

(1922) 04 PAT CK 0003
In the Patna High Court
Case No : Civil Rev. No. 2 of 1922

Nilmoni Chaudhuri

APPELLANT

Vs

Kedar Nath Daga

RESPONDENT

Date of Decision : 12-04-1922

Acts Referred:

Citation : (1922) 04 PAT CK 0003

Final Decision : Dismissed

Judgement

Das, J.—This is an application for setting aside a consent decree passed by this Court on the 11th November, 1921. The circumstances are these:—The opposite party instituted a suit against the applicant in the Court of the Subordinate Judge of Dhanbad for specific performance of certain agreements and also for recovery of a sum of Rs. 6,05,642-11-0. Pending the disposal of that suit the plaintiff applied for, and obtained an order, appointing the applicant as the receiver of a certain colliery business which was the subject-matter of the litigation between the parties. Against that order of the learned Subordinate Judge the applicant preferred an appeal to this Court. That appeal came on for hearing on the 5th November and Mr. Hasan Imam appearing on behalf of the appellant, the applicant before us, made certain proposals for settlement. Mr. Manuk on behalf of the opposite party suggested that the case should stand over till the 11th November, 1921, in order to enable the parties to consider those terms or any alternative terms that might be suggested. The matter accordingly stood adjourned till the 11th November, 1921. On that date a consent order was passed to the effect that the appellant would deposit in the Court of the Subordinate Judge of Dhanbad on or before the 16th January, 1922, the sum of Rs. 6,05,642 to answer any decree that might be passed against him in that suit and that on such deposit being made the order appointing him the receiver of the colliery business would be discharged; but that on his failure to bring into Court the said sum on or before the 16th January, 1922 the appeal would stand dismissed. This consent order was passed on the 11th November, 1921, and on the 9th January, 1922, the present application for setting aside the consent order

of the 11th November, 1921, was presented to this Court. The petition alleged that one Ramratan Das who was in fact a broker but who represented himself to be the karpardaz of the applicant, gave instructions to Mr. Hasan Imam on behalf of the applicant and that Mr. Imam in proposing the terms of settlement to the Court acted on instructions given to him by Ramratan Das and not in exercise of that authority which was vested in him as an Advocate of the applicant. It was suggested in the petition that Mr. Imam acted-under a misapprehension in so far as he thought that Ramratan Das was authorized by the applicant to propose those terms to the Court and that as Mr. Imam's consent was given under a misapprehension there was in reality no consent at all and that accordingly the consent decree ought to be set aside. The whole basis of the petition, as I have stated, is that Ramratan Das was a broker and not a karpardaz of the applicant and had no authority from the applicant to propose any terms of compromise on his behalf and that as Mr. Imam acted entirely on the instructions given to him by Ramratan Das the consent decree could not stand. As I shall presently show, the introduction of the name of Ramratan Das has raised an entirely false issue in the case; for it now appears that on the 11th November, 1921, when the consent order was in fact passed by this Court it was not Ramratan Das who came to Patna from Calcutta to give instructions to Mr. Imam but one Provas Babu who admittedly looks after the applicant's business and was undoubtedly authorized to give instructions to Mr. Imam. The applicant has certainly shown a want of candour in so far as he has concealed the part which Provas Babu took in the matter from the Court in his petition. We are told that this petition was drafted in a solicitor's office in Calcutta. I am loath to believe that any solicitor of any position would deliberately give a wrong impression to the Court if the facts were disclosed to him. I am of opinion that the false issue which the applicant has deliberately raised in his petition has by no means improved his case.

2. The petition then states that new circumstances arose subsequent to the passing of the consent order which made it impossible for the applicant to bring into Court such a large sum of money within the period fixed in the consent order. This paragraph again suggests, and the evidence in the case makes it perfectly clear, that the applicant tried his best to give effect to the consent order and that the application was presented only when it became clear to the applicant that the money could not be raised so as to enable him to bring into Court such a large sum of money on or before the 16th January, 1922. It is only necessary to mention at this stage that the order which was passed by consent on the 11th November, 1921, was duly drawn up and entered before the application was presented in this Court on the 9th January, 1922.

