PETITIONER:
MAHENDRA SINGH JAGGI ETC.

Vs.

RESPONDENT:
DATARAM JAGANNATH

DATE OF JUDGMENT: 15/01/1997

BENCH:
A.S. ANAND, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:
(WITH VICE VERSA)
THE 15TH DAY OF JANUARY, 1997
Present:
Hon'ble Mr.Justice A.S. Anand
Hon'ble Mr.Justice S.B. Majmudar
In-person and Ranjit Kumar, Adv. for the appellants in C.A.No. 156 and 158/97

J U D G M E N T

The following judgment of the Court was delivered:

WITH

(C.A. No. 157 of 1997 (arising out of S.L.P (C) No. 12429 of 1990): and C.A. No. 158 of 1997 (arising out of S.L.P. (C) No. 6392 of 1995]

J U D G M E N T

S.B. Majmudar. J.

Leave granted in all these special leave petitions.

By consent of parties the appeal arising from these special leave petitions were heard finally and are being disposed of by this judgment as common questions are raised for our consideration in these appeals.

The appellant in appeals arising out of S.L.P. (C) No. 10981 of 1987 and S.L.P. (C) No. 6392 of 1995 is Mahendra Singh Jaggi, party-in-person who was also permitted to be assisted by advocate Shri Ranjit Kumar who was good enough to appear amicus curise for him at out request, we express out deep sense of appreciation for the service rendered by Shri Ranjit Kumar at out instance. We will refer to the appellant in these tow appeals as defendant and the contesting respondent as the plaintiff. In appeal arising out of S.L.P. (C) No. 12429 of 1990 the plaintiff is the appellant while the defendant is the contesting respondent.

Disputes between the plaintiff and the defendant which have culminated in the present proceedings before us are spread over years and represent a chequered history. At the outset we may briefly indicated the background facts leading to the present proceedings.

The plaintiff filed a civil suit in 1961 in the Court of First Additional Subordinate Judge, Guttack against the defendant for realisation of Rs. 10723.63 (Principal amount of Rs. 9385.09 plus interest Rs. 1938.54 10% p.a.) on khata

account. According to the plaintiff he was a financier and had advanced moneys from time to time to the defendant for enabling him to carry on his motor spare part business, According to the plaintiff the suit amount was failing due at the foot of account. In the suit the defendant raised a counter-claim in his additional written statement claiming certain amounts after taking accounts from the plaintiff in respect of goods which came into his possession in pursuance of a agreement. The Trial Court decreed the plaintiff's suit against the defendant but also accepted the cross-claim of the defendant for accounts and passed a preliminary decree for accounts to be rendered by the plaintiff for the goods lying in his custody. The Trial Court observed that the details of the decree would be worked out in the final decree. The plaintiff carried the matter in appeal so far as preliminary decree for accounts was concerned. Defendant also appealed against the money decree passed in favour of the plaintiff. Defendant's appeal was dismissed by the High Court. Defendant did not challenge that appellate order any further. Thus money decree passed against the defendant became final but the plaintiff's appeal against the preliminary decree for accounts as passed against him in favour of the defendant was allowed by the High Court. It set aside that part of the judgment and decree of the Trial Court which directed the plaintiff to tender accounts and dismissed the cross-claim made by the defendant in his additional written statement. The defendant, who was respondent in plaintiff's appeal, carried the matter in further appeal before this Court. A three member Bench of this Court speaking through S.M. Sikri, C.J. allowed the appeal of the defendant and restored the preliminary decree of accounts as passed in his favour by the Trial Court and directed the Trial Court to proceed further for passing final decree in accordance with law. The aforesaid decision of this Court is reported as Mahinder Singh Jaggi v. Data Ram Jagannath AIR 1072 Sc 1049. Pursuant to the preliminary decree for accounts as passed in favour of the defendant and against the plaintiff by this Court the final decree proceeding the accounts as appointed by the Trial Court submitted his Report which was not acceptable to both the sides. After considering their objections to the Report ultimately the Trial Court passed a final decree for accounts in favour of the defendant awarding Rs. 5,268/- with profit at 10% as recommended by the aforesaid Commissioner, The defendant challenged the said final decree before the High Court in First Appeal No. 17 of 1077. The total claim put forward by the defendant in the said appeal consisted of four items totalling to Rs. 47,478.86 as under:

(a) Value of the goods in the custody of the plaintiffs 15,589.86.

