

CALCUTTA HIGH COURT

Jadabendra Nath Mishra

Vs.

Manorama Debya

Civil Revn. Case No. 3553 of 1964

(P.N. Mookerjee, A.C.J. and Amiya Kumar Mookerji, J.)

24.07.1969

JUDGMENT

P.N. Mookerjee, A.C.J.

1. This Rule was obtained against an order of the learned trial Judge, dismissing the petitioner's application under Sections 148 and 151 of the Code of Civil Procedure upon the view that, in the circumstances of this case, the Court had, as a matter of law, no power to extend the time, as prayed for in the said application.

2. Broadly speaking, the relevant facts are as follows: The original buit for partition was decreed ex parte. Thereafter, the present petitioner, who was a defendant in the said suit, made an application for setting aside the said ex parte decree under Order 9, Rule 13, of the Code of Civil Procedure. This gave rise to the Misc. case in question and, in the said Misc. case, the parties eventually came to terms and filed a petition of compromise, under which the petitioner was to pay a certain amount within a certain time to have the Misc. case allowed and the suit restored to file after the setting aside of the relative ex parte decree. There was also a default clause providing, inter alia, that, in case the above payment was not made within the specified time, the Misc. case would stand dismissed and the ex parte decree in question would stand affirmed. On account of his illness, the petitioner could not make the above deposit in time with the result that the Misc. case stood dismissed and, accordingly, the petitioner made his present application under Sections 148 and 151 of the Code of Civil Procedure.

3. The opposite party filed his objections to the same, both on the merits and on the technical ground that the previous order, fixing the time-limit for the deposit in question, was by consent and, accordingly, the said time could not be extended without consent of parties. The Court below has accepted the opposite party's above contention on the point of law and appears to have rejected the petitioner's application upon the preliminary ground that the time, fixed for deposit of money, as aforesaid, by consent, could not be extended except by consent of parties, which, obviously, was not there in the instant case. The point now is whether, apart from consent, the Court can, in the instant case, extend the time for the deposit in question, provided it is satisfied on the merits that there was a case for such extension.

4. On behalf of the petitioner, our attention has been drawn to the leading decision of this Court, reported in *Kandarp Nag v. Banwari Lal Nag*¹, On behalf of the opposite party, reference has been made to the decision of the Supreme Court, reported in *Hukumchand v. Bansilal*², We have to consider now whether the two types of cases dealt with by the above two decisions are distinct and separate, and, if so, within which class the instant case would fall.

5. The case before the Supreme Court was one, where there was a statutory time-limit, which could not be extended by the Court in any event, except by consent of parties. In the case, reported in 33 Cal LJ 244 : (AIR 1921 Calcutta 356 (2)), there was no such restriction on the time, so fixed by consent of parties or on the power of the Court and their Lordships held that, as, on the expiry of the time, so fixed, the question of forfeiture arose, the Court had ample power, in an appropriate case, to grant relief against forfeiture even without the consent of the parties. In the instant case, we do not find that there was any statutory time limit, standing in the way of the Court in adopting the above principle, laid down in the above-cited decision of this Court. In our view, the instant case falls within the scope of the decision, 33 Cal LJ 244 : (AIR 1921 Calcutta 356 (2)) and the decision of the Supreme Court, AIR 1968 Supreme Court 86, is distinguishable from the present one.

6. There is, no doubt, that, as a result of non-deposit of the money within the time, fixed by consent, the petitioner was losing a valuable right in respect of immovable property, or, in other words, it is a case of forfeiture, in which relief against forfeiture is available from the Court under the authority of the above decision, 33 Cal LJ 244 : (AIR 1921 Calcutta 356 (2)).

7. We would, accordingly, make this Rule absolute, set aside the impugned order of the Court below and direct that the petitioner's application be considered on the merits and be dealt with and disposed of by the Court below in accordance with law, in the light of this judgment, as quickly as possible.

8. There will be no order for costs in this Rule.

9. Let the records go down as quickly as possible.

Amiya Kumar Mookerji, J.

10. I agree.

Petition allowed.

¹33 Cal LJ 244: (AIR 1921 Cal 356

² AIR 1968 SC 86