
(1880) 03 CAL CK 0001

Calcutta High Court

Case No: None

Donzelle

APPELLANT

Vs

Hossein Ally

RESPONDENT

Date of Decision: March 15, 1880

Citation: (1880) ILR (Cal) 906

Hon'ble Judges: White, J; Maclean, J

Bench: Division Bench

Judgement

White, J.

In this case the appellant (who is the defendant in the first Court) was sued u/s 52 of Beng. Act VIII of 1869 for the purpose of being ejected, and also for the recovery of certain arrears of rent.

2. On the 23rd September 1878, the first Court passed a decree for his ejectment, and as directed by the section the decree specified the amount of the arrears of rent due from the defendant.

3. The section further enacts that "if the amount of the arrears, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed." The date of the decree was the 23rd September 1878, and the Court closed on the 26th of that month for the Poojah holidays, and did not open again till the 28th October 1878. The defendant on that day appeared in Court, and deposited the amount of the arrears, together with interest and costs. Notwithstanding the deposit having been made, the decree-holder applied to the Munsif to execute the decree by ejecting the defendant, on the ground that the payment was not made in due time. The Munsif, being of that opinion, ordered execution to issue.

4. On appeal to the District Judge he upheld the Munsif's decision. He considered that it was a hard case, but that, on the face of a certain Full Bench Ruling, which he refers to but does not cite, held, that the Munsif's order must stand, and that, he

could not interfere. We have referred to the Full Bench Ruling, which is reported in 2 W.R. 21(Poulson v. Modhopsoodun Paul Chowdhry, B.L.R. Sup.101), and we think that it has no application to the case now before us. The real question which we have to deal with is as to the construction which is to be put upon Section 52 of Beng. Act VIII of 1869. It is to be observed that Section 52 gives, a ryot the power of staying execution of a decree for ejectment upon paying the amount of arrears decreed, together with interest and costs of suit, into Court, and allows him fifteen days for that purpose. We think that he is entitled to have a clear fifteen days for making the payment. In the present case the decree was made only two days before the Court closed. To hold that he must make the payment within those two days, as the Courts below appear to think, is to deprive him of thirteen of the days awarded him by the legislature. "When the fifteenth day arrived he could not possibly deposit the money, because the Court was shut, and there was no officer to receive the money. The Court was legally closed for the Poojah holidays; but the money was paid in by the defendant on the very first day the Court re-opened. We think that, under these circumstances, the defendant was entitled to stay of execution. A case analogous to the present one was decided by Sir B. Peacock, Chief Justice, and Mr. Justice Loch--Dabee Rawoot v. Heeramun Mahatoon (8 W.R., 223). It was a case under the Regulation relating to the foreclosure and redemption of mortgages, which was construed by these Judges to give a mortgagee the option either of depositing the mortgage-money and costs in Court within a year from the date of the notice to foreclose, or of tendering it to the mortgagee. The mortgagor in the decision cited chose to adopt the former course,--namely, to deposit the money in Court. The 25th November was the last day for depositing the money, but the Court was not open on that day, and he deposited it on the 28th, which was the first day of the re-opening of the Court. Those learned Judges held, that the mortgagor had saved the estate from foreclosure by depositing the money on the first day after the 25th November on which the Court was open, and they came to this decision, although Sir B. Peacock doubted whether the Court had been legally closed. Our decision is also in accordance with the English authorities. In Mayer v. Harding (L.R. 2 Q.B. 410), the appellant, who wished to appeal against an order of certain Justices of the Peace, and who was bound by a Statute to lodge in the Queen's Bench the case signed by the Justices within three days after he had received it from them, got the case on Good Friday, when the Queen's Bench was closed, and lodged it on the following Wednesday, when the Division Bench re-opened. The Court held, that as the offices were closed from Friday to the Wednesday, the appellant had transmitted the case as soon as it was possible to do so, and had sufficiently complied with the requirements of the Statute. In passing the decision the Court acted upon the rule that the law will not compel the doing of impossibilities.

5. We, accordingly, reverse the order of the lower Court, and direct that the defendant, if he has been ejected, which we are informed that he has been, should be restored to possession, and that the plaintiff should have liberty to take out of

Court the money deposited by the defendant.

6. The appeal is allowed with costs.