3. The evidence shows that when the first proposal was made by Mr. Imam for settlement it was Ramratan Das who gave instructions to Mr. Imam on behalf of the applicant. Having given those instructions he left for Calcutta on the night of the 5th November. When the case came up for hearing on the 11th November, it was not Ramratan Das who came from Calcutta to instruct Mr. Imam. Provas Babu, who, as I have stated, is undoubtedly the agent of the applicant, was in

Court and it was in his presence and not in the presence of Ramratan Das that Mr. Imam offered the terms which were accepted by Mr. Manuk. I am of opinion that the question whether Ramratan Das had authority from the applicant is entirely irrelevant; we have only to enquire whether Provas Babu's evidence in this Court is that when he came to Patna on the 11th November, he was wholly unaware of the fact that any terms of settlement had been proposed to the Court on the instructions of Ramratan Das. I find it difficult to accept this testimony. Ramratan Das did give certain instructions to Mr. Imam and Mr. Imam did propose certain terms to the Court. Ramratan Das left for Calcutta immediately after and it is admitted that he saw the applicant as well as Provas Babu in Calcutta. It is admitted that Ramratan Das informed them that the case would be taken up on the 11th November. I find it difficult to believe that Ramratan Das failed to tell them that certain terms of settlement had been proposed to the Court by Mr. Imam on his instructions. There is no suggestion that Ramratan Das deliberately acted to the prejudice of the applicant. He undoubtedly thought that a settlement was best for the parties and though he may have exercised an authority which he never had in fact, there is no explanation why he should not have told the applicant exactly what happened in Court on the 5th November. Babu Abani Bhusan Mukharji, a leading Vakil of this Court who appeared in the case with Mr. Imam, has made a statement to this Court and we entirely accept that statement. He says in his statement that Provas Babu told him that it was not possible to bring into Court such a large sum of money within so short a time and that Abani Babu told Provas Babu that the other side would probably not accept the terms which had been proposed by Mr. Imam. Abani Babu's impression as to what happened on the 11th November, is as follows :-

"On the 11th before the Hon"ble Judges came to Court Mr. Manuk in Court room said that he agreed to the terms. This came upon Provas Babu as a surprise : but I advised Provas Babu to try and agree to it since the other side was agreeable, on the ground that the matter had advanced too far the proposal had gone from us and it would not be wise to back out of it now and that judging from the rate at which they had been working and selling coal, I thought it would be possible for them to deposit the money if they tried honestly. Provas Babu said it would be difficult to put together such a large sum within such a short time; but I thought that in the interests of the client it would not be proper to recede at that stage and tried to make him submit to the terms. Provas Babu kept quit and I understood him to agree. Thereupon I instructed Mr. Imam that the client was agreeable."

4. I accept the statement as an accurate representation of what actually happened in Court. The question still remains that Provas Babu kept quite and allowed his counsel Mr. Imam to make the proposal in Court on the 11th November. He made no attempt to tell Mr. Imam, although he was actually present in Court, that the terms were such as could not be carried out. On the contrary, he went to Calcutta and made a genuine effort to raise the money. Circumstances, however, changed over which the parties had no control which

made it impossible for the applicant to raise the money in Calcutta. The fact remains, however, that between 11-11-1921 and 9-1-1922 there was not only no challenge by the applicant on the consent order of the 11th November, 1921, but on the contrary, there was a submission to that order in the sense that the applicant tried to raise the money to enable him to carry out the order.

