Nabha, but it is not clear from the judgment whether that decree was *ex parte* and whether the defendant had refused to submit himself to the jurisdiction of the Court, and if the defendant did appear and contest the suit he cannot raise the plea which has been raised by the judgment-debtors before us. Therefore, the decision in that

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case that the decree of the Nabha Court could be executed in the State of Punjab may be inapt so far as the facts of the present case are concerned on this ground.

The net result is that all the rulings which might support the decree-holder's claim relate to cases in which decrees were passed by Courts situated in Part A States, whereas only two reported cases which are similar to the case before us are cases in which it was held that decrees passed by Courts situated in native States were not capable of execution in India.

I now come to the consequences that follow from the enactment of Article 261 (3) of the Constitution—

> "261 (3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law."

It seems to me quite clear that the judgments or orders mentioned here are judgments or orders which are passed or delivered after the coming into force of the Constitution. On this point all the High Courts are unanimously agreed, and it is only necessary for me to refer briefly to the cases cited before us. In *Shah Premchand* v. *Shah Danmal* (1), it was held that the provisions of this Article had no retrospective operation because there was nothing in the wording of Article 261 to show that by its express intention or by necessary implication the Article was to apply retrospectively. Similar view was taken by the Calcutta High Court in *The Owners and Partners*

(1) A.I.R. 1954 Rajasthan 4

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of the firm named Shah Kantilal v. *Dominion of India* (1), by the Madras High Court in *H. M. Subbaraya Setty and Sons* v. *S. K. Palani Chetty and Sons*, (2), and also in the following cases: *Ràmkishan Janakilal and another* v. *Seth Harmukharai Lachminarayan* (3), *Maloji Rao Narsingh Rao* v. *Shankar Saran and others* (4), and *P. C. Vareed* v. *Gopalbai Bahubai Patel Rambai Gopalbai Patel* (5).

Counsel for the decree-holder drew our attention to a decision of the Supreme Court in *Kishori Lal* v. *Sm. Shanti Devi* (6). That case, however, does not support the contention of the decree-holder. The decision of that case proceeded on the wording of section 490 of the Criminal Procedure Code. It was held in that case that an order passed under section 488 of the Criminal Procedure Code by a Court in Lahore before the partition of the country could be executed in Delhi after the partition because on the wording of section 490 that order was always executable in India. The decree in the present case was not executable in India at any time and therefore the coming into operation of any subsequent law did not remove this disability. Indeed, it was conceded before us by Mr. Sodhi who appeared on behalf of the decree-holder that he could not rely upon the provisions of Article 261 (3) and that this Article was not intended to be retrospective. There is no decision of any High Court to the contrary.

In the result, therefore, I would hold that the decree of the Court of Indore at the time it was passed was a decree of a foreign Court. The

(1) A.I.R. 1954 Cal. 67
(2) A.I.R. 1952 Mysore 69
(3) A.I.R. 1955 Nag. 103
(4) A.I.R. 1955 All. 490
(5) A.I.R. 1954 Tra-Co. 358
(6) A.I.R. 1953 S.C. 441

judgment-debtors did not submit themselves to the jurisdiction of the Court and at that time the decree could not have been executed through the Court in Ludhiana. The subsequent change in the definition of the "foreign Court" and in the provisions of section 43 of the Civil Procedure Code did not make the decree capable of execution in Ludhiana, nor did the provisions of Article 261 (3) of the Constitution remove the disability which attached to the decree. The judgment-debtors were not debarred from raising the plea that the decree was a nullity by reason of the fact that it was passed by a Court which had no jurisdiction to pass it. That plea was open to them still as the right to raise that plea was not taken away by subsequent legislation. The appeal of the decree-holder is therefore liable to be dismissed and I would dismiss it.

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BISHAN NARAIN, J. I agree with Khosla, J., and have nothing to add.

Bishan Narain, J.

