

CIVIL REVISION.

Before Edgley J.

BHAGABAN CHANDRA BHAKAT

v.

SATIA BEWA.*

1939

Mar. 14.

Appeal—*Appeal against refusal to set aside sale—Registration of appeal—Deposit of decretal amount—Jurisdiction—Bengal Tenancy Act (VIII of 1885), s. 174 (5).*

The deposit of the decretal amount as contemplated by the proviso to s. 174(5) of the Bengal Tenancy Act must be made before an appeal under that section can be entertained.

An appeal must be regarded as having been admitted when the proper officer of the Court has accepted the memorandum of appeal and endorsed thereon the date of its presentation.

Bidhubala Dasi v. Kumud Nath Das (1) and *Sudhir Chandra Nag v. Nazir Mamud Sheikh* (2) followed.

Where an appeal against an order refusing to set aside a sale under s. 174 (5) of the Bengal Tenancy Act is entertained within the period of limitation but the deposit of the decretal amount, as contemplated by that section, is made after the lapse of such period, the recording of a formal admission order after the receipt of the deposit will not render the appeal competent.

Dakhsaja Mohan Roy Chowdhury v. Matiar Rahman (3) relied on.

CIVIL RULE obtained by the auction-purchaser.

In execution of a decree in a suit for arrears of rent, a holding at Jangipur was sold to the petitioner Bhagaban Chandra Bhakat to whom the certificate of sale was issued on May 17, 1937. On February 4, 1938, one of the judgment-debtors applied under s. 174 of the Bengal Tenancy Act, to set aside the sale on grounds of material irregularity, but this application was refused by the Munsif. On March 12, 1938, the last day of limitation for filing the appeal,

*Civil Revision, No. 1359 of 1938, against the order of K. K. Hajara, District Judge of Murshidabad, dated July 7, 1938, reversing the order of Uma Das Gupta, Second Munsif of Jangipur, dated Feb. 4, 1938.

(1) (1937) 41 C. W. N. 1299. (2) (1938) 43 C. W. N. 106.
(3) (1938) 42 C. W. N. 646.

1939

*Bhagaban
Chandra
Bhakat*
v.
Satia Bewa.

the judgment-debtor presented an appeal against the order under s. 174(5) without making the deposit of decretal amount as contemplated under the proviso to that section. The deposit was made on March 29, 1938, when a formal admission order was recorded on the plaint. The District Judge allowed the appeal and set aside the sale. Thereupon, the auction-purchaser moved the High Court in its revisional jurisdiction.

Arguments in the Rule appear sufficiently from the judgment.

Apurbadhan Mukherjee for the petitioner.

Abdul Bari for the opposite party.

EDGLEY J. The first point urged in connection with this Rule is to the effect that the learned Munsif had been invested with final powers up to Rs. 100 under s. 153 of the Bengal Tenancy Act and therefore no appeal lay to the District Judge. It appears, however, from the record of this case, read in the light of the Civil List corrected up to January 1, 1939, that the Munsif in question has not been vested with these powers. This contention must fail.

It is next urged that the requisite deposit was not made as required by the proviso to s. 174(5) of the Bengal Tenancy Act and that the appeal to the District Judge was, therefore, incompetent. The period of limitation for filing the appeal expired on March 13, 1938, and it appears that the appeal was presented in the Court of the District Judge on March 12, 1938. The records, however, show that the deposit was not actually made until March 29, 1938, long after the prescribed period of limitation, and that, after the receipt of the deposit, a formal admission order was recorded on the plaint. It was held by this Court in the case of *Bidhubala Dasi v. Kumud Nath Das* (1) that, where an appeal is preferred against an order dismissing an application to

(1) (1937) 41 C. W. N. 1299.

set aside a sale, the deposit must be made as required by sub-s. (5) of s. 174 of the Bengal Tenancy Act before the appeal can be entertained at all. It was further pointed out by S. K. Ghose J. in the case of *Dakhaja Mohan Roy Chowdhury v. Matiar Rahman* (1) that it would be overriding the law of limitation to register and entertain an appeal in a case of this sort when the deposit had been made after the prescribed period of limitation.

During the course of the arguments, reference was also made to another decision of this Court in the case of *Sudhir Chandra Nag v. Nazir Mamud Sheikh* (2). In the judgment in that case it was pointed out that, having regard to the terms of O. XLI, r. 9, Code of Civil Procedure, the "admission of an appeal" must mean acceptance of the memorandum of appeal by the proper officer of the Court with a view to securing its registration. From this standpoint the appeal with which we are now dealing must be regarded as having been admitted on March 12, 1938, which is the date on which the proper officer of the Court endorsed the date of presentation on the memorandum of appeal under O. XLI, r. 9, and not on March 30, 1938, when a formal admission order was recorded on the back of the memorandum of appeal.

Having regard to the principles laid down in the abovementioned decisions, I do not think that this appeal was properly entertained by the learned District Judge on March 12, 1938. The subsequent order accepting the deposit cannot be held in the circumstances to save limitation. In this view of the case the Rule must be made absolute with costs, the hearing fee being assessed at one gold mohur. The order of the lower appellate Court must be set aside and that of the learned Munsif restored.

Rule absolute.

G. K. D.

1939
 Bhagaban
 Chandra
 Bhakat
 v.
 Satia Beua.
 Edgley J.

(1) (1938) 42 C. W. N. 646.

(2) (1938) 43 C. W. N. 106.