

(1933) 08 PAT CK 0035
In the Patna High Court

Sheo Prasad Lal and Others

APPELLANT

Vs

Tapeshwar Mahto and Others

RESPONDENT

Date of Decision : 28-08-1933

Acts Referred:

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

Citation : AIR 1933 Patna 563

Hon'ble Judges : Courtney-Terrell, C.J;Saunders, J

Bench : Full Bench

Judgement

Courtney-Terrell, C.J.—This is an appeal by the decree-holders against a decision of the Judicial Commissioner of Chota Nagpur confirming a decision of the Additional Subordinate Judge of Hazaribagh and dismissing an execution case. In a suit by the decree-holders based upon a mortgage there had been a final decree for Rs. 4,267. Certain of the defendants sued for a declaration that the mortgage decree had been fraudulently obtained. The suit was compromised and a compromise decree was passed as against those defendants to the effect that if the defendants paid a total sum of Rs. 2,700 in three yearly instalments of Rs. 900 that the whole decree should be deemed to have been satisfied.

2. The defendants duly paid the first two instalments but as to the third they paid Rs. 550 before it was due but failed to pay the balance of Rs. 350 by the due date. They nevertheless deposited that sum in Court 16 days after the due date. The decree-holders sought to execute that term of the compromise decree which stated that if there should be failure in the payment of the instalments the amount of the original decree should be recoverable. The lower Courts have held that "time was not of the essence of the contract" and relying upon two authorities namely Mt. Nand Rani Kuer Vs. Durga Dass Narain, and Kandarpa Nag v. Banwari Lal Nag AIR 1921 Cal 356, held that the conditions of the compromise decree had substantially been fulfilled.

3. In my opinion the view of the lower Courts is erroneous. It has long been held and notably in the case of Budhu Ahir Vs. Emperor, relied on by the defendant,

that a compromise decree cannot extend further than the terms of the compromise itself and that if the compromise involved a clause of penalty or forfeiture that the Court notwithstanding the decree in the terms of the compromise retains the power to grant equitable relief against such penalty or forfeiture. This is no doubt true but the question here is not one of whether time was of the essence of the contract, but of whether it is a case of forfeiture against which equitable relief could be claimed.

4. It was held as long ago as 1883 by the Privy Council in the case of *Balkislen Das v. Run Bahadur Singh* (1884) 10 Cal 305 that a provision in case of default in the payment of instalments that a higher rate of interest might be charged is not a penalty giving the right to equitable relief: see also *B. Kishen Prasad and Another Vs. Kunj Behari Lal*. Similarly in the case of *Jadab Chandra Poddar Vs. Rameshwar Marwari*, where the compromise decree provided that a sale would be set aside on condition of payment by instalments and there had been a failure to pay the instalments on the due date it was held that the provision that the sale was not to be set aside was not in the nature of a forfeiture.

5. The case of *Mt. Nand Rani Kuer Vs. Durga Dass Narain*, really turned upon the question whether the Court in the exercise of its revisional jurisdiction u/s 115, Civil P.C., could interfere with the decision of the Subordinate Judge that the clause for the enforcing of the original decree on failure to carry out the punctual payment of instalments arranged by compromise was or was not a forfeiture. It is true that there are some observations in the judgment of *Mullick, J.*, which would give colour to the argument that this is an authority that such a term is in the nature of a forfeiture.

6. Having regard however to the point upon which the case was actually decided I do not think it can be considered an authority to this effect. If it were, it would be entirely against the current of decisions in the Courts in India and would be entirely against the decision of the Privy Council already referred to.

The respondents further suggested that the Court had power to extend the time for payment u/s 148, Civil P.C. I entirely agree with the judgment on this point of *Wort, J.*, in the case of *Jadab Chandra Poddar Vs. Rameshwar Marwari*, .

7. The section has no application to a matter of this kind. I would reverse the decisions of the lower Courts and direct that the execution do proceed and that the respondents pay to the appellants their costs throughout.

Saunders, J.

8. I agree.