DULAT, J.—On the 17th February, 1948, Messrs. Radhe Sham-Roshan Lal of Indore obtained an *ex parte* decree from the Court of the Additional District Judge, Indore, against Messrs. Kundan Lal-Mohan Lal of Ludhiana. At that time the Indore Court was a foreign Court within the meaning of the Code of Civil Procedure and its decrees could not be executed in Courts governed by the Code of Civil Procedure. On the 26th January, 1950, the Constitution of India came into force and Indore came to be included in Part B State called Madhya Bharat. At the same time section 43 of the Code of Civil Procedure was amended and decrees of Courts in Part B States became executable in the other Indian Courts to which the Code of Civil Procedure applied. In April 1951 the Code of Civil Procedure

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became applicable to the whole of India including Part B States. In the meantime Messrs. Radhe Sham-Roshan Lal, the decree-holders, applied for the transfer of the decree for purposes certificate on the 21st September, 1950. On the 10th January, 1951, an application for the execution of this decree was presented in the Court of the Senior Subordinate Judge at Ludhiana. of execution to Ludhiana and obtained a transfer Notice was issued to the judgment-debtors and on their behalf objection was at once taken that the decree could not be executed at Ludhiana as it was the decree of a foreign Court. This objection prevailed and the executing Court held that the decree was not capable of execution at Ludhiana, and, therefore, dismissed the decree-holders' application. The decree-holders appealed to this Court and that appeal has been referred for decision to this Full Bench.

The question is whether the decree in this case having been granted in February 1948 by a Civil Court at Indore could after the 26th January, 1950, or the 1st April, 1951, be lawfully executed through the Civil Court at Ludhiana and the answer to that depends on the answer to the question whether the decree at the time of its execution is to be deemed the decree of a foreign Court or the decree of a Court in a Part B State, i.e. an Indian Court, and quite clearly if it is to be considered the decree of a foreign Court at the time of its execution, then it can certainly not be executed in a Court governed by the Code of Civil Procedure, while on the other hand if it is to be deemed the decree of a Court in a Part B State, of an Indian Court, then equally clearly it cannot be refused execution.

An exactly similar question arose in this Court in *Dalel Singh* v. *Shrimati Dhan Devi and others* (1). The decree in that case was granted on the 12th July, 1947, by a Court at Nabha which was later included in PEPSU, a Part B State, and that decree was sought to be executed at Simla after the 26th January, 1950, and the question was whether it was to be deemed the decree of a foreign Court or the decree of a Court in Part B State. A Division Bench of this Court held that the decree was capable of execution at Simla as at the time of the execution it must be deemed to be the decree of a Court in Part B State. I was a party to that decision and having considered the arguments advanced in the present case I still think that our decision in *Dalel Singh* v. *Shrimati Dhan Devi and others* (1), was correct and that it fully applies to the present case. A distinction was sought on the ground that in the present case the decree was obtained *ex parte* and the defendants, who were not residents of Indore, never submitted to the jurisdiction of that Court while in *Dalel Singh* v. *Shrimati Dhan Devi and others* (1), it was not clear that the decree was not obtained after contest. This distinction, in my opinion, makes no difference in principle. The question still is whether the decree is to be considered the decree of a foreign Court as it undoubtedly was at the time it was made or whether in view of the amendment of section 43 of the Code of Civil Procedure it is to be considered the decree of an Indian Court subsequent to those amendments. The fact that a decree may have been obtained *ex parte* or after contest does not, in my opinion, affect the matter, for the decree of a foreign Court whether *ex parte* or obtained after contest remains incapable of

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execution, while on the other hand the decree of an Indian Court, whether *ex parte* or otherwise cannot be refused execution. No principle of international law is really involved in the matter and the question is fully covered by the provisions contained in the Code of Civil Procedure.

The main argument for the view that the decree in the present case must be deemed to be a foreign decree is that the decree when made was the decree of a foreign Court and cannot change its character on account of subsequent political events which made the foreign Court in question an Indian Court, and that the amendment of section 43 of the Code of Civil Procedure is not meant to be retrospective and does not, therefore, affect the status of those decrees which were granted by a foreign Court prior to the amendment. I am aware that such a view is possible but the inconvenience in adopting such a view is in my opinion so great that it should on that ground alone be rejected. The argument involved really comes to this. The Indore Court was a foreign Court before the 26th January, 1950 and became a Part B State Court only on that date and became a Court governed by the Code of Civil Procedure only on the 1st April, 1951. The decrees granted by the Indore Court prior to the 26th January, 1950, were, therefore, foreign decrees and could not be executed in any Court governed by the Code of Civil Procedure even after the Indore Court became a Part B State Court or even after the Code of Civil Procedure was made applicable. If the argument is sound it would logically follow that a decree granted by the Indore Court on the 25th January, 1950 could not be executed even in the Indore Court after the 26th January, 1950, or, at any rate, after

