

Present : Schneider J.

1923.

RAN MENIK ETANA v. APPUHAMY.

25—C. R. Chilaw, 18,364.

Civil Procedure Code, s. 349—Application for writ—Payments not certified—Debtor seeking to show cause—Proper procedure.

Where a judgment-creditor moves for writ, the debtor cannot show cause against it by seeking to prove that payments, which have not been certified, have been made in satisfaction of the decree. He must first move by petition to certify such payments.

No payment or adjustment of a decree will be recognized by any Court unless it has been certified in the manner provided in section 349 of the Civil Procedure Code.

THE facts appear from the judgment.

J. S. Jayawardene (with him *J. E. M. Obeyesekera*), for plaintiff, appellant.

Samarakoon, for defendant, respondent.

March 2, 1923. SCHNEIDER J.—

Decree in this action was entered on January 23, 1918, and an application for writ was made on October 3, 1922. Plaintiff's proctor rightly indicated to the Court that more than a year having elapsed, notice should issue to the defendant of this application. Notice was accordingly issued. Defendant appeared, and submitted that he had cause to show, namely, that he had paid Rs. 60, but held no receipt. The learned Commissioner thereupon made the following order : " Fix for a cause to be shown on the 1st proximo. " It is obvious that he did not consider the procedure prescribed by the Civil Procedure Code, emphasized by a Full Court decision of this Court. It has been settled law for over twenty years that no payment or adjustment of a decree will be recognized by any Court, unless it has been certified in the manner provided in section 349. Now, section 349 provides that it is the duty of the decree-holder to have payment or adjustment certified, and that it is also competent to a judgment-debtor to have this done, and prescribes the procedure by which the judgment-debtor may have this done—that it should be by petition. Then the section proceeds to say " No such payment or adjustment shall be recognized by any Court unless it has been certified as aforesaid. " In the case of *Pitche v. Mohamadu Khan*,¹ this Court held that the effect of section 349 was to render

¹ 9 S. C. R. 187.

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the certificate the sole admissible evidence of the satisfaction of the decree. The result therefore of section 349 and of this decision is to place the matter beyond any doubt or controversy that a certificate is the sole admissible evidence. Mr. Samarakoon, who appeared for the defendant-respondent, contended that his objection to the issue of the writ was in order, that no obligation lay upon him to have the payment certified, and that, therefore, it was open to him to follow the procedure which had been followed by him, that is, to call evidence to prove that he had made the payment. It is just this very procedure that the Civil Procedure Code intended to shut out. The provisions of the Civil Procedure Code are based upon a sound principle, that principle being this : so long as there is a decree not prescribed upon a record, the decree-holder is entitled to obtain satisfaction of that decree. If he has permitted time to run beyond certain periods, then the Civil Procedure Code prescribes that he shall follow a particular procedure. So long as that decree is on the record without a record to the effect that it had been adjusted or satisfied, the Court is therefore not put upon an inquiry as to whether it has been satisfied or adjusted. But for the protection of the judgment-debtor the Code does require the judgment-creditor in his application for writ to disclose any adjustment or part payment. In the event of the judgment-creditor failing to show that the decree has been satisfied in part, he is entitled to obtain a writ for its satisfaction. Now, the Code not only lays down that a Court should not take cognizance of any payment or adjustment unless it has been certified, but indicates the procedure by which the judgment-debtor may obtain the certifying of a payment or adjustment.

As this was a matter in the Court of Requests, although the judgment-debtor was in default in not pursuing the procedure he should have pursued, I offered his counsel an opportunity to allow me to overlook this irregularity, and send the case back for inquiry, but he took the high ground in persisting that his procedure was correct. I shall therefore deal with the case upon that footing. As I have already indicated, the procedure he followed is wrong. It is not authorized by the Code or any law that I know of. I therefore cast him in the costs of the proceedings which have taken place already in the Court below and also of this appeal. But as it would be unjust to deprive him of an opportunity of proving payment, I will remit the record, in order that he may set himself right by presenting a petition as required by the Code. On his failing to do so, the plaintiff will be entitled to have his application for writ allowed. The Commissioner will fix a date within which the application for adjustment should be made.

Sent back.