5. What then is the position ? Two propositions are well-settled; first, that express authority is not needed for a counsel to enter into a compromise within the scope of the suit; and, secondly, that where there is limitation of authority and that limitation is communicated to the other side, consent by counsel outside the limits of his authority would be of no effect. But the position is one of difficulty where the limitation is unknown to the other side or where counsel acts on instructions as to a compromise under a misapprehension and not in exercise of that authority which is vested in him as an Advocate of the party to the litigation. It was urged before us by Mr. P. K. Sen that in this case Mr. Imam did not purport to exercise his discretionary authority at all; but that he purported to act on instructions and that as he was wholly unaware of the fact that his client had stated to his Vakil Abani Babu that it would be impossible for him to carry out the terms of the consent order, his consent was given under an entire misapprehension so that there was in reality no consent at all. Mr. Sen relied upon *Swinfen v. Swinfen* (1857) 24 Beave. 549=53 E. R. 470 in all its stages on *Lewis v. Lewis* (1890) 45 Ch. D. 281=59 L. J. Ch. 712 and on *Nand Lal Bose v. Nistarini Dasi* (1900) 27 Cal. 428=4 C. W. N. 169. So far as *Swinfen v. Swinfen* (1857) 24 Beave 549=53 E. R. 470 is concerned, the subsequent case of *Prestwich v. Poley* (1865) 18 C. B. N. S. 806=144 E. R. 662 declined to refer to it as a decision which is to afford a guide in any case not similarly circumstanced. In *Swinfen v. Swinfen* (1857) 24 Beave 549=53 E. R. 470 the circumstance were these: On the 15th March, 1856, an issue directed by the Master of the Rolls, in a suit in Chancery of *Swinfen v. Swinfen* (1857) 24 Beave 549=53 E. R. 470 to try the validity of the will of one Samuel Swinfen, deceased, came on for trial before Cressell, J. and a special jury at the Assizes at Stafford. Negotiations for settlement took place between the leading counsel for the respective parties at the close of the first day of the trial and ultimately certain terms were agreed upon and embodied in a memorandum which was signed by them in the presence of the attorneys on both sides. The terms were that the estate was to be conveyed by the plaintiff to the defendant free of incumbrance, if any, created since the death of Samuel Swinfen and that the defendant was to secure to the plaintiff an annuity for her life on the estate of ? 1,000 a year. This memorandum was embodied in an order of nisi prius, which was afterwards made a rule of Court. In order to give effect to the compromise the defendant's solicitor addressed several letters to the plaintiff's solicitor for certain documents and was ultimately informed by the plaintiff that she was not disposed to carry out the terms of compromise on the ground that the arrangement was made not only without her sanction but directly in opposition to her wishes. Thereupon the defendant obtained a rule calling upon Mrs. Swinfen, the plaintiff, to show cause

why an attachment should not be issued against her for disobedience of the rule of Court. This was the first stage of the case and the decision of these proceedings is reported in 18 Common Bench 486; 139 E. R. 1459. The application failed on a technical ground, namely, that it was not shown that there was personal service of the rule and a personal demand of performance before the rule was obtained; but Cresswell, J. in delivering the judgment came to the conclusion that the compromise was binding on Mrs. Swinfen. In the course of his judgment the learned Judge said as follows:-

"I think it would be most fatal to the due administration of justice if we were to allow the authority of counsel to be thus questioned. And there is not any hardship or inconvenience in this; for, if the client or the attorney has any reason to think that the counsel is taking a course that will prejudice his interests, he may withdraw his brief; and so put an end to his authority to represent the client before the Court."

6. I may mention that in the case before us there was at no time any express dissent on the part of Provas Babu. All that he did was to make his protest, not to Mr. Imam but to Abani Babu and then remained silent when it was pointed out to him by Abani Babu that it was possible for them to raise the money if they "tried honestly." He suffered the consent decree to be passed without making any protest to Mr. Imam although he was sitting behind Mr. Imam and made an effort to comply with the terms of settlement. In my opinion the case of Swinfen v. Swinfen (1859) 18 C. B. 485=139 E.R. 1459, is against the contention of Mr. Sen.

