
50 Ind. Cas. 937

Calcutta High Court

Case No: None

Akkach Mondal

APPELLANT

Vs

Aminuddi Mullik

RESPONDENT

Date of Decision: Feb. 1, 1918

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 34 Rule 3

Citation: 50 Ind. Cas. 937

Hon'ble Judges: Teunon, J; Newbould, J

Bench: Division Bench

Judgement

1. This Rule is directed against an order made by the District Judge of the 24-Pergannas. The suit in question was a suit upon the mortgage, and

the parties having come to a compromise, a decree was made on the 5th June directing that on payment by the defendant into Court of the sum of

Rs. 850 on or before the 4th April 1917, the plaintiffs should deliver up to the defendant all documents in their possession relating to the mortgage

property and should put the defendant into possession of the property in question. On the 31st March 1917 the defendant paid into Court the sum

of Rs. 450 and applied under Order XXXIV, Rule 3, that the time for the payment of the balance should be enlarged. The original Court rejected

that application on the ground that the decree passed was a final decree and not a preliminary decree. In appeal the learned District Judge held that

the decree was not a final decree, but he declined to enlarge the time for the payment of the balance on the ground that the date for payment had

been fixed by agreement of parties. Before that order was made, the balance Rs. 400 had in fact been paid into Court on the 12th May 1917.

2. The objection taken by the plaintiff is not seriously pressed in this Court and we think that on the whole it would not be unjust to both parties

that we should now extend the time for the payment of the balance upto the 12th May, on which date the money was paid into Court, and that the

Court should now make the final decree in terms of Order XXXIV, Rule 3, Civil Procedure Code.

3. Having regard to the concession that we thus make to the defendant, the petitioner before us, we direct that he do pay to the plaintiff-opposite

party the costs of this Rule, which we assess at, one gold mohur

4. Let the papers be sent down at once.