

in the most crucial point from that of the *wajib-ul-arz* referred to in the judgment of the lower appellate court. In our opinion, therefore, the decision of the court of first instance was correct. The plaintiffs were entitled to no relief and the order of remand passed by the lower appellate court is unsustainable. We allow this appeal, set aside the order of the lower appellate court and restore the decree of the court of first instance with costs throughout in favour of the defendant

*Appeal allowed.*

## REVISIONAL CIVIL.

*Before Mr. Justice Ryves and Mr. Justice Gokul Prasad.*

KANDHAIYA SINGH (DEFENDANT) *v* MUSAMMAT KUNDAN (PLAINTIFF)\*.  
*Civil Procedure Code* (1908), sections 148 and 151; order XXXIV, rule 8; order XLVII—*Decree conditioned upon payment of money within a fixed period—Court not competent to extend time for payment otherwise than in the case of mortgage decrees.*

Except in the case of a decree in a mortgage suit to which order XXXIV, rule 8, of the Code of Civil Procedure applies, a court has no power to extend the time limited for payment of money ordered by a decree to be paid as a condition precedent to its operation. *Suranjan Singh v. Ram Bahal Lal* (1) followed. *Idumba Parayan v. Pethi Raddi* (2) dissented from.

THE plaintiff in this case sued to set aside a mortgage and subsequent sale of a house which she had executed in favour of one of the defendants. The decree of the appellate court, passed on the 17th of February, 1919, was to the effect that the plaintiff should get possession of the house on condition that she paid a sum of Rs. 600 into court within one month. Four days before the term limited by the decree had expired the plaintiff made an application to the court in which she stated that she had been unable to get a copy of the decree up till then, and that as she was a pauper, she had not money herself to satisfy the decree and could not get a loan from the local bankers without showing them the copy of the decree. She, therefore, prayed that she might be permitted to deposit the money within a month of her receiving a copy of the decree. On this application the court passed the following order:—“As it appears there

\* Civil Revision No. 75 of 1919.

(1) (1913) I.L.R., 35 All., 582.

(2) (1919) I. L. R., 43 Mad., 357.

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has been great delay in preparing the copy of the decree, I allow this application and direct that the time allowed for payment be one month from delivery of copy of decree to the plaintiff appellant." In consequence of this order the court altered its judgment by inserting after the words "one month" the words "from delivery of copy of decree," and the decree itself was amended in the same way. The money was paid into court on the 5th of April.

The defendant applied in revision to the High Court asking that the order of the lower appellate court made on the plaintiff's application might be set aside as passed without jurisdiction.

Babu *Durgu Charan Banerji*, for the applicant.

Babu *Piari Lal Banerji*, for the opposite party.

RYVES and GOKUL PRASAD, JJ. :—Musammat Kundan brought a suit to set aside a mortgage and sale of a house which she had subsequently executed in favour of the first defendant. The court of first instance gave her a decree on certain conditions. On appeal to the District Judge that court ordered, on the 17th of February, 1919, that the plaintiff should get possession of the house on condition that she paid a sum of Rs. 600 into court within one month. On the 13th of March, 1919, that is, four days before the term mentioned in the decree expired, the plaintiff made an application to the court in which she stated that she had been unable to get a copy of the decree up till then, and that as she was a pauper, she had not money herself to satisfy the decree and could not get a loan from the local bankers without showing them the copy of the decree. She, therefore, prayed that she might be permitted to deposit the money within a month of her receiving a copy of the decree. On this application the court passed the following order :—“As it appears there has been great delay in preparing the copy of the decree, I allow this application and direct that the time allowed for payment be one month from delivery of copy of decree to the plaintiff appellant.” In consequence of this order the court altered its judgment by inserting after the words “one month” the words “from delivery of copy of decree,” and the decree itself was amended in the same way. The money was

paid into court on the 5th of April. The defendant respondent applied to this Court to set aside the order of the District Judge, dated the 13th of March, 1919, on the ground that it was made without jurisdiction. It is conceded on behalf of the plaintiff that that order was not justified under the terms of sections 148 of the Code of Civil Procedure. Having regard to the course of rulings of this Court, and especially the case of *Suranjan Singh v. Ram Bahal Lal* (1), it could not be argued that section 148 gave the court jurisdiction to pass this order, but it is suggested that the court had jurisdiction to extend the time under order XXXIV, rule 8, because the suit was analogous to a suit for redemption of a mortgage, and reliance has been placed on a very recent decision of the Madras High Court in the case of *Idumba Parayan v. Pethi Reddi* (2). It seems to us that order XXXIV deals exclusively with suits on mortgages, and that the provisions of that order cannot be utilized in any other suit. We are, therefore, unable to agree with the decision of the Madras High Court just quoted. Then it is suggested that we should take this order of the learned District Judge to be one in review of judgment under order XLVII. It is suggested that possibly it is a wrong order and one which the court perhaps should not have passed, but that nevertheless it was a just order and that, therefore, we should not interfere with it in revision. It seems to us, however, that it could not possibly be taken to be an order by way of review of judgment. In the application made by the plaintiff on which that order was granted, it is quite clear that no foundation for a review was laid. Then it is suggested that the court had power under section 151 of the Code of Civil Procedure to pass the order. That section provides that "nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court." We are unable to see how that section can apply to the facts of this case. The result is that we allow the application and dismiss the plaintiff's application for extension of time. Under the circumstances we make no order as to costs.

*Application allowed.*

(1) (1918) I.L.R., 35 All., 582.

(2) (1919) I.L.R., 43 Mad., 357.