

Gureebullah Sirkar Vs Mohun Lall Shaha and Others

None

Court: Calcutta High Court

Date of Decision: April 2, 1881

Acts Referred:

Rent Law of Bengal, L.P. Act, 1869 "Section 58

Citation: (1881) ILR (Cal) 127

Hon'ble Judges: Richard Garth, C.J; Prinsep, J; Morris, J

Bench: Full Bench

Judgement

Richard Garth, C.J.

The Judges of the Division Bench having differed in opinion, this case has been referred to me as a third Judge, and

we have heard the point in difference again argued before us.

2. The suit was brought u/s 30 of the Bent Law, and a decree was made in the Court of first instance by consent of the parties on the 24th January,

1876, for the sum of Rs. 100 payable by installments. The first installment of Rs. 10 was payable in January 1876, and the remaining installments of

Rs. 15 each were payable respectively, in January and August of the years 1877, 1878, and 1879, the last becoming due in August 1879, or

upwards of three years from the date of the decree. On non-payment of any one of these installments, the whole sum decreed became due.

3. The two first installments were not paid in due course, and the whole amount thus became payable.

4. An application for execution was made on the 10th of January 1879, which was struck off on the 7th of March following, in consequence of no

one appearing in support of it. Another application was made on the 5th of April following, and an objection was then taken, that by the terms of

Section 58 of the Bent Law Beng. Act VIII of 1869 no execution could legally be issued upon the judgment, inasmuch as more than three years

had elapsed from the date of the decree.

5. The answer to this objection was two-fold:

6. 1st.--That the application on the 5th of April was only a continuation of the former application of the 10th of January; and

7. 2nd.--That, in a case like the present, the language of Section 58 ought not to be construed literally, but that the three years" limitation ought to

be reckoned, not from the date of the judgment itself, but from the day when the sum decreed was adjudged to be payable.

8. It was argued, and argued truly, that if the three years" limitation was to be reckoned from the date of the judgment, any decree, although

obtained by consent, by which the amount payable would become due by installments or otherwise at a date more than three years subsequent to

the judgment, would be impossible for any Court to make a valid decree for a sum payable by installments at a time more than three years from the

making of it.

9. This would, of course, be materially limiting the power, which is given to the Courts by Section 210 of the Civil Procedure Code, to make any

sum decreed payable by installments.

10. On the other hand, it is argued that the very object of Section 58 was in the first place, to prevent the Courts from postponing the payment of

rent for more than three years; and in the next place, to oblige decree-holders to enforce their decrees within that period, on pain of losing their

money altogether. The intention was to prevent ryots being harassed and oppressed by rent decrees being kept hanging over their heads for a

lengthened period.

11. I confess I have had great difficulty in coming to a conclusion upon the point, and I am not at all sure that I have at last arrived at the correct

one.

12. On the one hand, the language of the Section appears to be very plain, and there is no doubt much reason in the argument, that the sooner

these rent claims are finally settled, the better it is for the interests of agriculture.

13. On the other hand, it seems hardly reasonable, that when a ryot is really unable, from poverty or otherwise, to pay the [130] whole rent within

three years, a Civil Court should be positively disabled (even at the instance of the ryot himself, and out of consideration for his poverty), from

making a decree payable by installments extending over more than three years.

14. Most of the authorities which have been cited appear to me to render us little or no assistance; but it was decided in the case of Goloke

Money Dabia v. Mohesh Ohunder Mosa (I. L. R. Cal. 547) that the words ""no process of execution shall be issued on a judgment after the lapse

of three years" in Section 58"" mean, that execution shall not issue unless a proper application is made or it within three-years. In this the Court

seems to have adopted the view taken by the majority of the Full Bench in the case of Ridoy Krishna Ghose v. Kailas Chandra Bose (4 B. L. R.

F. B. 82).

15. These cases certainly serve to show no more than this, that the Court will put a reasonable construction upon Acts of the Legislature, and will

not allow the strict language of a Section to prevent their giving it such a construction. Authority is scarcely needed for such an elementary

principle.

16. The question with me has been, whether we ought to extend that principle to the present case; and I have come to the conclusion that we

ought. We must, I think, read Section 58 of the Rent Law with Section 210 of the Civil Procedure Code, and it seems to me manifestly for the

benefit of ryots, that full powers should be given to the Courts to make rent decrees payable by installments.

17. If I am right in this, I think it almost follows as a matter of course, that it would be a great injustice to a decree-holder, whose rent is thus made

payable by installments, to give him a shorter time for executing his decree than one whose rent is made payable at once.

18. I therefore think, that the reasonable construction of the two Sections taken together is this, that the words ""from the date of such judgment"" in

Section 58 should be read as if they were ""from the date when the rent is adjudged to be payable.

19. If I am wrong in putting this somewhat liberal construction upon the words of the Section, I hope I may be set right either by a Full Bench or

by the Legislature.

20. The result of this decision will be, that the appeal will be dismissed with the costs of both hearings in this Court.

Morris, J.

21. I concur. It seems to me that, in the absence of express provision, a local Rent Law cannot, by implication only, be understood to restrict the

general right possessed by Civil Courts to give decree for amounts payable by installments over a period exceeding three years.

Prinsep, J.

22. I regret to be unable to concur in the opinion expressed by my learned colleagues in this case. In my opinion the terms of Section 58 of the

Rent Law prevent the further execution of this decree.

23. Section 43 of the Rent Law declares, that the CPC shall regulate all proceedings in suits of this description, save as in that Act is otherwise

provided. The CPC (Act VIII of 1859), Section 194 Section 194:--In all decrees for the payment of money, the Payment by installments. Court

may for any sufficient reason order that the amount shall be paid by installments with or without interest declares, that in all decrees for the payment

of money, the Court may, for any sufficient reason, order that the amount shall be paid by installments; but Section 58 of the Rent Law provides,

that ""no process of execution of any description whatsoever shall be issued on any judgment in any suit"" (for arrears of rent) ""after the lapse of

three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred rupees."" In my opinion the date of the

judgment is the date on which it is delivered See the judgment of Lord Westbury, in In re Bisca Coal and Iron Co. 4. D. F. and J. 456 ; and of

Bacon, J., in *Ex parte Whitton*, *In re Greaves*, L. R. 3 Ch. D. 881 for Section 185 Section 185:--The judgment shall contain the point or points for

determination, the decision thereupon, and the reasons for the decision and shall be dated and signed by the Judge in open Court at the time of

pronouncing it of Act VIII of 1859 provides, that ""the judgment shall be dated by the Judge in open Court at the time of pronouncing it;"" and

Section 189 adds, ""the decree shall bear date the day on which the judgment was passed."" Further, I am of opinion that the intention of the

Legislature in enacting Section 58 was to insist on the early realization of all decrees for small amounts of rent, by withholding any action of the

Court towards obtaining payment by means of its processes. If acting u/s 194 a Court fixes an installment beyond the term of three years from the

date of its judgment so as not to come within the terms of Section 58 of the Rent Law, in my opinion that decree is, in that respect a bad decree,

and incapable of being put into execution. With [132] the terms of Section 58 of the Rent Law so clearly expressed, the Court could have no

sufficient reason for passing such an order. The consent of the parties would not affect the operation of the law, as has been held by Peacock,

C.J., in the case of *Krishna Kamal Sing v. Hiru Sirdar* (4 B. L. R. F. B. 105).

24. I am, therefore, of opinion that we should read Section 58 of the Rent Law according to the plain sense of the words, it being our duty to

expound it as it stands. I would, therefore set aside the order of the lower Court.