

(1906) 03 CAL CK 0013
In the Calcutta High Court

Megraj Marwari

APPELLANT

Vs

Nursing Mohan Thakur

RESPONDENT

Date of Decision : 30-03-1906

Acts Referred:

Citation : (1906) ILR (Cal) 846

Hon'ble Judges : Geidt, J; Francis W. Maclean, J

Bench : Division Bench

Judgement

Francis W. Maclean, K.C.I.E., C.J.—The only question in this suit is whether the mortgagee, who has obtained a decree for sale in. a suit to realize his security, is entitled to interest upon his mortgage money up to the date of the confirmation of the sale or only up to the date of sale. That question prima facie depends upon the terms of the decree, which he has obtained. In the present case, the terms are that interest is to run up to the date of realization. The question is what is the date of realization. Is it the date of the sale or the date of the confirmation of the sale?

2. There is, apparently, no direct authority in the Courts of India upon the subject, though a case *Manilal Umedram v. Nanabhai Maneklal* I.L.R.(1903) 28 Bom. 264 has been very properly called to our attention by the learned vakil for the appellant, and we do not think it is in his favour. There the Court put a construction upon the expression "realization" and held that it means "when the property is converted into cash or into a form whereby it becomes available for immediate distribution." Now in the case before us the money would not be available for distribution until the sale is confirmed. Up to that time and until that time the mortgagee would not be entitled to take the money out of Court, and in my opinion "realization" means the time when the mortgagee becomes entitled to actually handle the cash. Were it otherwise, this result, which would certainly be contrary to the principles of equity, justice and. good conscience, might ensue, namely, a long litigation to set aside the sale lasting possibly for years and in which ultimately the sale is upheld, and during the whole of that period

the mortgagee would be deprived of interest. That would not be right or fair.

3. I, therefore, feel little hesitation in differing from the view expressed by the Subordinate Judge, who gives no reason for his conclusion, but simply says "I cannot allow interest after the date of sale."

4. The appeal must, therefore, be allowed, and the appellant must have the costs of the appeal.

Geidt.

5. I agree.