

SUPERMANIAN v. PERUMAL.

*D. C., Colombo, C/3,753.*

1894.

August 30.

*Civil Procedure Code, ss. 300, 303, 305, 307 to 312—Release of judgment-debtor on terms—Alteration of terms of decree—Payment by instalments—Policy of the law as to incarceration of debtors.*

Under section 300 of the Civil Procedure Code, when a judgment-debtor is brought before the Court after being arrested in execution of a decree for money, the Court, in certain circumstances, may, upon such terms, if any, as it thinks fit, make an order directing his release—

*Held*, that under this section the Court has no power to alter, to the creditor's disadvantage, the terms of the decree, and it cannot therefore allow the debtor the privilege of paying the amount of the decree by instalments. The terms intended by the section must be terms onerous to the debtor and not to the creditor.

*Per* LAWRIE, J.—The policy of the law now is to discourage the incarceration of honest debtors who, from misfortune and poverty, cannot pay their debts, and to confine the creditor's remedy of imprisoning his debtor only, or at least mainly, to cases where the debtor is contumacious, and will not pay or disclose for seizure funds over which he has control.

THE facts of the case appear sufficiently in the judgments delivered by their Lordships.

*Wendt*, for appellant.

*Dornhorst and Sampayo*, for respondent.

30th August, 1894. LAWRIE, A.C.J.—

In this appeal we are called on to decide what are the powers of a District Judge when a judgment-debtor is brought before him arrested on a writ against person.

It must be admitted that it is difficult to reconcile the 300th and the 305th sections of the Code, which both deal with this matter.

In the former (which is taken from the Indian Code) a discretion is given to the Court to release the debtor, either without conditions or upon terms, provided it appears to the Court that the debtor is unable to pay from poverty or other sufficient cause; and in determining whether he shall exercise the discretion, the Judge may take into consideration the five matters stated in section 303, and a judgment-debtor, released under section 300 and 302, may be re-arrested.

Then, it is somewhat puzzling to find in section 305 that a debtor shall be released if he satisfies the Court that he has no seizable property, or that he is ready and willing to point out all such seizable property as he possesses. It may, I think, be gathered

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from the sections, and from the sections 307-312, that the policy of the law now is to discourage the incarceration of honest debtors who, from misfortune and poverty, cannot pay their debts, and to confine the creditor's remedy of imprisoning his debtor only, or at least mainly, to cases where the debtor is contumacious, and will not pay or disclose for seizure funds which he has control over. Whatever be the District Judge's power, and whatever be the right given to the debtor by the 305th section, it is in my opinion certain that the Court has no power given to it to alter the decree under which the arrest has been made.

It cannot from pity reduce the debt from Rs. 100,000 to Rs. 10,000, nor can it (as the District Judge did here) transform the decree from Rs. 2,000 into one for a monthly payment of Rs. 50.

The 300th section speaks of releasing upon terms, but that means putting the debtor on terms; it does not mean imposing terms unfavourable to the creditor and favourable to the debtor. In other words, a Judge may not in the order of release alter to the creditor's disadvantage the terms of the decree.

In the present case, the debtor did not bring himself within the terms of the 305th section. The learned Judge exceeded the powers given to him by the 300th section. I would set aside the order, and I would remit the case to the District Court to be proceeded with according to law.

No costs.

WITHERS, J.—

The order appealed from appears to be contained in a journal entry of the 1st November, 1893, and is as follows :—

“Defendant will be allowed to pay by instalments of Rs. 50 per month from the 5th instant. On failure to pay instalment on or before 5th of each month, warrant to issue.” This order was made on the occasion of the judgment-debtor in the action on the record being brought before the Court after arrest in execution of the money decree, and we were told that this was intended to be an order directing the judgment-debtor's release on terms under section 300 of the Civil Procedure Code. But this is not an order on terms at all. To be released from an arrest otherwise good is an indulgence which must be paid for. The terms must be onerous to the debtor, and not to the creditor.

Here, a creditor is made to pay for an indulgence to the debtor, which cannot be right.

The order amounts to a modification of the final decree, and that in itself stamps the order as a wrong one.

This first part of section 305 of our Code is taken from the Indian Code, section 337, which there falls into its proper position immediately preceding section 337 (a), which corresponds to our section 300 before referred to. Where the latter and larger part of our 305th section has been taken from, I do not know, but it must be clearly taken into consideration when a judgment-debtor is brought into Court under a warrant for his arrest. The learned Judge gave no reasons for his order, which does not expressly direct the man's release.

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I think the order should be set aside, and the question of the man's release or committal be further inquired into and determined.

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