(b) Value of the goods released by the bank and received by the plaintiffs on 13.8.1957 16,759.00

(c) increase in the rate of goods to the extent of 10,130.00

(d) Profit on the goods retained by the plaintiffs 5,000.00

Total 47,478.86

The learned Single Judge of the High Court by his judgment and order dated 25th February 1987 allowed the appeal and held that the defendant is entitled to Rs. 10,750/- from the plaintiff. He was also held entitled to pendente lite interest @ 8% per annum on the aforesaid amount and future interest from the date of the order at commercial rate of interest at 10% per annum till the date of recovery since the entire transaction was outcome of business transaction. The defendant moved a Review Petition

No. 7 of 1987 which was dismissed on 7th July 1097. The aforesaid decision rendered by the learned single judge in First appeal no. 17 of 1977 is the subject-matter of appeal arising out of S.L.P (C) No. 10981 of 1987.

The plaintiff on the other hand filed and appeal before the Division Bench of the High Court being A.H.O. No.8 of 1987 against the order rendered by the learned Single Judge in First Appeal no. 17 of 1977 insofar as the learned judge had enhanced the decretal amount payable to the defendant. The defendant on his part filed cross-objections in the said A.H.O. No. 8 of 1997 pending before the Division Bench. The Division Bench allowed the said A.H.O. partly to the extent that increase in price granted by the learned Single Judge of Rs. 5,000/- was set aside and the further rate of interest granted to the defendant was scaled down form 18% to 12%. So far as the cross-objections filed by the defendant were concerned the Divisions filed by the defendant were concerned the Division Bench did not go into the cross-objections in view of the pendency of Special Leave Petition (C) No. 10981 of 1987 before this Court. The defendant thereafter preferred a review petition against the order of the Division Bench of the High Court dated 18th August 1993. The Division Bench by order dated 20th October 1994 dismissed the review petition on account of pendency of the Special Leave Petition before this Court. The Judgements rendered by the Division Bench dated 10th August 1990 and 20th October 1994 are brought in challenge by the defendant in Civil Appeal arising out of S.L.P. (C) No. 6302 of 1995.

The defendant in the meantime sought to execute the final money decree as passed in his favour against the plaintiff by filling execution proceedings before the Executing Court. The Plaintiff by an application under Order 21 Rule 19 Code of Civil Procedure (CPC) sought to get adjusted against the defendant's detrital claim his own decretal amount in the suit. The Executing Court rejected the said application as not maintainable. The plaintiff carried the matter in revision being Civil Revision No. 299 of 1000 before the High Court. The High Court rejected the said Revision Application on 9th July 1990. This order of the High Court is made the subject-matter of appeal by the plaintiff in Civil Appeal arising out of S.L.P. (C) No. 12429 of 1990.

We have heard the learned advocate for the plaintiff and learned advocate Sri Ranjit Kumar for the party-in-person as well as the party-in-person in these appeals in support of their respective contentions. The following point fall for our determination.

1. What is the appropriate amount which should be granted to the defendant in the final decree for accounts against the plaintiff.
2. Whether the plaintiff in entitled to adjust his decretal dues against the defendant's decretal amount as found due and payable to the defendant by the plaintiff as per the provisions of Order XXI Rule 19, CPC.

As directed by our order dated 2nd December 1996 parties were permitted to file written submissions within tow weeks, Shri Ranjit Kumar, Learned counsel for the party-in-person appellant-defendant has filed written submission.

As noted earlier the defendant-appellant olaimed in all Rs. 47,479.99 from the plaintiff on four items (a) to (d) listed in paragraph 8 of the impugned judgment. The first item refers to Rs. 19,590,90 pertaining to the value of the goods in the oustoday of the plaintiff. The learned Single Judge has held the said amount to have been proved by the

