
(1941) 07 CAL CK 0005
In the Calcutta High Court
Case No : S.C.C. Suit No. 18596 of 1938

The Official Trustee of Bengal

APPELLANT

Vs

Taj Mahammad and Others

RESPONDENT

Date of Decision : 08-07-1941

Acts Referred:

Citation : (1941) 07 CAL CK 0005

Judgement

Sen, J.—The Petitioner is a landlord. He applied under the Presidency Small Causes Court Act for the ejectment of the Opposite Party, his tenants. On the 27th May, 1940, the learned Judge of the Presidency Small Causes Court passed an order under sec. 43 of the aforesaid Act directing the bailiff to give possession of the premises to the Petitioner on the 1st June, 1941. In that order it was also" stipulated that the Opposite Party should pay rent regularly month by month during this intervening period and that on default of payment of any month's rent the applicant would be at liberty to apply for immediate ejectment of the Opposite Party. On the 23rd April, 1941, the Opposite Party made an application to the learned Judge for extension of time beyond the 1st June, 1941. The learned Judge allowed the application and extended the time till 31st March, 1942. The Petitioner now applies to this Court under sec. 115 of the CPC and his contention is that the Judge of the Court of Small Causes had no jurisdiction to extend the time which had been fixed by his order passed on the 27th May, 1940.

2. Sec. 43 of the Presidency Small Causes Court Act is in the following terms:--

If the occupants do not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under sec. 41, be entitled to an order addressed to the bailiff of the Court directing him to give possession of the property to the applicant on such date as the court thinks fit to be named in such order.

3. It is clear from the words of this section that the date on which possession is to be given by the bailiff to the applicant must be mentioned in the order passed under sec. 43 and in no other order. There is no provision in the Act which

empowers the Court to vary an order passed under sec. 43 by extending the date on which possession is to be given. The decree of the Court was that possession was to be given on the 1st June, 1941. That was a final decree and in my opinion the Court had no jurisdiction to vary that decree upon any application. This view was taken by the High Court of Bombay in the case of Jamshedjee Hormusji v. Gordhandas Gokuldas ILR 46 Bom, 1048 (1920). It was held there that once an order is passed under sec. 43 of the aforesaid Act, the Court had no jurisdiction to vary that order. My attention is drawn by learned Counsel appearing for the Opposite Party to sec. 148 of the Code of Civil Procedure. He contended that this section gave power to the Court to extend the time fixed by it for delivery of possession. This section was taken into consideration in the case mentioned above and a similar argument as has been advanced before me was negatived. In my opinion sec. 148 can have no application whatsoever to the present case. The section is in the following terms:--

Where any period is fixed or granted by the Court for the doing of an act prescribed or allowed by the Code, the Court may in its discretion from time to time, enlarge such period, even though the period originally fixed or granted, may have expired.

4. The section applies to the doing of an act prescribed or allowed by the Code. Here the act directed to be done is this: The Sheriff is directed to give possession of the property to the landlord. This is not an act prescribed or allowed by the Code. It is an act which has to be done under the Court's decree. Learned Counsel for the Defendants referred me to the case of Abdul Rahim Molla v. Tamijuddin Molla 37 C.W.N. 397 (1933). What was decided in that case is this: When in a decree for specific performance of a contract of sale it was directed that the sale deed, should be executed by the Defendants on the Plaintiff depositing a certain sum of money within a specific time, but there was no provision in the decree as to what was to happen if the Plaintiff failed to deposit the money within the time specified and the Plaintiff did not pay in the money as directed and applied for extension of time to put in the money, the Court had jurisdiction to extend the time. I am unable to see how that case has any application whatsoever to the point which arises for determination in the present case. The decree passed by the learned Judge on 27th May, 1940, was a final and unconditional decree and there was no room whatsoever for the exercise of any power of extending time. The result is that the order of the learned Judge must be set aside. The Petitioner will get the costs of this application.