7. The next stage of Swinfen v. Swinfen (1857) 1 C. B. N. S. 364=140 E. R. 150. The application was again made for attachment of the plaintiff for disobedience of the rule of Court after effecting personal service on her. One of the learned Judges, Crowder, J., was of opinion that attachment should not issue inasmuch as there was no real consent on behalf of the plaintiff. He found that the plaintiff before the commencement of the litigation had rejected an offer much more advantageous in its terms than those contained in the agreement in question and that she has refused again to entertain the proposition when recommended to her by her counsel after the adjournment of the case on the first day. He thought that there was express dissent on her part and that there was no authority in her counsel to settle the case on her behalf. This was the view of Crowder, J.; but the other learned Judges who heard the case were of a different opinion. But having regard to the well-known practice that it is impossible for a Court to treat a party as guilty of contempt for refusing to perform an agreement by which one member of the Court thinks the party is not bound, the Court, although the majority of the Judges was clearly of opinion that the plaintiff was bound by the agreement, discharged the rule. This case again does not support the contention of Mr. Sen.

8. The last stage of this case is reported in Swinfen v. Swinfen (1857) 24 Beave. 549=53 E. R. 470. This was a decision in Chancery in a supplemental bill filed by Captain Swinfen who was the defendant in the original action, praying that Mr.

Swinfen might be decreed specifically to perform the agreement for a compromise. The Court came to the conclusion that a client may become bound by a compromise entered into by fete attorney without his authority but not repudiating it within a reasonable time. The facts found by the Court were that the compromise was unauthorized by the plaintiff and was effected without the instructions of his attorney and that as there was no subsequent acquiescence the bill by the defendant in the action for specific performance of the compromise could not be entertained. Now in my opinion a suit for specific performance of an agreement stands on a different footing from an application to set aside a consent order. A plaintiff is not entitled as of right to a decree for specific performance and various questions can properly be taken into consideration by a Court in deciding whether an agreement should be specifically performed which do not arise in an application for setting aside a decree. It is open to a Court in an action for specific performance to say that the bargain is a hard one and that there is real hardship in the matter and that the plaintiff should be left to his remedy at law. This was at the bottom of the judgment pronounced by the Master of the Rolls in the case: but though the decision cannot be claimed as an authority by a party seeking to set aside a consent decree on the ground that the counsel had no authority to enter into the compromise the Court in *Prestwich v. Poley* (1865) 18 C. B. N. S. 806=144 E. R. 662, refused to recognise the decision of the Master of the Rolls as a guide in any case not similarly circumstanced; the case is against the contention of Mr. Sen in so far as it recognizes that unless the repudiation is prompt and within a reasonable time the compromise would bind the party. In the case before us the repudiation was not only not prompt but actually came only after the applicant discovered that, owing to change of circumstances which took place subsequent to the date of the consent order, it was impossible for him to comply with that order, I am unable therefore to look upon *Swinfen v. Swinfen* (1857) 24 Beave. 549=53 E. R. 470, as in any way assisting the arguments of Mr. Sen. The next case is that of *Lewis v. Lewis* (1890) 45 Ch. D. 281=59 L. J. Ch. 712, *Kekewich, J.*, held that although a compromise entered into by counsel under the authority implied by their employment is binding on the client, and cannot be upset by the Court, a compromise entered into in intended pursuance of terms consented to by the client but by misapprehension not strictly following them, is not binding on the client. It was argued by Mr. Sen that there was a clear misapprehension in the mind of Mr. Imam in so far as he thought that his client desired him to settle the case on the terms proposed by him. It is necessary to mention that the decision of *Kekewich, J.*, was pronounced in a motion on behalf of the plaintiffs for leave to withdraw their consent to the order which purported to be a consent order on the ground that there was misapprehension in the mind of the counsel. This motion was made before the order was actually drawn up and entered. *Neale v. Gordon Lennox* (1902) A. C. 465=71 L. J. K. B. 939, also supports the argument that there is very large discretion in the Court before the order is actually drawn up and entered. The action was for damages for slander and libel on the allegation that the defendant had made serious imputations against the

plaintiff's character. Before the case came up for trial Sir Edward Clarke, the plaintiff's leading counsel, proposed certain terms of settlement to his client. The terms were written out by Sir Edward Clarke himself and were handed over to the plaintiff and they were as follows:- "Defendant stating by her counsel that she never imputed or meant to impute anything against the moral character of the plaintiff and is satisfied that there is no ground for any such imputation."

