

CIVIL REVISION.

Before Edgley J.

MAHAMMAD ASRAF ALI

v.

NABIJAN BIBI.*

1939

Jan. 6.

Judgment—Order by executing Court, when a judgment—Bengal Tenancy Act (VIII of 1885), s. 174—Code of Civil Procedure (Act V of 1908), ss. 2(9), 148; O. XX, r. 3.

Where the executing Court, on an application under s. 174 of the Bengal Tenancy Act to set aside the sale in execution of a rent decree, passed an order to the effect that the sale would be set aside provided the petitioner deposited the decretal amount within a specified date failing which the application would stand dismissed,

held that the order was a judgment within the meaning of s. 2(9) of the Code of Civil Procedure and by virtue of O. XX, r. 3, the Court had no jurisdiction to extend the time of deposit unless steps were taken to obtain a modification of the order by filing an application for review. Section 148 of the Code of Civil Procedure had no application to such a case.

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The material facts and arguments appear sufficiently from the judgment.

Jitendranath Guha and *Satyapriya Ghosh* for the petitioner.

Jitendra Nath Roy and *Prabhas Chandra Bose* for the opposite party.

EDGLEY J. In this case, opposite party No. 2, Tafejjal Ahmad Chaudhuri, brought a rent suit against opposite party No. 1, Nabijan Bibi, and obtained a rent-decree, which he put into execution in Execution Case No. 687 of 1937 and in due course he brought to sale the holding of the judgment-debtor. On July 7, 1937, the judgment-debtor

*Civil Revision, No. 1136 of 1938, against the order of B. P. Ray, Third Additional District Judge of Bakarganj, dated April 28, 1938, reversing the order of A. G. Chatterji, First Munsif of Pirojpur, dated Nov. 26, 1937.

applied to the executing Court under s. 174 of the Bengal Tenancy Act to have the sale set aside. The executing Court, on November 26, 1937, passed the following order with regard to this application:—

The application is allowed on contest and the sale is set aside, provided the petitioner deposits the decretal amount within ten days hence, failing which the application shall stand dismissed.

No deposit of the decretal amount was made within the time allowed, with the result that, on December 7, 1937, a subsequent order was recorded by the learned Munsif directing that the Miscellaneous Case should be treated as dismissed in the terms of the judgment, dated November 26, 1937. The judgment-debtor then appealed to the District Judge and the main ground taken in the appeal was that the learned Munsif should have granted the judgment-debtor an extension of time to put in the decretal amount, on her application to that effect, which was rejected by the first Court. The learned Judge held with regard to this matter that s. 148 of the Code of Civil Procedure applied and that the learned Munsif had failed to exercise his judicial discretion in refusing the petitioner's prayer for extension of the time within which he might deposit the decretal dues. He, therefore, allowed the appeal.

It is argued by the learned advocate for the petitioner that the learned Additional District Judge was wrong in holding that s. 148 of the Code of Civil Procedure applied in a case of this sort. He contends that the order of the first Court, dated November 26, 1937, was a final order and that the learned Munsif had no jurisdiction to vary his order unless proper steps under the law were taken to obtain its modification by filing an application for review. I am of opinion that there is great force in this argument. From the nature of the order which was passed on November 26, 1937, it seems to be perfectly clear that the intention was that this order should be final and no further reference to the Court would be necessary for the purpose of implementing it. Its terms

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provide that, if the decretal amount was deposited within ten days, the sale would be set aside and, on failure to deposit that sum within the stipulated period, the application would stand dismissed. The terms of this order are perfectly clear and, after having passed an order of this nature, the learned Munsif ceased to have jurisdiction over this particular matter, unless any aggrieved party filed a properly constituted application for the review of the order. This being the case, in my view, the provisions of O. XX, r. 3 of the Code of Civil Procedure would apply. This rule provides that a judgment "when once signed, shall not afterwards be altered or added to, save as provided by s. 152 or on review."

The learned advocate for the opposite party argues that the order, dated November 26, 1937, is not in effect a judgment. With this contention I am unable to agree in view of the definition of "judgment" contained in s. 2(9) of the Code of Civil Procedure, which provides that "'judgment' means the statement given by the Judge of the grounds of a decree or order." Section 148 of the Code of Civil Procedure, in my opinion, can have no application in a case of this nature in which a final order has been passed in a judgment of a Court and, in this view of the case, I do not think that the learned Additional Judge was correct in holding that the learned Munsif failed to exercise his judicial discretion when he refused the petitioner's prayer to extend the time within which deposit of the decretal dues might be made.

In view of what I have stated above, this Rule is made absolute with costs. The hearing fee in this Court is assessed at two gold *mohurs*.

Rule absolute.