

(1923) 07 PAT CK 0030
In the Patna High Court

Musammat Nand Rani Kuer		APPELLANT
	Vs	
Babu Durga Dass Narain and Others		RESPONDENT

Date of Decision : 03-07-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 148

Citation : 82 Ind. Cas. 505

Hon'ble Judges : John Bucknill, J;B.K. Mullick, J

Bench : Division Bench

Judgement

B.K. Mullick, J.—A compromise decree was passed against the opposite party ordering that upon payment of a sum of Rs. 1,000 in cash to the plaintiff immediately and the sum of Rs. 12,600 on or before the 31st March 1923 the claim of the plaintiff would be discharged in full, but that on failure to pay the above instalments the plaintiff would be entitled to realize her full claim for Rs. 20,989-9-0 with costs and future interest. Accordingly the sum of Rs. 1,000 was duly paid on the date of the compromise. But on the 31st May 1923 the defendants brought into Court a sum of Rs. 6,000 only which the plaintiff received under protest, and as regards the balance of Rs. 6,600 the defendants asked for an extension of time for one month; on the 4 th June 1923 time was allowed by the Subordinate Judge and it was ordered that payment would be accepted on or before the 30th June 1923 on condition that the defendants paid a sum of Rs. 164 on account of intermediate interest to the plaintiff.

2. Against this order the plaintiff moved this Court on the 13th June 1923 for the exercise of the Court's revisional powers u/s 115, Civil Procedure Code.

3. Now the only question is whether the Court had power to extend the time allowed by an agreement which has resulted in a decree of Court.

4. It is contended by the petitioner that no extension of time can be given without the consent of the parties and reliance is placed upon *Australasian Automatic Weighing Machine. Company v. Walter* (1891) CW.N. 170 but the

matter has been exhaustively, considered in *Kandarpa Nag v. Banwari Lal Nag* 60 Ind. Cas. 864 : 33 C.L.J. 244 and it seems now settled that no general rule can be laid down and that although a contract may have ripened into a decree the Court will not be precluded from giving relief which it would have been competent to give if it had been called upon to adjudicate upon the contract in the first instance and without its having been embodied in a decree. There are cases which have held [that when a compromise takes place between an auction-purchaser, a judgment-debtor and a decree-holder stipulating that the sale would be set aside on the payment of the judgment-debt on a certain date time was of the essence of the contract. On the other hand it seems to be now settled that where the agreement is for the payment of money on a prescribed date and that upon default of payment on that date money or land is to be forfeited, time is not of the essence of the contract. Indeed the rule is clear that in every case the Court must determine upon the facts of that case whether relief against forfeiture is to be given or not. I have no doubt that in the present case the Subordinate Judge had jurisdiction to determine whether time was of the essence of the contract. He has decided that it was not and, therefore, it does not seem to me that Section 115, Civil Procedure Code, can be invoked for the purpose of setting aside the learned Subordinate Judge's order. The learned Subordinate Judge in one part of his judgment expresses the view that Section 148, Civil Procedure Code, is applicable to the case, but I would prefer to base his jurisdiction on the general rules of equity.

5. The only question that remains is whether we should further extend the time. Having regard to the fact that the application to this Court was made without much delay and that the defendants were uncertain whether the learned Judge's order would be affirmed by the High Court I think this is a fit case for granting further extension; and we give seven days further time from this date for complying with the order of the Subordinate Judge.

6. We direct that if the defendants deposit in the Court of the Subordinate Judge the sum of Rs. 6,60.0 on account of the decretal sum together with the sum of Rs. 200 on account of intermediate interest, that is to say, a total sum of Rs. 6,800 on or before the 10th July, full satisfaction will be entered in respect of the claim as provided by the compromise decree and that on default the terms of the said decree will be duly enforced according to law.

7. There will be no order as to costs.

B.K. Bucknill, J.

8. I agree