

(1909) 05 AHC CK 0024

Allahabad High Court

Case No: None

Jug Ram

APPELLANT

Vs

Jewa Ram and Others

RESPONDENT

Date of Decision: May 17, 1909

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 148

Citation: 3 Ind. Cas. 497(1)

Hon'ble Judges: Tudball, J; Banerji, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. The facts out of which the application has arisen are these: On the 27th of November, 1908, the applicant obtained a decree for pre-emption from this Court. The decree directed that he should pay the purchase-money, namely Rs. 45, within two months from that date. He was, therefore, bound to pay the amount on or before the 27th of January, 1909. He has not paid it but he makes an application for extension of time to enable him to pay the purchase-money now. There can be no doubt, and it is not disputed, that under Act XIV of 1882 such an application could not be made. The only remedy which the applicant had under that Act was an application for review of judgment on sufficient grounds. The applicant, however, relies upon the provisions of Section 1.48 of the Code of Civil Procedure, 1908, which enables a Court to enlarge the period fixed or granted by it for doing any act prescribed or allowed by the Code. We have grave doubts whether this section applies to a case of pre-emption. Further, having regard to the provisions of Section 6 of the General Clauses Act, 1897, we think that Section 148 of Act No. V of 1903, even if it is applicable to a case like this, would not apply to the present case. The appellant incurred a liability under Act XIV of 1882 to have his suit dismissed on non-payment of the purchase-money within the time fixed. That liability cannot be affected by the provisions of the new Code of Civil Procedure. It is true that there is

no vested right in procedure but the question before us is not one of procedure but of an obligation and liability. Even if we assume that the applicant can invoke in aid Section 148 of Act V of 1908, we are of opinion that there are no grounds for granting the application. As has been stated above the applicant was allowed time till the 27th of January, 1909, for payment of the purchase-money. He states in his affidavit that he became aware of the decree on the 15th of January, 1909, that is 12 days before the date up to which he could have paid into Court the amount of the purchase-money declared to be payable. He did not make any payment within the 12 days but resorted to the roundabout procedure of applying to obtain a copy of the decree. If he had simply communicated with his counsel in this Court he could easily have ascertained what amount he had to pay and on what date. He did not do so and no satisfactory reasons are given for his omission. Therefore, on the merits also no case has been made out for permitting the applicant to pay the pre-emption-money after the date fixed. We dismiss the application with costs.