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**(1925) 03 CAL CK 0017**  
**In the Calcutta High Court**

Murtaza Begum

APPELLANT

Vs

Jogendra Nath Roy and Others

RESPONDENT

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**Date of Decision :** 20-03-1925

**Acts Referred:**

**Citation :** AIR 1926 Cal 344

**Hon'ble Judges :** Greaves, J;Cumming, J

**Bench :** Full Bench

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### **Judgement**

Greaves, J.—An ex-parte decree was passed in a mortgage suit on the 5th December 1923. The suit was decreed in full, but the stipulated rate of interest was not allowed from the date of the institution of the suit. After the preliminary decree was signed on the 12th December 1923 and on the same day the petitioner applied under Order 9, Rule 13 to have the matter re-opened. Meantime on the 22nd January 1924, the decree-holders preferred an appeal to this Court with regard to the dismissal of their claim for interest from the date of the institution of the suit. On the 16th July 1924 that appeal was allowed and a decree was passed, so far as is material in these terms: It is ordered and decreed that the decree of the lower Courts be and the same is hereby set aside and in lieu thereof it is hereby declared that there is due and owing the sum of Rs. 2,40,429-12-3 on account of principal and so much on account of costs" and interest was allowed as mentioned in the decree. On the 1st November 1924 the application under Order 9, Rule 13 came up for hearing. This was dismissed by the learned Subordinate Judge on the ground that there was no decree against which the application could be directed and no decree which could be set aside. He accordingly dismissed the application on this ground. Against this dismissal this Rule was granted and we were referred to a recent decision reported as Kalimuddin Ahamed Vs. Esabakuddin and Others, , as authority for the proposition that notwithstanding what happened if there were certain points which had not been dealt with in the judgment of this Court which the petitioner desired to raise in the Court below against the ex-parte decree, and notwithstanding the decree of this Court he was entitled to raise them. It seems

to us that that case stands as a decision upon the particular facts for in that case the appeal to the High Court had been dismissed as it could not proceed owing to the death of one of the respondents, her heirs not having been brought on the record. But the matter is different here. Moreover, there are no merits and the petitioner merely delayed with a view to avoid payment of her just dues which she had really admitted by asking adjournments in order that she might raise money elsewhere for the discharge of the mortgage.

2. Under the circumstances, it would be deplorable if we are to aid her in her delaying tactics by acceding to her prayer.

3. The Rule is, accordingly, discharged with costs, hearing-fee, two gold mohurs.

4. Let the record be sent down at once.

Cuming, J.

5. I agree.