

ALLAHABAD HIGH COURT

Roshan Lal

Vs

Ganpat Lal

(G Nath, J.)

17.12.1937

JUDGMENT

Ganga Nath, J.

1. This is a Letters Patent appeal from the decision of a learned single Judge of this Court. The respondent, Ganpat Lal has a decree for Rs. 3786 against the firm Nand Ram Piare Lnl which was represented by Piare Lal, the father of the appellant Roshan Lal. The decree-holder attached some property in execution of his decree. An objection was filed by Roshan Lal under Order 21, Rule 58, Civil P.C. He claimed the attached property as his. The objection was dismissed. Roshan Lal then filed the suit under Order 21, Rule 53 for declaration of his right to the property. The suit was disposed of in accordance with a compromise which was entered into between the parties. It was agreed in that compromise that if Roshan Lal paid Rs. 2600 by four installments, the entire decree would be deemed to be satisfied but that if default was made in payment of any one installment, the whole of the decretal amount, namely Rs. 3786, would be recovered by the decree-holder. Under the terms of the compromise, the appellant Roshan Lal had to hypothecate his property for the satisfaction of the decree. Roshan Lal accordingly executed a mortgage deed, mortgaging his property. The dates for the payment of the installments were fixed in the compromise. The first two installments were paid on the due dates. The third installment was to be paid on Sawan Sudi 15, Sambat 1990, corresponding to 5th August 1933. The fourth installment was payable on Kartik Sudi 15, corresponding to 2nd November 1933. The third installment was not paid in accordance with the terms of the compromise. On 4th August, Roshan Lal deposited Rs. 300 and applied to the Court for permission to deposit the balance of Rs. 700 with the fourth installment. The Court passed an ex parte order granting time and allowing the sum of Rs. 300 to be deposited. On 31st August 1933, Roshan Lal applied to the Court for extension of time for the payment of the balance of the third installment and the whole of the fourth installment.

2. This application was opposed by the decree-holder and the appellant's application was

dismissed on 3rd November 1933. Roshan Lal then filed a tender offering to pay the entire balance of the third and the fourth installments. He deposited the entire sum, namely Rs. 600, the next day, that is on 4th November 1933. The decree holder applied on 9th November 1933 for execution for the balance of his decretal amount of Rupees 3786 giving credit for the money that had been paid. Roshan Lal objected to the execution on the ground that the decree had been fully satisfied by the payment of Rs. 2600 in accordance with the terms of the compromise. The objection was disallowed by the execution Court and also by the lower Appellate Court. The decisions of both the lower Courts were confirmed by the learned single Judge. The appellant has filed this appeal in Letters Patent from the decision of the learned single Judge. The only question for determination in this appeal is whether there was any default on the part of the judgment-debtor in paying the fourth installment which, as stated above, fell due on 2nd November 1933. It has been urged on behalf of the appellant that as 2nd November 1933 was a holiday and as the tender was filed by the appellant on the next day, that is 3rd November 1933, the payment was within time. Reliance has been placed by the learned Counsel for the appellant on *Muhammad Jan v. Shiam Lal*¹ That was a case of a decree in a pre-emption suit under which the purchase money was to be deposited within a certain period which expired on a date on which the Court was closed for the vacation. The deposit was made on the date on which the Court re-opened. It was held: 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.

3. Under a pre-emption decree, the decretal money is to be deposited in Court. Order 20, Rule 14 lays down: Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase money has not been paid into Court, the decree shall : (a) specify a day on or before which the purchase money shall be so paid and (b) direct that on payment into Court of such purchase money...the defendant shall deliver possession....

4. The principle laid down in the Full Bench case applies to only those cases in which a party is required to do something in Court. It does not apply to those cases when it is open to a party to do something outside the Court. It has been urged on behalf of the appellant that under Order 21, Rule 1, it is open to a judgment debtor to pay the money either into the Court or out of Court to the decree-holder. There is no doubt that it is so. But under Order 21, Rule 1, it is not compulsory on the judgment-debtor to pay the money in Court. If two alternatives are allowed to a person, he cannot choose one of them and act in such a manner as to prejudice the rights of the other party. In this case there was a clear agreement between the parties that if the money of any installment was not paid on the date fixed, the decree-holder would be entitled to realize the whole of his decretal money. It was only a concession by which the decree-holder agreed to accept a lesser sum than; what was due under the decree. It was in consideration of the payments on certain dates. If the judgment-debtors did not avail themselves of the concession which was allowed to them by not acting up to the terms of the agreement, they are themselves to blame and must bear the consequences of the breach committed by them.

5. The money of the fourth installment, as stated above, was paid on 4th November 1933. The installment fell due on 2nd November 1933 under the terms of the compromise. Consequently it cannot be said that the money was paid on the next-day after 2nd November 1933 which was a holiday. If they wanted to take advantage of the provisions of Order 21, Rule 1, it was open to them to deposit the money in Court but it should have been deposited within the time allowed under the terms-of the compromise. They could not act in such a manner as to commit default and to extend thereby the time in derogation of the terms settled between them. The payment made by the judgment, debtors in Court on 4th November 1933 would not prevent the condition of recovering the full amount of the decree in case-of default from becoming effective and coming into operation. A similar point was considered in *Kunj Behari Singh v. Bindeshri Prasad Singh*² There a compromise decree provided that a certain amount will be due to the plaintiff on certain bonds and this will be payable by installments on certain dates. In case of default of payment of any installment on due date, the plaintiffs were to have a-right to sue for recovery of the whole. On the date when first installment became due, the Civil Courts were closed but the defendant tendered it on the day it reopened. The plaintiffs thereafter brought a suit for recovery of the whole amount. There too reliance was placed on the provisions of Order 21, Rule 1, and *Muhammad Jan v. Shiam Lal (1924) 11 A.I.R. All. 218(Supra)* referred to above. It was observed:But assuming that the defendants had the power to make the payment direct to the mortgagees or to deposit the amount in Court, they cannot take advantage of the circumstance that the Civil Court was closed on 16th June 1924. If the only course open to them had been to deposit it in Court and the Court was closed on the last date on which they could have made the deposit, then the ruling in the Full Bench case would have been applicable. That was a case of a deposit under a pre-emption decree, and in view of the provisions of Order 20, Rule 14, that deposit had to be made into Court. The judgment debtors in that case had no option but to deposit the amount in Court, and accordingly it was held by the Full Bench that if the Court by its own act prevented the judgment-debtors from making the deposit within the time, they should not be deprived of their right to do so provided they came into Court at the first opportunity available, namely the reopening day of the Court, In the present case the defendants, on their own showing, had the option of making the payment to the mortgagees direct. From this they were in no way prevented on account of the Court being closed. They were not compelled to wait till the Court re-opened. They had an opportunity available to them of which they did not take advantage. We do not therefore think that they were entitled to say that the time fixed in the compromise decree for the payment of the first installment should be extended. Accordingly there was a default on 15th June 1924, which entitled the plaintiffs to claim the whole amount.

6. In *Adya Singh v. Nasib Singh (1920) 7 A.I.R. Pat. 122* a similar view was taken. There a decree-holder agreed to set aside the sale of the properties of the judgment-debtor if the latter paid up the decretal amount within two months of the date of the sale. The Courts were closed on the last day allowed for pay-ment and the decretal amount was deposited on the day that the Courts re-opened. It was held:that payment not having been made within the time agreed upon,

the sale could not be set aside.

7. There is no force in the appeal. It is therefore ordered that it be dismissed with costs.

Cases Referred.

1(1924) 11 A.I.R. All. 218

2(1929) 16 A.I.R. All. 207