

demand is measured by the ability to do so, and the Judge considers apparently that it was made with the least practicable delay. But if the Judge is to be understood as applying this test to the immediate demand, then we think that he is wrong, and that delay in making the immediate demand is fatal, because it must be made at once when the fact of the sale becomes known.

1876.

ALI  
MUHAMMAD  
v.  
TAJ  
MUHAMMAD

The Full Bench decision of this Court cited marginally ruled *Chundo v. Hakeem Alim-ooddeen* (1). that, under s. 24, Act VI of 1871, Muhammadan law is not strictly applicable in suits for pre-emption between Muhammadans not based on local custom or contract, but it is equitable in such cases to apply that law. So in cases relating to gifts it was held in another Full Bench decision (2) that it was equitable as between Muhammadans to apply Act VI of 1871 to such questions. The right of pre-emption is not a strong right, and it appears to us that any one claiming it should be held bound by the conditions of the Muhammadan law, and should promptly assert his right of pre-emption by the immediate demand. It is not surely the duty of the Courts to enlarge the conditions under which so inconvenient and sometimes oppressive a right can be asserted. Following the principle laid down in the Full Bench decisions of this Court already referred to, we think that the judgment of the lower appellate Court is wrong, and that of the first Court should be restored. We, therefore, decree the appeal and reverse the judgment of the lower appellate Court, and restore that of the first Court with costs.

## APPELLATE CIVIL.

1876  
August 22.

(Mr. Justice Turner and Mr. Justice Spankie.)

IN THE MATTER OF THE PETITION OF RUKMIN AND ANOTHER.\*

Act XXVII of 1860, ss. 5, 6—Certificate for Collection of Debts—Security—Appeal.

No appeal impugning the order of a District Court requiring security from the person to whom it has granted a certificate, under Act XXVII of 1860, lies

\* Miscellaneous Regular Appeal, No. 42 of 1876, from an order of the Judge of Cawnpore, dated the 19th May, 1876.

(1) H. C. B., N.-W. P., 1874, p. 28.

(2) *Shumshoolnissa v. Zohra Beebee*,  
H. C. B., N.-W. P., 1874, p. 2.

1876.

IN THE MAT-  
TER OF THE  
PETITION OF  
RUKMIN AND  
ANOTHER.

under that Act to the High Court. *Sonea v. Ram Suha* (1) and *Monmohinee Dasse v. Khetter Gopaul Dey* (2) followed.

*Seemle*, that, in proceedings under Act XXVII of 1860, a review of judgment is admissible (3).

THIS was an application to the District Court for a certificate under Act XXVII of 1860. It was made on the ground that the applicants were the widows and sole heirs of the deceased. The debts due to the estate of the deceased were stated in the application to amount to Rs. 3,000. Notice was issued in accordance with the provisions of s. 6 of the Act, but no claimants appeared. The District Court granted the certificate, but required the applicants to furnish security under the provisions of s. 5 to the amount of Rs. 3,000.

The applicants appealed to the High Court against the District Court's order requiring security, urging that that order was unreasonable and unjust, inasmuch as they had no separate property of their own, and there were no debts due by the estate.

Mr. *Leach*, for the appellants.

The judgment of the Court was as follows :—

We must follow the ruling of this Court in *Soonea v. Ram Suha* (1), which is in accordance with a recent ruling of the Calcutta High Court in *Monmohinee Dasse v. Khetter Gopaul Dey* (2). The appeal then fails ; but if the facts are such as the petitioners assert, we consider that the appellants should apply to the Judge to reconsider the order relating to security, and that the Judge might well comply with their prayer and reduce the amount demanded.

1876  
August 22.

## APPELLATE CIVIL.

(*Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.*)

HASSAN ALI (DEFENDANT) v. NAGA MAL (PLAINTIFF).\*

*Adoption—Hindu Law—Jain Law.*

The question of the validity of an adoption, the parties between whom the ques-

\* Special Appeal, No. 1035 of 1874, against a decree of the Judge of Saharanpur, dated the 21st May, 1874, affirming a decree of the Munsif of Muzaffarnagar, dated the 25th March, 1874.

(1) H. C. R., N.-W. P., 1870. p. 146.

(2) I. L. R., 1 Calc., 127 ; S. C., 24 W. R., 362 ; see also *Raj Mohinee Chowdhrai v. Dinko Bundhoo Chowdhry*, I. L.

R., 1 Calc., 128 note ; S. C., 17 W. R., 566.

(3) See *Petition of Poona Koor*, I. L. R., 1 Calc., 101 ; but see also *Siva v. Chenamma*, 5 Mad. H. C. R., 417.