

Sheikh Ali Mamud Vs Sheikh Miarish

Court: Calcutta High Court

Date of Decision: Jan. 15, 1917

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 34 Rule 3

Citation: 37 Ind. Cas. 779

Hon'ble Judges: Newbould, J; N.R. Chatterjea, J

Bench: Division Bench

Judgement

1. The decree-holder, who is the appellant in this case, obtained a decree for foreclosure upon a mortgage. The decree gave six months" time to

the mortgagor to redeem. The latter preferred an appeal. The appeal was dismissed and there was no direction in the decree of the Appellate

Court that the six months" time would run from the date of that decree. The date of the original decree was 27th August 1913 and the appeal

against that decree was dismissed on 1st December 1914. On 11th February 1915, the decree holder applied for the decree being made absolute,

and a final decree was passed. Subsequently on 24th May the mortgagor deposited the money in Court and that was accepted, by the Munsif.

Subsequently that order was set aside at the instance of the decree-holder, when it was pointed out to the Court that the final decree had already

been passed.

2. The order of the Munsif was set aside by the lower Appellate Court, on the ground that the six months" time had run from the date of the

Appellate Court"s decree. We think that the view taken by the lower Appellate Court is erroneous. In the absence of any direction in the decree of

the lower Appellate Court, the period of six months would run from the date of the decree of the Court of first instance. See Bholu Nath

Bhattacharjee v. Kanti Chundra Bhattacharjee (1) and Faijuaoi Sardar v. Asimuddi Biswas (2). It is true that the Court has the power, under

Order XXXIV, Rule 3, proviso, to enlarge the time for redemption. But the final decree had been passed before the judgment-debtor deposited

the money. Under the circumstances, we do not think that the Court had any power to accept the money long after the expiry of the time within

which the judgment-debtor was to put in the money. The appeal must accordingly be allowed, the order of the lower Appellate Court set aside

and. that of the Court of first instance restored. Each party will bear its own costs in all the Courts.