

APPELLATE CIVIL

Before Mr. Justice Bennet, Acting Chief Justice, and
Mr. Justice Ganga Nath

ROSHAN LAL (JUDGMENT-DEBTOR) v. GANPAT LAL.
(DECREE-HOLDER)*

1937
December, 17

Instalment decree—Instalments not directed to be payable only in court—Date for payment expiring on court holiday—Deposit on re-opening of court—Validity of payment.

A compromise decree directed the payment of Rs.2,600 in four instalments on specified dates and further provided that in default of due payment of any one instalment a total amount of Rs.3,786 would become recoverable. One of the instalments fell due on 2nd November, 1933, which was a court holiday. The court re-opened the next day and on that day a tender for the amount was filed and the amount was actually deposited on 4th November, 1933. There was nothing in the decree which made the instalments payable only in court and not outside the court: *Held* that there was default in due payment of the instalment and the larger sum of Rs.3,786 had become recoverable.

The principle of law, under which parties who are prevented from doing a thing in court on a particular day, not by any act of their own but by the court itself, are entitled to do it at the first subsequent opportunity, applies to only those cases in which a party is required to do something in court; it does not apply to those cases where it is open to a party to do something outside the court. If two alternatives are open to a person, he can not choose one of them and act in such a manner as to prejudice the rights of the other party.

Muhammad Jan v. Shiam Lal (1), distinguished.

Mr. Panna Lal, for the appellant.

Messrs. S. K. Dar and C. B. Agarwala, for the respondent.

BENNET, A.C.J. and GANGA NATH, J.:—This is a Letters Patent appeal from the decision of a learned single Judge of this Court. The respondent, Ganpat Lal, has a decree for Rs.3,786 against the firm Nand Ram Piare Lal which was represented by Piare Lal, the father of the appellant, Roshan Lal. The decree-holder

*Appeal No. 5 of 1937, under section 10 of the Letters Patent.

(1) (1923) I.L.R. 46 All. 328.

1937
ROSHAN
LAL
v.
GANPAT
LAL

attached some property in execution of his decree. An objection was filed by Roshan Lal under order XXI, rule 58 of the Code of Civil Procedure. He claimed the attached property as his. The objection was dismissed. Roshan Lal then filed the suit under order XXI, rule 63 for declaration of his right to the property. The suit was disposed of in accordance with a compromise which was entered into between the parties. It was agreed in that compromise that if Roshan Lal paid Rs.2,600 by four instalments, the entire decree would be deemed to be satisfied, but that if default was made in payment of any one instalment, the whole of the decretal amount, namely, Rs.3,786 would be recovered by the decree-holder. Under the terms of the compromise the appellant, Roshan Lal, had to hypothecate his property for the satisfaction of the decree. Roshan Lal accordingly executed a mortgage deed, mortgaging his property. The dates for the payment of the instalments were fixed in the compromise. The first two instalments were paid on the due dates. The third instalment was to be paid on Sawan Sudi 15, Sambat 1990, corresponding to 5th August, 1933. The fourth instalment was payable on Katik Sudi 15, corresponding to 2nd November, 1933. The third instalment was not paid in accordance with the terms of the compromise. On 4th August Roshan Lal deposited Rs.300 and applied to the court for permission to deposit the balance of Rs.700 with the fourth instalment. The court passed an *ex parte* order granting time and allowing the sum of Rs.300 to be deposited. On the 31st of October, 1933, Roshan Lal deposited Rs.200 and applied to the court for extension of time for the payment of the balance of the third instalment and the whole of the fourth instalment. This application was opposed by the decree-holder and the appellant's application was dismissed on the 3rd November, 1933. Roshan Lal then filed a tender offering to pay the entire balance of the third, and the fourth instalments. He

deposited the entire sum, namely, Rs.600 the next day, that is on the 4th November, 1933. The decree-holder applied on the 9th November, 1933, for execution for the balance of his decretal amount of Rs.3,786, giving credit for the money that had been paid. Roshan Lal objected to the execution on the ground that the decree had been fully satisfied by the payment of Rs.2,600 in accordance with the terms of the compromise. The objection was disallowed by the execution court and also by the lower appellate court. The decisions of both the lower courts were confirmed by the learned single Judge. The appellant has filed this appeal in Letters Patent from the decision of the learned single Judge.

The only question for determination in this appeal is whether there was any default on the part of the judgment-debtor in paying the fourth instalment which, as stated above, fell due on the 2nd November, 1933. It has been urged on behalf of the appellant that as 2nd November, 1933, was a holiday and as the tender was filed by the appellant on the next day, that is 3rd November, 1933, the payment was within time. Reliance has been placed by the learned counsel for the appellant on *Muhammad Jan v. Shiam Lal* (1). That was a case of a decree in a pre-emption suit under which the purchase money was to be deposited within a certain period which expired on a date on which the court was closed for the vacation. The deposit was made on the date on which the court re-opened. It was held: "There is a generally recognized principle of law under which parties who are prevented from doing a thing in court on a particular day, not by any act of their own, but by the court itself, are entitled to do it at the first subsequent opportunity."

Under a pre-emption decree the decretal money is to be deposited in court. Order XX, rule 14 lays down: "Where the court decrees a claim to pre-emption in

1937

 ROSHAN
LAL
v.
GANPAT
LAL

1937

ROSHAN
LAL
v.
GANPAT
LAL

respect of a particular sale of property and the purchase money has not been paid into court, the decree shall—
(a) specify a day on or before which the purchase money shall be so paid, and (b) direct that on payment into court of such purchase money . . . the defendant shall deliver possession . . .”