"Case referred to.....to say what should be done between the parties in satisfaction of all matters in difference between them."

"Case referred to.....to say what sum, if any, should be paid by the defendant in compensation for the matters complained of in this action."

9. It will be noticed that alternative terms were suggested by Sir Edward Clarke to his client. If the first alternative was accepted by the defendant there was no question of any sum being paid by the defendant in compensation for the matters complained of in the action. But it required the defendant to state that she never imputed or meant to impute anything against the moral character of the plaintiff and was satisfied that there was no ground for any such imputation. The other alternative assumed the correctness of the allegations of the plaintiff and left the question of compensation to arbitration. At the bottom of these terms the plaintiff wrote the words:- "I consent to either alternative Sir Edward Clarke adopts." There was clearly a limitation of counsel's authority, but this limitation was not made known to the defendant's counsel. The defendant, however, refused to disclaim all imputations and after an interview with the learned Judge an order was drawn up in the following terms:-

"It is ordered that the whole of this case be tried before H. F. Dickens Esqr., K. C., as Official Referee, who shall have all the powers of certifying and amending of a Judge of the High Court of Justice, and shall direct judgment to be entered and otherwise deal with the whole action pursuant to Order 36"

10. In other words, the whole action was referred to the arbitration of Mr. Dickens. Before the order was actually drawn up and entered the plaintiff took steps to set it aside and the House of Lords came to the conclusion that the learned Judge in the trial Court who did set it aside and restore the cause to the list for trial acted with the great propriety. Mr. Sen strongly relied upon this case and argued that where there is in fact a limitation of authority the consent given by counsel outside the limits of his authority would not bind his client irrespective of the question whether that limitation is communicated to the other side or not. On the other hand, *Strauss v. Francis* (1866) 1 Q B 379=35 L. J. Q. B. 133, establishes that a compromise which is within the counsel's apparent authority, that is to say, a compromise within the scope of the suit, is binding on the client notwithstanding he may have dissented unless this dissent was brought to the knowledge of the opposite party at the time. *Holt v Jessee* (1876) 3 Ch. D. 177=46 L. J. Ch. 254, lays down that though a consent given by counsel in the presence and with the sanction of his client may be withdrawn before the order is

drawn up, if given through inadvertence, it cannot be withdrawn where the matter was fully understood at the time and the client shortly afterwards changes his mind. In this case there is no doubt that the client did fully understand what the compromise was about and that he changed his mind not shortly afterwards, but only when he found that it was impossible for him to comply with the consent order. This case entirely supports the contention of Mr. Manuk.

11. There is, however, an apparent conflict between *Strauss v. Francis* (1866) 1 Q B 379=35 L. J. Q. B. 133, and *Neale v. Gordon Lennox* (1902) A. C. 465=71 L. J. K. B. 939. This conflict was explained in the case of *Shepherd v. Robinson* (1919) 1 K. B. 474=88 L. J. K. B. 873. The learned Judges in *Shepherd v. Robinson* (1919) 1 K. B. 474=88 L. J. K. B. 873, accepted the proposition as well-settled that counsel has an apparent authority to compromise in all matters connected with the action and not merely collateral to it: and that if he acts within his apparent authority and the other party has no notice of any limitation or restriction on that authority, the client will be bound by the agreement made by his counsel and embody in some order or judgment of the Court. In reference to *Neale v. Gordon Lennox* (1902) A. C. 465=71 L. J. K. B. 939, the learned Judges said that that case belonged to a different line of cases which decided that before a consent order has been drawn up and perfected, the consent given by counsel or solicitor may be withdrawn by the client if the counsel or solicitor give it under a misapprehension. This, in my opinion, is the real distinction between *Neale v. Gordon Lennox* (1902) A. C. 465=71 L. J. K. B. 939, and *Strauss v. Francis* (1866) 1 Q B 379=35 L. J. Q. B. 133. The Court undoubtedly has very large discretion in the matter before the order is actually drawn up and perfected, but there is no such discretion where the order has in fact been drawn up and perfected. As was pointed out in *Shepherd v. Robinson* (1919) 1 K. B. 474=88 L. J. K. B. 873, the real question in each case is to see within which class the particular case falls.

