

**A. I. R. 1917 Lahore 389**

SCOTT-SMITH, J.

*Abdul Rahman* and *another*—Decree-holders—Appellants.

v.

*Sibghatulla* -- Judgment-debtor — Respondent.

Misc. First Appeal No. 2811 of 1916, decided on 19th February, 1917, from the Order of Sub-Judge, First Class, Delhi, dated 18th October, 1916.

**Decree—Construction — Instalment decree — Default in paying instalment—Plaintiff was held entitled to execute decree for whole amount remaining due.**

An instalment decree provided that the amount decreed shall be payable by monthly instalments of Rs. 2,500 commencing from the 1st of January, 1916 and that if any two of the instalments were not paid as prescribed, the plaintiff would be entitled to recover the whole amount which at the time of default remained due under the decree. The judgment-debtor made default in the payment of the instalment of a certain month and paid it along with the instalment of the following month on the 11th of that month:

*Held*, that the decree meant that the first instalment was payable on the 1st of January and that the subsequent instalments were payable on the 1st of each succeeding month, and that, therefore, the judgment-debtor having made default in the payment of two instalments, the decree-holder was entitled to execute the decree for the whole amount remaining due on it.

[P. 390, C. 1.]

*Kirkpatrick* —for Appellants.

*Muhammad Iqbal*—for Respondent.

**Judgment.**—The decree-holders-appellants were given an instalment decree against the judgment-debtor-respondent. The instalments were Rs. 2,500 a month and the first was payable on the 1st January, 1916, and it was provided in the decree that if any two of the instalments were not paid as prescribed the plaintiff would be entitled to recover forthwith the whole amount, which at the time of default remained due under the decree. The instalments were paid at some time during each month up to August 1916. The instalment due in September was not paid at any time during that month, but along with the instalment of October which was paid into Court on the 11th of the latter month. The lower Court held that it was not clearly stated in the decree that each instalment was payable on the 1st of every month and that, therefore, the instalments of September and October could be paid at any time in the month of October, and as they were so

paid no such default had occurred as would entitle the decree-holders to take advantage of the clause authorising them to realize forthwith the whole amount due. The actual words in the decree are that amount decreed shall be payable by monthly instalments of Rs. 2,500 commencing from the 1st of January, 1916. In my opinion this means that the first instalment was payable on the 1st of January, 1916 and that subsequent instalments were payable on the 1st of each succeeding month.

Mr. Muhammad Iqbal, for the respondent, refers to *Kashiram v. Pandu* (1) and urges that the decree-holder, having not insisted on the punctual payment of the instalment on the 1st of each month, cannot now urge that the instalments were so due. In my opinion the ruling referred to is distinguishable from the present case. Though the previous instalments were not regularly paid on the 1st of every month they were always paid before the end of every month, and this was the first occasion on which default was made in a second instalment while the previous instalment was still unpaid. There is, therefore, no question of waiver by the decree-holders. In my opinion the decree is quite clear and is in accordance with the award upon which it was based.

I, therefore, accept the appeal and setting aside the order of the lower Court direct that the decree-holders are entitled to realize forthwith the whole amount due under his decree. Respondent will pay the appellants' costs in this Court.

R.M./R.K.

*Appeal accepted.*