The principle laid down in the Full Bench case applies to only those cases in which a party is required to do something in court. It does not apply to those cases where it is open to a party to do something outside the court. It has been urged on behalf of the appellant that under order XXI, rule 1 it is open to a judgment-debtor to pay the money either into the court or out of court to the decree-holder. There is no doubt that it is so. But under order XXI, rule 1 it is not compulsory on the judgment-debtor to pay the money in court. If two alternatives are allowed to a person he cannot choose one of them and act in such a manner as to prejudice the rights of the other party. In this case there was a clear agreement between the parties that if the money of any instalment was not paid on the date fixed, the decree-holder would be entitled to realise the whole of his decretal money. It was only a concession by which the decree-holder agreed to accept a lesser sum than what was due under the decree. It was in consideration of the payment on certain dates. If the judgment-debtors did not avail themselves of the concession which was allowed to them by not acting up to the terms of the agreement, they are themselves to blame, and must bear the consequences of the breach committed by them.

The money of the fourth instalment, as stated above, was paid on the 4th November, 1933. The instalment fell due on the 2nd November, 1933, under the terms of the compromise. Consequently it cannot be said that the money was paid on the next day after the 2nd November, 1933, which was a holiday. If they wanted to take advantage of the provisions of order XXI, rule 1,

it was open to them to deposit the money in court but it should have been deposited within the time allowed under the terms of the compromise. They could not act in such a manner as to commit default and to extend thereby the time in derogation of the terms settled between them. The payment made by the judgment-debtors in court on the 4th November, 1933, would not prevent the condition—of recovering the full amount of the decree in case of default—from becoming effective and coming into operation.

A similar point was considered in *Kunj Bihari v. Bindeshri Prasad* (1). There a compromise decree provided that a certain amount would be due to the plaintiffs on certain bonds and this would be payable by instalments on certain dates. In case of default of payment of any instalment on due date the plaintiffs were to have a right to sue for recovery of the whole. On the date when the first instalment became due the civil court was closed but the defendant tendered it on the day it re-opened. The plaintiffs thereafter brought a suit for recovery of the whole amount. There, too, reliance was placed on the provisions of order XXI, rule 1, and *Muhammad Jan v. Shiam Lal* (2), referred to above. It was observed:

“ But assuming that the defendants had the power to make the payment direct to the mortgagees or to deposit the amount in court, they cannot take advantage of the circumstance that the civil court was closed on the 15th of June, 1924. If the only course open to them had been to deposit it in court and the court was closed on the last date on which they could have made the deposit, then the ruling in the Full Bench case would have been applicable. That was a case of a deposit under a pre-emption decree, and in view of the provisions of order XX, rule 14, that deposit had to be made in court. The judgment-debtors in that case had no option but to deposit the amount in court, and accordingly it was held by the Full Bench that if the court by its own act prevented the judgment-debtors from making the deposit within the time, they should not be deprived of their

1937
ROSHAN
LAL
v.
GANPAT
LAL

(1) (1928) I.L.R. 51 All. 527.

(2) (1923) I.L.R. 46 All. 328.

1937
 ROSHAN
 LAL
 v.
 GANPAT
 LAL

right to do so, provided they came into court at the first opportunity available, namely, the re-opening day of the court. In the present case the defendants, on their own showing, had the option of making the payment to the mortgagees direct. From this they were in no way prevented on account of the court being closed. They were not compelled to wait till the court re-opened. They had an opportunity available to them of which they did not take advantage. We do not, therefore, think that they were entitled to say that the time fixed in the compromise decree for the payment of the first instalment should be extended. Accordingly there was a default on the 15th of June, 1924, which entitled the plaintiffs to claim the whole amount."

In *Adya Singh v. Nasib Singh* (1) a similar view was taken. There a decree-holder agreed to set aside the sale of the properties of the judgment-debtor if the latter paid up the decretal amount within two months of the date of the sale. The courts were closed on the last day allowed for payment and the decretal amount was deposited on the day that the courts re-opened. It was held: "That payment not having been made within the time agreed upon, the sale could not be set aside."

There is no force in the appeal. It is therefore ordered that it be dismissed with costs.

1937
 December, 21

Before Mr. Justice Bennet, Acting Chief Justice, and
 Mr. Justice Ganga Nath

LATAFAT ALI KHAN (JUDGMENT-DEBTOR) v. KALYAN MAL
 (DECREE-HOLDER)*

Limitation Act (IX of 1908), article 182(5)—"Step in aid of execution"—Application to withdraw money deposited by judgment-debtor.

An application by the decree-holder to withdraw a sum of money which had been deposited in court by the judgment-debtor in payment of an instalment due on the decree, is an application to take a "step in aid of execution" within the meaning of article 182 (5) of the Limitation Act.

For a "step in aid of execution" it is not necessary that there must be a pending application for execution; the last part of

*Second Appeal No. 993 of 1934, from a decree of M. B. Ahmad, District Judge of Shahjahanpur, dated the 28th of May, 1934, confirming a decree of Bishun Narain Tankha, Civil Judge of Shahjahanpur, dated the 15th of September, 1931.

(1) A.I.R. 1920 Pat. 122.