
(1910) 02 CAL CK 0004
In the Calcutta High Court

Bal Gobindram Bhakat

APPELLANT

Vs

Chhedilal Saha

RESPONDENT

Date of Decision : 11-02-1910

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 11

Citation : 6 Ind. Cas. 552

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

Bench : Division Bench

Judgement

1. We are invited in this Rule to modify an instalment decree made under Order XX, Rule 11, of the CPC of 1908 by the Small Cause Court Judge of Murshibabad. The suit was for recovery of money due on an account-book for price of articles purchased by the defendant from the firm of the plaintiff. The transactions took place from time to time, the last of the series on the 20th July 1908, which the plaintiff alleged to be the date of his cause of action. The suit was instituted on the 20th September 1909. The claim was for Rs. 420-3-6, as principal sum and damages Rs. 9-12-6. The defendant admitted the claim, but pleaded inability to pay within one year as his properties had been destroyed by fire; in cross-examination he admitted, however, that he had his homestead, several bullocks and on its with which he carried on a grain business. The Small Cause Court Judge made a decree for the claim and costs and directed the amount to be paid in monthly instalments of Rs. 15 from the end of the then current Bengali month, Aghran 1316, interest to run at the rate of 6 percent, per annum till the whole amount due was paid off. He further directed that upon failure of defendant to pay one instalment, the entire judgment-debt would be recoverable. It has been contended before us that there are no good grounds for the indulgence shown to the defendant. In our opinion, this contention is well-founded. As the total amount decreed exceeds Rs. 474, with interest, the instalments would cover a period of about three year so. The Small Cause Court Judge does not assign any reason in support of such a decree. The discretion vested in the Court under Order XX, Rule 11, is a judicial discretion and cannot be arbitrarily exercised, as

indicated in numerous decisions upon the corresponding Sections of previous Codes. Mohessur Buksh Singh v. Jhubboo Chowdhry (1863) 2 Hay 68, Subatollah v. Thomson (1862) 2 Hyde 98, Ram Gopal v. Ram Tanoo 6 W.R. 89. Besides, the fact that the defendant was hard-pressed is by itself ordinarily not sufficient reason to justify a decree for instalments spread over several years. Binda Prasad v. Madho Prasad 2 A. 129. The Rule is, therefore, made absolute with costs, and the decree, in so far as it entitles the defendant to pay the judgment-debt in monthly instalments is set aside. The decree-holder will be entitled to take out execution of the decree forthwith. We assess the hearing fee in this Court at one gold mohur.