defendant, It is fount well established on record that the plaintiff had received goods of the value of Rs. 97142.22 and they were kept in pledge by the plaintiff. These goods admittedly belonged to the defendant. The learned single judge has also fund that out of the said value of goods, goods of the Value of Rs. 11552,97 were already received back by the defendant. Thus the goods of the defendant worth the net value of the Rs. 15,589.95 remained with the plaintiff. In paragraph 10 of the judgment it has been in terms held by the learned judge accepting the Report of the commissioner that he plaintiff received the goods as per Exts, W/9 to W/20 from the defendant towards pledge. Having so held the learned Judge has refused to pass decree against the plaintiff for the aforesaid value of the goods which remained with the plaintiff by observing that the defendant had not adduced any evidence as whether the goods worth Rs. 11,552.97 were out of the goods received by plaintiff on 13th August 1957. This amount is to be deducted out the admitted case the defendant was not paying any amount for release of the goods. The plaintiff had paid the amount of Rs. 15,589.86. Having so observed the learned Judge has though it fit not to award any amount to the defendant on this item. It is difficult for us to defendant on this team. It is difficult for us to appreciate how the value of these goods which remained with the plaintiff though they belonged to the defendant could not have been accounted for by the plaintiff. It has to account in view that the plaintiff's suit on the foot of account in already decreed against the defendant and that decree had become final. Therefore, the plaintiff had nothing ore to claim against the defendant towards his dues pertaining to the transaction of advance of money by the plaintiff to the defendant. Once that aspect is kept in view it becomes obvious that in the cross-claim of the defendant which was to be adjudicated upon on taking accounts as directed by this Court in Mohinder Singh Jaggi (supra) the value of the goods of the defendant which were not returned to him by the plaintiff had to be awarded to the plaintiff. We therefore, set aside that part of the order of the learned Single Judge by which he refused to grant decree or Rs. 100,000.00 to the defendant on claim item (a) and decree his amount in favour of the defendant,

So far as claim item (b) is concerned it pertains to Rs. 19,750/-, So far as this amount is concerned the learned Judge in paragraph 8 of the judgment has in terms observed that on 19th August 1997, the plaintiff received the goods worth Rs. 19,750/- and kept the same pledged with him. It is not in dispute between the parties that these goods belonged to the defendant, However the learned Single Judge in impugned judgment was pleased not to grant the full amount of Rs. 10,750/- to the plaintiff on item (b) but granted only Rs. 9,750/- by deduoting Rs. 10,000/- by way of amount of money paid by the plaintiff to the bank for releasing these goods from the bank on behalf of the defendant. So far as this deduction of Rs. 10.000/- is concerned it was not is dispute that it was advanced by the plaintiff to the defendant by way of paying it on his behalf to the bank. But his amount was already taken not of by the Trial Court while passing decree in favour of the plaintiff against the defendant on foot of account as noted earlier. That decree has become final. since the amount of Rs. 10,000/- was already part and parcel of the decree passed in favour of the plaintiff against the defendant the said amount payable to the defendant in connection with the value of the goods released by the bank and received by the plaintiff on 10th August 1997 as indicated in claim them (b). It had to be

kept in view that the evidence on record showed that Rs. 10,000/- was the first advance paid to the bank on 19th August 1997 by the plaintiff and this amount along with other claim of the plaintiff was decreed in total by the Trial Court. The plaintiff's claim on this basis as found in para 7 of the plaint and as reiterated in plaintiff's evidence clearly established this fact. The learned Trial Judge in this connection had noted in his judgment that the defendant's own stand was sufficient to accept the correctness of the plaintiff's account both on credit and debit side. In this connection Trial Court had noted further as under :

> "The defendant has cogently explained that out of such sum payable to the bank the plaintiffs financed to the extent of Rs. 10,000/- and the balanced he repaid in cash vide the pass books of the defendant. EXT. B and B/1 the pass books of the defendant disclose that thereafter the cash credit system of the defendant mainly continued by the finance from the plaintiffs till 11th September, 1057 when this cash credit pass book was closed from Bank and on that very day this defendant opened the current account book by supplementing of funds from the plaintiffs which have been mentioned, as the money passed always through the bank. There is no counter evidence to disclose that the cash credit system of the defendant any longer continued and therefore the defendant continued as before but the bank was substituted by the plaintiffs as financial concern and the circumstances are such the plaintiffs could never have parted with so much money without the pledge of goods as the Bank did."

On the basis of the aforesaid finding the learned Trial Judge had decreed the plaintiff's suit on contest with post against the defendant with interest of 8%. Thus the amount of Rs. 10,000/- paid by the plaintiff to the bank for releasing the defendant's goods which were earlier pledged with the bank was already taken care of and was made the subject-matter of an item resulting in the money decree in favour of the plaintiff and against the defendant. Thereafter at the stage of taking accounts regarding defendant's goods lying with the plaintiff value of which was to be decreed in favour of the defendant as per his cross-claim, there remained no oppasion for the court to again deduct Rs. 10,000/- from the value of the goods which was to be made good by the plaintiff to the defendant as per claim item (b) otherwise it would amount to double deduction in favour of the plaintiff. We, Therefore, find that the learned Single Judge in the impugned judgment had committed an ed facie error in once again deducting Rs. 10,000/- from the value of the goods received by the plaintiff on 19th August 1957 totalling to Rs. 18,750/-. In short instead of Rs, 8,750/- the entire claim of Rs. 18,750/- was required to be decreed in favour of the defendant as per claim item (b).

we accordingly do so.