12. There is no doubt whatever that the application in the present case was made long after the order was drawn up and perfected. There is also no doubt, in my mind, that the applicant not only did not repudiate the consent given on his behalf by Mr. Imam but acquiesced in it in so far as he tried to raise the money in order to enable him to comply with the order. I am of opinion, therefore, that the applicant is not entitled to an order setting aside the consent order of the 11th November, 1921.

13. It was urged by Mr. Sen that it has been the settled practice of the Calcutta High Court to set aside consent orders in applications for review and it was urged that the case is a particularly hard one for his client and that this Court ought to set aside the consent order. It may be assumed that an application for review would lie to set aside a consent order; but the question still remains whether grounds have been made out by the applicant which would induce this Court to set aside the consent order. In my opinion there are no grounds for review. I

quite agree that there are certain terms in the order which has been passed by the learned Sub. Judge which are very hard on the applicant and although we can give no directions upon the learned Sub. Judge in these proceedings we would urge upon him the necessity of altering these terms to some extent. We are informed, for instance, that the receiver has been directed to file his account monthly. I have no doubt whatever that this would have the effect of hampering him in his business. In my experience half-yearly accounts are usually required from the receiver and I think that if an application be made by the petitioner to the learned Sub. Judge, the learned Sub. Judge ought to consider whether it is not a sufficient protection for all the parties concerned if the receiver is directed to bring his accounts into Court half-yearly. But although the Court may properly require the receiver to file his accounts half-yearly he ought to be required to send abstract of the receipts and disbursements of the property in his hands every three months to the plaintiff. He ought further to be required to supply to the plaintiff once every three months a copy of the completed contracts which have been entered into by him. Any order which may have the effect of compelling him to disclose the agreements into which he may enter before those agreements have matured into completed contracts might seriously embarrass him in his business. These are the matters which I think the learned Sub. Judge ought to seriously consider if a proper application is presented to him by the plaintiff. But the fact that the order which has been passed by the learned Sub. Judge is undoubtedly hard on the receiver, is no ground for reviewing the consent order of the 11th November, 1921.

14. This application must fail and we refuse it with costs. Hearing fee fifteen gold mohurs.

Bucknill, J.:-

15. This was an application made by one Nilmoni Chowdhuri who is the defendant in an action brought against him by one Kedarnath Daga in the Court of the Sub. judge of Dhanbad in the District of Manbhum in connection with a claim for a very large sum of money which the plaintiff alleged have been advanced to the defendant relative to an agreement for sale of a colliery.

16. There is no doubt that there was a serious dispute between the parties: the defendant, however, maintained that the real issue between them was merely a matter of account. The plaintiff, on the ground that the defendant was trying to dispose of the property in question and on other grounds, applied to attach the defendant's colliery before judgment and for the appointment of a receiver pending the hearing of the suit, and, as a result of this application, the Sub. Judge called upon the defendant to show cause why the property should not be attached and why a receiver should not be appointed pendente lite; and he granted an ad interim attachment pending the hearing of the application. When the matter on 1-9-1921 came up before him the Sub. Judge made an order appointing the defendant as receiver. From this order the defendant appealed to this Court and a rule was issued upon the plaintiff to show cause why an ad

interim stay of the execution of the order appointing the receiver should not be allowed.

