

## Krishnarao Pandurang Barve Vs Balvant Keshav Patil

**Court:** Bombay High Court

**Date of Decision:** March 3, 1925

**Citation:** AIR 1925 Bom 404 : (1925) 27 BOMLR 678

**Hon'ble Judges:** Norman Macleod, J; Coyajee, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### Judgement

Norman Macleod, Kt., C.J.

The plaintiff in this case obtained a decree in his favour in suit No. 28 of 1916. The following amended

decree was passed by the appellate Court:-

The decree of the lower Court is altered and it is ordered as follows :-The defendant should pay to the plaintiff the sum of Rs. 4,384-2-2 together

with interest thereon by equal four annual instalments. The first instalment should be paid on the date the 5th of the month of June in the year 1919.

Interest on each instalment should be paid at the rate of four per cent, from May 9, 1918, till payment of the whole amount. If he fails to pay the

instalment, interest at the rate of six per cent, will continue to run from the dates on which the instalments will not be paid. The defendant should

henceforth pay the Government assessment until delivery of possession to the plaintiff if occasion for such delivery to the plaintiff arises. If the

plaintiff has paid the amount of (Government assessment after May 9, 1918, the same should be recovered by the plaintiff from the defendant

together with interest thereon at six per cent, from the date of the payment) of the Government assessment. If the plaintiff henceforth paid the

Government assessment, he should recover the > same with interest therein to be calculated at the rate of six per cent, from the date of the

payment of the Government assessment within one year. After all the instalments have been paid and after all the above mentioned amounts have

been paid, the plaintiff should pass a sale deed to the defendant if the " latter requests the former to do so. He should execute the sale-deed after

the defendant brings to him the stamped paper required for the sale-deed of Rs. 3,180. If the defendant fails to pay the above-mentioned amounts

within the period in which the last instalment is to be paid, the plaintiff is at liberty to claim back the possession of the property mentioned in the

plaint. And the same is on the following; condition :-The plaintiff is at liberty to claim the same if he pays before taking back the possession the

amount which the defendant may have paid by way of principal out of Rs. 3,180.

2. The defendant paid Rs. 1,350 on March 11, 1921, and Rs. 1,061-4-2 on December 11, 1921. He made no further payment until after the

presentation of the present darkhast, which the plaintiff took out on September 8, 1922, and with it he paid into Court Rs. 424-4-6 for payment to

the defendant. He stated that since the defendant did not pay all the instalments within the date fixed for the last (fourth) instalment (June 1922) as

directed by the decree, he was entitled to demand back possession of the suit property from the defendant on his recouping the defendant the

amount paid by the defendant out of the principal sum of Rs. 3,180 in accordance with the terms of the decree.

3. The defendant thereafter deposited Rs. 3,158 in to Court for payment to the plaintiff, and said that as that amount covered more than the

amount due to the plaintiff under the decree the plaintiff might be paid the proper balance due to him under the decree out of the same, and his

prayer for execution of the decree by recovery of possession of the property from the defendant should not be granted. The plaintiff's pleader

admitted that calculated at six per cent, per annum interest the amount now due to the plaintiff was Rs. 3,141-5-0, but he contended that since the

defendant failed to pay off the instalments before the end of June 1922, the plaintiff was not bound to receive the said balance from the defendant,

but was entitled to demand delivery of possession of the property under the terms of the decree.

4. The trial Judge held that the decree left full discretion to the Court whether to grant or not to grant, on considerations of equity, the plaintiff's

demand to recover possession of the property. In these circumstances he thought it would be inequitable to grant the plaintiff's prayer to recover

possession of the property. The plaintiff lost nothing if he received his full principal amount and interest thereon at six per cent, from the defendant

as directed in the decree. He, therefore, directed that out of the amount of Rs. 8,158 deposited by the defendant into Court Rs. 3,141 -5-0 be

paid to the plaintiff as full satisfaction of the balance due to him under the present decree. The plaintiff should also recover his costs of this

decree from the defendant, the amount of Rs. 424-4-6, which had been deposited by the plaintiff into Court for payment to the defendant to be

paid back to the plaintiff.

5. In appeal the acting District Judge agreed with the trial Court that as a Court of equity relief could be granted to the defendant against the

consequence of his default, especially as he had since paid into Court the full balance that had become due to the plaintiff under the terms of the

decree.

6. In appeal to this Court it has been argued that this Court has no power to relieve a party to a decree against the consequences of his default in

not observing the obligations imposed upon him by the decree. It is suggested that by relieving against default, the Court executing the decree would

be modifying or varying its terms. Now it cannot be disputed that an executing Court cannot modify or vary the terms of a decree. But it is going

very much further to say that it has no power to relieve a party from the consequence? of his not paying money within the exact time mentioned in

the decree. To take one instance, a decree for redemption. Such a decree will state the amount payable by the mortgagor in order to redeem, and

will give him a certain time within which to pay the amount. The decree will provide that in default of payment of the money within that time, the

mortgagee will be at liberty to apply for a final decree for foreclosure or sale. It cannot be contended for a moment that if the period fixed by the

decree has passed, and the amount is not paid by the mortgagor, the Court, if the money is paid into Court after the period, cannot relieve him

from the sequences of the default, and must grant the mortgagee a decree for foreclosure or sale. So in this case the defendant undoubtedly was in

default, and the plaintiff was entitled to come to Court and ask the Court to give him possession of the property. The Court then was entitled to

weigh the equities and consider whether the defendant, as he had deposited everything that was due by him in Court, should be left in possession

of the property, or whether the plaintiff should be entitled to refuse the offer of payment, and should be granted possession of the property itself. If

the case had been argued on the footing that the equities were in favour of the plaintiff, we should have considered that the possibilities of the

plaintiffs success would have been more favourable. But the plaintiff has gone too far in contending that the Court has no power whatever to

consider the equities. We cannot agree with that. Both the lower Courts have considered the question whether the defendant is entitled to the

indulgence he asked for. One consideration which evidently weighed with them was the fact that the property belonged originally to the defendant,

and that the object of the decree was to enable him, if possible, to recover property which had passed away from him.

7. The next question would be whether the plaintiff was losing what he would otherwise have been entitled to in all fairness to him, if his prayer was

not granted. But, as both Courts have found, the plaintiff was recovering the value of the property in full, he was getting interest at six per cent,

thereon for the whole period, and was getting his coats of the darkhast. So really there is no particular reason why the Court should find that the

balance of the equities was in his favour.

8. We think, therefore are, that the decision of the Court below was right. The appeal must be dismissed with costs.