

Present: Branch C.J. and Garvin J.

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P. & O. BANKING CORPORATION v. SELVATHURAI.

166—D. C. Colombo, 17,060.

Liquid claim—Order for payment by instalments—Banking corporation—Civil Procedure Code, Chapter LIII.

Where, in an action by way of summary procedure on a liquid claim, the defendant admits liability, it is competent to a Court to enter a decree for payment of the amount due by instalments.

Such relief should not be denied to a debtor merely because the creditor is a Bank.

A PPEAL from an order of the District Judge of Colombo.

H. V. Perera, for plaintiff, appellant.

J. R. V. Ferdinands, for defendant, respondent.

January 15, 1926. BRANCH C.J.—

A promissory note for Rs. 500 was endorsed and delivered to the appellant Bank, and that Bank brought action under Chapter LIII. of the Civil Procedure Code for the recovery of the amounts due on the note. The respondent entered appearance and filed an affidavit admitting the debt and stating as follows:—

“ I am employed in the Colombo Municipality on a monthly salary of Rs. 230 per month and I am also possessed of some immovable property in Jaffna worth about Rs. 3,000. The income on the said property is hardly sufficient to manage and look after the said property.

“ I am a married man living in Colombo and my expenses for living in Colombo generally amount to about Rs. 200.

“ With much difficulty I shall be able to pay Rs. 50 per month. ”

The learned District Judge made the following order:—“ I allow the defendant to pay the amount by monthly instalments of Rs. 100, the first instalment payable on October 5. ”

Three arguments are put forward for the appellant by Mr. Perera. First, that this being an action instituted under Chapter LIII. of the Code and the appellant's claim having been admitted, the appellant became entitled to an unconditional decree, forthwith, for the full amount with costs, and that the provisions of Section 194 of the Code do not apply to actions instituted under Chapter LIII. Second, that as the appellant is a Bank, debtors should be compelled to keep strict faith in regard to their engagements, and that Section 194

1926. should never be applied in cases where a Bank is the plaintiff.
 BRANCH C.J. Third, that regard being had to the circumstances of this case, an instalment order was not a proper one.

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As regards (1) I do not agree. I think that section 194 is of general application. As regards (2) I do not agree. It seems to me impossible to lay down any such definite and fixed rule with regard to a plaintiff Bank. All the circumstances of the case must of course be taken into consideration. Relief by way of instalments as regards the debtor should not be refused merely because the creditor is a Bank. As regards this particular case the note was dated March 7, 1925, and was due on June 4, 1925. The District Judge thinks that this and the amount of the note justify an instalment decree. I suppose he means that the Chetty to whom the note was given and the debtor both had in mind the note not being met at maturity. This is, of course, possible, but on the other hand the debtor had according to his own account property of the value of Rs. 3,000 and the plaintiff might very properly have been left to obtain the fruits of his judgment from that property. The defendant has paid the instalments ordered and the next one will be due on January 5, 1926.

In the circumstances the instalment ordered might be left as it stands and the appeal dismissed, but without costs.

GARVIN J.—

This is an appeal by the plaintiff Company from an order of the District Judge that the amount payable to them under the decree in their favour may be paid by the first defendant by monthly instalments of Rs. 100. The plaintiff is the endorsee of a promissory note made by the first defendant in favour of a Chetty firm, and their action for the recovery of the amount due them is constituted under Chapter LIII. of the Civil Procedure Code, which lays down the "Summary procedure for the recovery of legal claims." The plaintiff duly obtained a summons and served the same on the defendants. Within the time prescribed the first defendant appeared, filed an affidavit, and, while admitting the debt, moved the Court for an order to pay the amount by instalments. This, as I have observed, was allowed. The appeal has been pressed on two grounds: First, that it was not competent for the Court to make such an order in an action brought under Chapter LIII. of the Code where the defendant had not obtained leave to appear and defend, but admitted his liability; secondly, that in any event the order of the Court should not be sustained for the reason that the Court had not given due weight to the fact that the plaintiff was a Banking Corporation and the condition under which the work of such a corporation is conducted. The provisions of section 194 of the Civil Procedure Code vest in the Court power to make an order to pay by

instalments " in all decrees for the payment of money." The only exception to the very general terms in which the power to make such an order is vested is the case of money due on mortgages of movable or immovable property. There is nothing in the section nor in the chapter in which it appears to indicate that it was the intention of the Legislature that such orders were only to be made in decrees for the payment of money made in regular actions. Indeed, if I understood Counsel aright, he was not prepared to contend that even in a proceeding under Chapter LIII, such an order may not be made in favour of a defendant who had obtained leave to appear and defend, but had failed in his defence. It was urged, however, that the provisions of section 703 and in particular section 704 necessarily excluded the possibility of such an order being made in favour of a defendant who admitted the claim but applied for such a concession. Section 703 lays down the procedure to be followed by a plaintiff who desires to sue out a summons under Chapter LIII. Section 704 proceeds as follows: " In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear and defend the action unless he obtains leave from the Court as hereinafter mentioned so to appear and defend; and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons,"

It was urged that the effect of this section was to prevent the " appearance " by the defendant for any other purpose whatsoever except to obtain leave to defend the action. What the section denies a defendant is the right to " appear and defend " without the leave of the Court.

He must, of course, " appear " before he can obtain leave. Having " appeared " it seems to me that he may take any steps appropriate at that stage of the proceedings so long as he does not attempt to " defend " the action. In my view the language of the sections relied on by Counsel for the appellant does not prevent a person served with a summons under Chapter LIII. from appearing and consenting to judgment, nor does it prevent a person who has so consented to judgment from appealing to the Court to exercise the power conferred on it by section 194 in his favour.

As regards the second of the two points taken in support of this appeal, I agree that the fact that the plaintiff is a Banking Corporation and that this promissory note came into their possession in the ordinary course of this business and the resulting inconvenience to the work of such a corporation are factors to which due weight should be given not only in deciding whether an order to pay by instalments should be made but also in determining the terms of such an order.

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GARVIN J. The District Judge appears to have considered these factors and to have given them the weight to which he thought they were entitled under all the circumstances of this case, and I am not prepared to say that his order is wrong.

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I would dismiss the appeal but, for the reasons given by the Chief Justice, without costs.

Appeal dismissed.

