ALLAHABAD HIGH COURT

Muhammad Jan

Vs.

Shiam Lal

(Piggott, Lindsay and Sulaiman, JJ.)

14.12.1923

JUDGMENT

Piggott, Lindsay and Sulaiman, JJ.

1. The facts out of which the two appeals before us arise are stated in the referring order of the 22nd of June, 1923. In substance they amount to this: By an appellate decree, the plaintiff, in two pre-emption cases, was given one month from the 27th of September, 1921, within which to deposit certain money, if he desired to obtain the benefit of the decrees in his favor. The civil courts closed for the vacation in that year on the 30th of September and reopened on the 4th of November. On that date the successful plaintiff made the deposit required by the decree. The courts below have held that it was too late, more than thirty days having elapsed since the 27th of September, 1921. There was authority of this Court for the view thus adopted. This is to be found in the case of *Hirde Narain v. Alam Singh*[1] The attention of the courts below was not drawn to the fact that, since the decision above referred to, a Bench of this Court, in the case of *Reoti Ram v. Sita Ram*[2] had arrived at a different conclusion. The matter has been referred to a Full Bench in order that these conflicting decisions may be reconsidered. The position is so far an unfortunate one that in Reoti Ram's case the attention of the Bench was not called to the decision in Hirde Narain's case, while, on the other hand, the decision in Reoti Ram's case is founded upon an older decision of this Court which was not laid before the Bench which decided Hirde Narain's case. The older decision in question is the case of *Dabi Din Rai v. Muhammad Ali*[3] We now find, moreover, that another Bench of this Court, in the case of *Bisheshar Naik v. Sahibuddin*[4] had held a deposit made under circumstances precisely similar to those which we are now considering to have been made in time. The question for determination is whether the deposit made by the plaintiff Muhammad Jan was or was not within time under the terms of the decree. We have no desire to discuss any question as to the powers of the court to extend that time; nor do we hold that the case falls within the provisions of Section 10 of the General Clauses Act. As regards the decisions of this Court, there is clearly a preponderance of authority in favor of the plaintiff appellant. The current of authority is broken only by the decision in Hirde Narain's case. The facts in that case were to this extent peculiar, that the deposit made by the plaintiff was not

made actually on the first possible day after the reopening of the courts, but one day later. It is true that a point was made in argument of the fact that, on the first available day, the

[1] I.L.R. (1918) All. 47
[2](1920) 19 A.L.J. 49
[3] I.L.R.(1881) All. 850
[4]1884 WN 217

treasury where the deposit was required to be made was only open for one hour; but we do not know how far this circumstance may have affected the decision of the Hon'ble Judges. There are two cases of other High Courts which are, in our opinion, in point. In the case of *Shooshee Bhusan Rudro v. Gobind Chunder Roy*[5] the Calcutta High Court, relying upon certain English cases, made the following observations:

> The broad principle there laid down is that, although the parties themselves cannot extend the time for doing an act in court, yet if the delay is caused, not by any act of their own, but by some act of the court itself, such as the fact of the court being closed, they are entitled to do the act on the first opening day.

2. They go on to remark that this principle had been affirmed in older cases of the same Court.

3. The same principle was laid down by another Bench of the same Court, in the case of *Peary Mohan v. Anunda Charan I.L.R*[6]. in which again two older cases are referred to. We desire to refer also to the case of *Sambasiva Chari v. Ramasami Reddi*[7] The significance of that case lies in the fact that the Hon'ble Judges repelled contentions based upon the statutory provisions of the Indian Limitation Act and of the General Clauses Act; but nevertheless held that there is a generally recognized principle of law under which parties who are prevented from doing a thing in court on a particular day, not by any act of their own, but by the court itself, are entitled to do it at the first subsequent opportunity. It is quite true that this case, as well as Shooshee Bhusan Rudro's case, was laid before the Bench of this Court which decided Hirde Narain's case. The learned Judges there remarked that these cases have nothing to do with the question then being argued before the Court. Strictly speaking, this remark is correct, as the Hon'ble Judges were then dealing with a pre-emption decree prescribing a certain period for the doing of a certain act; but it does seem to us that the general principle affirmed in the Calcutta and Madras cases is applicable and is sound in law. In view of these considerations and, taking account of the fact that the general current of authority in this Court has been opposed to the decision in Hirde Narain's case, we think that that case should now be overruled and the law affirmed as settled by two previous decisions and one subsequent one. In our opinion the deposit tendered by Muhammad Jan the plaintiff, on the 4th of November, 1921, was in time under the terms of the decree and should have been accepted. We, therefore, allow these appeals, set aside the order of the court below and dismiss the application of the defendants to have the decree of the 27th of September, 1921, executed as a decree in their favor. The appellant will have his costs throughout. It will be for the plaintiff Muhammad Jan to make such further application to the trial court as he may be advised, if he desires to obtain execution of the decree in his favor.

[5] I.L.R. (1890) Cal. 231
[7] I.L.R. (1898) Mad. 179

[6] I.L.R(1891) Cal. 631