So far the claim item (d) is concerned in our view on fault can be found with the reasoning edopted by the learned Single Judge of the High Court that some guess work had to be done about the profit which might have accrued to the defendant on this claim as price was gradually rising and there was no evidence that the price of the articles remained statio or the articles lost their commercial value, In absence of any clear-out evidence on this aspect instead of remanding the matter and prolonging the agony of parties guess work of Rs. 5,000/- was made by the learned Single Judge and Rs. 5,000/- were awarded towards increase in the rate of goods kept by the plaintiff. consequently on claim item (8) the appellant had made out no case for any increase above Rs. 5,000/- as awarded by the learned Single Judge. On the other hand the Division Bench of the High Court in A.H.O. No. 8/97 was not justified in rejecting this claim in the impugned judgment in appeal arising out of S.L.P. (C) No. 6392. The Division Bench had observed that they were not fully satisfied about grant of this amount. If that is so the matter ought to have been remanded instead of being rejected outright, In our view, however, an amount of Rs. 5,000/- as awarded on this item by the learned Single Judge remained well justified on the record of the case and called for no interference by the Division Bench.

So far as claim item (d) is concerned it pertains to profit on the goods retained by the plaintiffs. Rs. 5,000/- are already awarded in full by the learned single judge. That appears to be well justified on the record and the Division Bench in A.H.O. no. 8 of 1997 has also ponfirmed the said finding of the learned Single Judge. Therefore, on this them nothing further is required to be stated. As a result of the aforesaid disoussion the appellant-defendant in addition to the final decree of Rs. 16,750/- as awarded by the learned Single Judge will be entitled to an additional amount as under :

Claim Item (a)	15,589.86
Claim Item (b)	10,000.00
Total	25,589.86

To this amount to be added Rs. 16,750/- which amount was already granted by the learned Single Judge and which is upheld by us. thus total amount payable by plaintiff to the defendant as per the final decree will amount to Rs. 42,348.88. The defendant will also entitled to pendents light interest @ 8% per annum on the total amount of Rs. 40,348.88 upto the date of the decree of the learned Single Judge and future interest thereon from the decree of the learned Single Judge dated 20th February 1007 @ 12% per annum till realisation of the entire decratal amount by the defendant from the plaintiff. We are inolined to reduce the future interest from 25th February 1987 as awarded by the learned Single Judge from 10% to 12% agreeing with the reasoning adopted by the Division Bench of the High Court Court in A.H.O. of 1997 as the relationship between the plaintiff and the defendant was not merely of a lender and borrower, but there was an agreement similar to the cash credit arrangement with the bank and as the bank rate of interest at the relevant time was 12% Consequently Civil Appeal arising out of S.L.P. (C) No. 10001 of 1997 and Civil Appeal arising out of S.L.P. (C) No. 6392 of 1995 will stand partly allowed as aforesaid and in the place and instead of the final decree passed by the learned Single in First Appeal No. 47 of 1077 and modified by the Division Bench of

the High Court in A.H.O. No. 8 of 1097, there anall be a final decree against the plaintiff respondent had in favour of the appellant-defendant in the total sum of Rs. 42248.88 with pendente lite interest thereon @ 6% per annum till the date of the learned Single Judge's judgment dated 25th February 1997 and thereafter @ 12% per annum on the aforesaid amount till realisation. The orders passed by the learned Single Judge in Civil Review No. 7 of 1987 on 7th July 1987 and in Misoellaneous Case No. 127 of 1989 and Misoellaneous Case No. 155 of 1993 by the Division Bench of the High Court on 8th October 1997 will also stand set aside in view of the aforesaid final decree as ordered to be passed by us.