17. Now it is very important to note what took place when the matter was finally brought up before this Bench for it is from that that the present application now arises; it is accordingly necessary to review shortly what actually occurred. During the course of the hearing it was agreed by counsel purporting to act on behalf of the defendant and by counsel for the plaintiff that the defendant would deposit in Court on or before 16-1-1922, the amount claimed by the plaintiff in order to satisfy any decree which might be passed against him in the suit and that in the event of his failure to do so the rule nisi would be discharged and the appeal dismissed with costs; and on this basis this Bench on the 11-11-1921 passed an order accordingly. The matter however did not rest there for on the 9-1-1922 the defendant filed the present petition in which he asks that the order passed by this Court on 11-11-1921 should be reviewed (that is to say, set aside) on the ground that the individual who purported to represent him and who purported to agree to the terms of the order was in no way authorised so to do. The individual referred to was one Ram Ratan Das. It is noticeable, however, that the defendant in his petition, whilst pointing out that Ram Ratan Das had no authority to assent to the terms of the agreement, also indicates that, owing to various circumstances such as strikes, demand for higher wages, and the insufficient supply of railway waggons which had occurred subsequent to this Court's order, he had found it almost impossible to collect and deposit the agreed sum in Court. The authority of counsel for the defendant to enter into any such arrangement as had been embodied in the order of this Bench was under these conditions seriously challenged on behalf of the defendant; and, the facts therefore demanded a close investigation. A considerable volume of evidence upon affidavit was adduced by both parties whilst in addition this Bench thought fit to have before it for examination the individual named Ram Ratan Das to whom reference has already been made, another gentleman named Provash Chandra Ray who is an employee in the defendant's firm and who was present at the Court at a very material date when the question of the terms of the order of 11-11-1921, were under discussion; in addition to this the defendant himself was also examined. I do not think that it is necessary for me to analyse closely the evidence which has been given. I have read and carefully considered it all and I have come, without difficulty to the conclusion that the attitude which is now taken up by the defendant is without justification. It is, I think, sufficient to say that Ram Ratan Das who was the defendant's broker came to Patna on November 5th last in connection with the proceedings taken by the defendant in this Court against the order of the Sub. Judge; he was accompanied by a clerk in the defendant's firm. Ram Ratan Das had a consultation with his counsel and says that he (Ram Ratan Das) suggested that if an adjournment could be obtained the money could be collected by the defendant and deposited in Court. As a result of this the matter was adjourned till the 11th idem and Ram Ratan Das returned to Calcutta; he stated that he did not inform his principal of what

had taken place at Patna; I regret to have to say that I cannot believe this statement. On the 11th November, Ram Ratan Das did not return to Patna; but, on that date, the defendant was here represented by Provash Chandra Ray who, to use his own expression, "looks after the defendant's cases." He also had a consultation with his legal advisers; and although he says now that he did not agree to the arrangement made by his counsel and which formed the basis of the order of November 11th, there is no doubt whatever in my mind that he did in fact, even though it may be somewhat reluctantly, acquiesce. The matter having been dealt with in the manner in which I have before indicated, this gentleman returned to Calcutta. There is no doubt that he told his master what had been done, but no protest so far as I can see was ever raised until the present application was filed. In my own view there is no doubt that what really took place was that there was in the mind of the defendant no thought of repudiating what had been agreed until it may have been found that the collection of the sum to be deposited presented perhaps more difficulty than had been anticipated or demanded somewhat greater sacrifices than had been expected.

18. For these reasons I think that this application should be rejected with costs. The order of the 11th November, 1921, of this Court will therefore stand but, as the money has not been paid in, the result is that the rule issued by this Court stands discharged whilst the appeal stands dismissed. But although that is so the order of the Subordinate Judge appointing the receiver should in my opinion be modified in certain respects as have been detailed by my learned brother.