

1933

MUSAMMAT
AYUB
FATIMA
v.
JHAO LAL

Srivastava
and
Nanavutty,
JJ.

We can under the circumstances see no ground to justify us in interfering with the terms agreed to between the parties. See *Dayaram Gidumal v. Nabibux* (1).

Lastly it was argued that the learned Subordinate Judge having once permitted the judgment-debtor to deposit the money within three days he had no authority to go behind that order. The learned Subordinate Judge never passed any order either holding that the judgment-debtor was entitled to extension of time or granting an extension. The permission to deposit the money within three days was obviously subject to any objections which might be raised by the decree-holder and the final orders which the Subordinate Judge was to pass in the case. As held by a Bench of this Court in *Abdul Rahman v. Banke Behari Lal* (2) to which one of us is a party section 148 of the Code of Civil Procedure does not apply to the present case. We have already pointed out that Order XXXIV, rule 4 also has no application. The Court therefore had no authority to grant any extension of time. The case is perhaps one of some hardship for the judgment-debtor but as remarked by the learned Subordinate Judge, the Court cannot compel the decree-holder to accept the money deposited beyond time in the absence of any provision of law authorising it to do so.

The result therefore is that the appeal fails and is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL

*Before Sir Syed Wazir Hasan, Knight, Chief Judge and
Mr. Justice E. M. Nanavutty*

1933
November, 20

S. AMIR HAIDER (JUDGMENT-DEBTOR-APPELLANT) v. LALA
BABU LAL (DECREE-HOLDER-RESPONDENT)*

Execution of decree—Government Notification requiring execution of decree involving sale of agricultural land to be transferred to Collector from a certain date—Sale by Civil Court

*Execution of Decree Appeal No. 59 of 1932, against the order of Pandit Bishwa Nath Hukku, Additional Subordinate Judge of Hardoi, dated the 6th of August, 1932.

(1) (1929) Sindh, 98.

(2) (1933) 10 O.W.N., 1151.

after that date, if void—Jurisdiction—Objection as to jurisdiction—Waiver of objection, effect of.

Where a Government Notification directs that with effect from a certain date the execution of decrees in cases, in which the Civil Court has ordered any agricultural land to be sold, shall be transferred to the Collector, sale in execution of a decree by the Civil Court made after that date is void as the Court had no jurisdiction to sell the property which it purported to sell on that date and must be set aside. *Naqi Ahmad v. Sheo Shankar* (1), approved.

Where an objection is raised which clearly relates about the jurisdiction of the Civil Court, its waiver is of no consequence. *Hari Saran Das v. Pyare Lal* (2), followed.

Messrs. *M. Wasim* and *Akhatar Husain* for the appellant.

Messrs. *Hyder Husein* and *Prabhu Dayal Rastogi* for the respondent.

HASAN, C.J. and NANAVUTTY, J.:—This is the judgment-debtor's appeal, arising out of execution proceedings in a decree held by the respondent against the appellant, from the order of the Additional Subordinate Judge of Hardoi, dated the 6th of August, 1932.

It may be mentioned at the outset that the sale of immovable property of the judgment-debtor in execution of the aforementioned decree took place on the 3rd of May, 1932, in pursuance of the order of the Civil Court seized of the execution proceedings. The objection with which we are concerned in this appeal as to the validity of the sale was raised by the judgment-debtor by means of his application, dated the 6th of May, 1932. This objection was that the sale by the Civil Court was in contravention of the Government Notification to which reference shall hereafter be made in detail and therefore void. At the hearing of the petition of objection this ground was waived by the Counsel for the judgment-debtor.

Clearly if the objection goes to the matter of the jurisdiction of the Civil Court the waiver is of no conse-

1933

S. AMIR
HAIDER
v.
LALA BABU
LAL

(1) (1933) I.L.R., 8 Luck., 504.

(2) (1931) 8 O.W.N., 927.

quence. This view was stated to be the correct view in the case of *Hari Saran Das v. Pyare Lal* (1).

The Government Notification with the interpretation of which we are concerned is as follows:

“Number 576/1-A-93, dated 26th March, 1932.

In supersession of notification No. 1887/1-238, dated October 7, 1911, and in exercise of the powers conferred by section 68 of the Code of Civil Procedure, 1908, the Governor in Council is pleased to declare that with effect from April 1, 1932, the execution of decrees in cases in which the Civil Court has ordered any agricultural land situated in the United Provinces of Agra and Oudh or any interest in such land to be sold shall be transferred to the Collector.”

It is agreed that if the Notification quoted above applies to this case the sale of the 3rd of May, 1932, was void for the simple reason that the Court had no jurisdiction to sell the property which it purported to sell on that date. We are also of opinion that that is the correct proposition free from any doubt whatsoever. It is argued however on behalf of the decree-holder that the Government Notification applies only to cases where an order for sale has not been made by the Civil Court seised of the execution of a decree before the 1st of April, 1932, and in this case such an order was admittedly made. We are unable to accept this argument. It seems to us that cases of execution of all decrees of the nature described in the notification if pending on the aforementioned date in any Civil Court, shall thenceforward be transferred to the Collector. We must hold that if sale in execution of a decree has not been made previous to the 1st of April, 1932, the execution proceedings must be held to be pending. The matter was considered by one of us in the case of *Naqi Ahmad v. Sheo Shankar Lal* (2) and we see no reason to adopt a different view now from what was

(1) (1931) 8 O.W.N., 927.

(2) (1933) I.L.R., 8 Luck., 504.

1933

S. AMIR
HAIDER

v.
LALA BABU
LAL

Hasan, C.J.
and
Nanavatty,
J.

adopted then. On these grounds we are of opinion that the sale of the 3rd of May, 1932, was void and must be set aside as such.

We accordingly allow this appeal, set aside the order of the learned Subordinate Judge, dated the 6th of August, 1932, and direct that the proceedings relating to the execution of this decree shall be transferred to the Collector concerned. As the judgment-debtor waived the objection which has prevailed now and thereby prevented the Court below from considering the matter we will make no order as to costs in his favour.

Appeal allowed.

1933

S. AMIR
HAIDER
v.
LALA BABU
LAL

Hasan, C. J.
and
Nanavutty,
J.

MISCELLANEOUS CIVIL

*Before Mr. Justice Muhammad Raza and Mr. Justice
H. G. Smith*

PANDIT IQBAL NARAIN AND OTHERS (JUDGMENT-DEBTORS-APPELLANTS) v. PANDIT RAJ KUMAR BAKHSHI (DECREE-HOLDER-RESPONDENT)*

1933
November, 15

Civil Procedure Code (Act V of 1908), Order XXI, rules 89 and 90—Execution of decree—Sale in execution—Bid by decree-holder—Order of Court accepting the bid and declaring a person to be the purchaser—Sale completed, whether on the date the bid is made or when the declaration is made—Limitation for application under Order XXI, rule 89, starting point of—Court confirming sale on the day the bid is accepted and the sale is completed—Order of confirmation, validity of—Revision against the order of confirmation of sale.

It is only on the date when the bid is accepted by the Court and a declaration made about a person being a purchaser that the sale can be said to have been completed and the starting point of limitation for an application under rule 89 of Order XXI must be the date of such declaration and not the date when the bid is made. The Court ought not to confirm the sale on the very day the bid is accepted and the declaration is made but should postpone the confirmation of the sale to enable the judgment-debtor to take advantage of the provisions of rules 89 and 90, if they wished to do so, within 30 days from

*Miscellaneous Appeal No. 21 of 1932, against the order of S. M. Ahmad Karim, Subordinate Judge of Malihabad at Lucknow, dated the 15th of March, 1932.