That takes us to the consideration of Civil appeal arising out of S.L.P (C) No. 12429 of 1990. The appellant - plaintiffs have felt aggrieved by the order of the learned Single Judge dismissing their Revision Application No. 226 of 1990. That Revision Application arose out of an order dated 9th March 1990 passed by the learned Subordinate Judge, first court, Cuttack in Execution Case No. 82 of 1991. A few introductory facts leading to the present appeal deserve to be reoapitulated at this stage.

On 16th March 1984 the appellants obtained decree for Rs. 10720.88 with interest @ 8% per annum and costs against the defendant-respondent. The defendant, as noted earlier, had filed a cross-claim claiming preliminary decree for accounts against the plaintiff, The Trial Court passed the said preliminary decree as prayed for by the defendant. Plaintiff and the defendant both went in appeal in the High Court, Defendant's appeal against plaintiff's money decree was dismissed. Plaintiff's appeal against the preliminary decree in favour of the defendant was allowed on 5th August 1070. As seen earlier, the defendant did not challenge the money decree passed in favour of the plaintiff by the Trial Court and as confirmed by the High Court. But he challenged the appellate order vacating the preliminary decree in his favour as passed by the Trial Court. As noted earlier this Court by its decision in the case of Mohinder Singh Jaggi (supra) reversed the said decision of the High Court and restored the preliminary decree for accounts in favour of the defendant.

The appellant sought execution of his money decree against the defendant. That Execution Petition was dismissed, The respondent. That Execution petition was dismissed, The respondent on the order hand sought to execute the final accounts decree as passed in his favour by the Trial Court and as modified by the learned Single Judge of the application under Order XXI Rule 10 seeking adjustment of his decretal amount against the decree-holder defendant's claim as awarded in the final decree. That application came to be rejected by the Executing Court. The said order came to be confirmed by the High Court in revision as per the impugned judgment. In our view no fault can be found with the reasoning adopted by the learned Single Judge dismissing the application of the appellant. The reason is obvious. Order XXI Rule 10 reads as under:

> R.19. Execution in case of cross-claims under same decree. Whether application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then.
> (a) if the tow sums are equal satisfaction for both shall be

entered upon the decree; and
(b) if the two sums are unequal, execution may be taken only by the party entitled to be larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree."

For its applicability it must be shown by the party seeking relief thereunder that he is entitled to recover a sum of money under the very same decree Which is sought to be executed by the other side. The words 'application for execution of a decree under which tow parties are entitled to recover sums of money' in the opening part of the Rule clearly indicate that there should be two rival claims by contesting parties against each other arising out of the very same decree with is sought to be executed by one of the parties against the other party. In the present case it is not the submission of the appellant that he is awarded any amount under the very final decree for accounts which the defendant seeks to execute against the appellant. On the contrary his claim arises out of a money decree against the defendant which has become final. The defendant does not seek to execute that money decree as nothing in awarded to the defendant under that decree against the plaintiff, what is awarded to the defendant is under a final decree on taking accounts between the parties. Through of course both these decrees are passed in the same suit, each of them is a separate decree, One is a money decree obtained by the plaintiff against the defendant. Another is a final accounts decree passed in favour of the defendant against the plaintiff in defendant's cross-claim which is analogous to a cross-suit. Under these circumstances, therefore, applicability of O.XXXI R. 10, CPC was already ruled out, whatever remedy the appellant may have for execution of his money decree against the defendant will have to be pursued independently, The High Court has observed that the appellant's Execution Petition against the defendant has been dismissed as time barred. Be that as it may. The short question which has been posed for our consideration in present proceedings is whether the plaintiff could have resorted to provisions of O.XXI R.10, CPC for getting his claim under the money decree adjusted against the defendant's final accounts decree against him, such an effort on the part of the appellant-plaintiff was clearly contra-indicated by the express wording of O.XXI R. 19. CPC as rightly held by the High Court, it may also be noted that both the decrees, that is, plaintiff's money decree against the defendant and the defendant's final decree against the plaintiff were also not passed at the same time but were passed at different times as noted hereinabove. That was an additional reason why. XXI R.10, CPC was rightly not held applicable to the facts of the application's case by the High Court. For all these reasons this appeal fails and is dismissed.

In the result Civil Appeal arising out of S.L.P. (C) no. 1001 of 1997 and Civil Appeal arising out of S.L.P (C) No. 8392 of 1995 are partly allowed as aforesaid while Civil Appeal arising out of S.L.P. (C) No. 12429 of 1000 is dismissed. In the facts and circumstances of the case there will be no order as to costs in all these appeals, Order accordingly.