the 1st April, 1951, because the Indore Court had by then become a Court governed by the Code of Civil Procedure just as the Court at Ludhiana was, and a decree granted even by the Indore Court prior to the 26th January, 1950, being a foreign decree would not be capable of execution in a Court governed by the Code of Civil Procedure. This would be an intolerable situation and on the ground of public convenience, therefore, such a view ought not to be adopted. To support the argument, assistance was sought from the observations of the Supreme Court in *Janardhan Reddy and others* v. *The State* (1). The question in that case, however, concerned the interpretation of Article 136 of the Constitution, the question being whether the Supreme Court could grant leave to appeal against a judgment of the Hyderabad High Court pronounced before the 26th January, 1950. The Supreme Court held that Article 136 of the Constitution did not empower the Supreme Court to grant leave to appeal from such a judgment because a right of appeal is statutory right and there was nothing to indicate that such a right existed in respect of judgments pronounced before the Constitution. The question of the inconvenience involved in adopting that narrow view was raised in the Supreme Court on behalf of the petitioners but the Supreme Court found that in actual fact no inconvenience was involved. The main consideration, therefore, that arises in the present case did not arise in the case before the Supreme Court and the question of considering the effect of the amendments of section 43 of the Code of Civil Procedure was, of course, not before the Supreme Court. It appears to me that a right of appeal is

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very different from the right of executing a decree and I am not, therefore, persuaded that the decision in *Janardhan Reddy and others* v. *The State* (1), covers the present case.

Regarding the decisions of the various High Courts in India on the particular question before us, there has been sharp divergence of views which we noticed when deciding *Dalel Singh* v. *Shrimati Dhan Devi and others* (2), and which divergence has continued. The view of the Full Bench of the Bombay High Court in *Bhagwan Shankar* v. *Rajaram Bapu Vithal* (3), which the Division Bench of this Court in the main accepted, has since been followed by a Full Bench of the Madhya Bharat High Court in *Brajmohan Bose Benimadhav* v. *Kishorilal Kishanlal* (4), and a Full Bench of the Rajasthan High Court in *Radheyshiam and another* v. *Firm Sawai Modi Basdeo Prasad and another* (5), but not followed by the Nagpur and the Allahabad High Courts as would appear from *Ramkishan Janakilal and another* v. *Seth Harmukarai Lachminarayan* (6), which is a Division Bench decision, and *Maloji Rao Narsingh Rao* v. *Sankar Saran and others* (7), which is a Single Bench decision of that Court, and in view of this divergence not much assistance can be derived from mere authority although the weight of it I feel is still with the view this Court took in *Dalel Singh* v. *Shrimati Dhan Devi and others* (2).

Mr. Mital for the judgment-debtors stressed the point that the decree in the present case was made by a foreign Court and against a non-resident defendant who had not submitted to the

(1) A.I.R. 1951 S.C. 124
(2) L.P.A. 24 of 1952
(3) A.I.R. 1951 Bom. 125
(4) A.I.R. 1955 M.B 1
(5) A.I.R. 1953 Raj. 204
(6) A.I.R. 1955 Nag. 103
(7) A.I.R. 1955 All. 490

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Court's jurisdiction and it was, therefore, in the eye of international law a nullity and it could, therefore, never be executed through an Indian Court. As I have already pointed out, this consideration does not really arise in the present case, for if the decree sought to be executed is to be deemed the decree of foreign Court, it is not capable of execution under the provisions of the Code of Civil Procedure and would not be capable of execution even if it were a decree obtained after contest. In my opinion, however, the decree in this case must now be taken to be the decree of an Indian Court to which the Code of Civil Procedure fully applies and as such the decree cannot be refused execution merely because it was obtained *ex parte*. On this view, I must hold that the executing Court was in error in refusing to execute the decree and the appeal should, therefore, be allowed and the order of the lower Court refusing execution set aside.

Full Bench

The decision of the Full Bench is that the appeal of the decree-holder is dismissed and the objections of the judgment-debtors are upheld. In the circumstances of the cases there will be no order as to costs.

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Falshaw, J.

THE UNION OF INDIA,—*Appellant.*

v.

MR. PARSHOTAM LAL DHINGRA,—*Respondent.*

Letters Patent Appeal No. 28 of 1955

1956

Jan., **19th**

Writ of Mandamus—When can issue—Constitution of India, Article 311—Government Servant holding a post in an officiating capacity—Reversion to his substantive post—Whether such reversion amounts to "reduction in rank" within the meaning of Rule 55 of Civil Service (Classification, Control and Appeal) Rules and Article 311 of the Constitution—Meaning of "reduction in rank".