

REVISIONAL CIVIL

Before Sir C. M. King, Kt., Chief Judge and
Mr. Justice H. G. Smith

1935
August 1

PANDIT NAND KUMAR (DECREE-HOLDER-APPLICANT) v.
MAQSOOD ALI (JUDGMENT-DEBTOR-OPPOSITE PARTY)*

*Civil Procedure Code (Act V of 1908), order XXI, rule 89—
Limitation Act (IX of 1908), Article 166—Execution of decree
—Sale in favour of decree-holder—Deposit by judgment-
debtor under order XXI, rule 89 after the period of limi-
tation—Decree-holder auction-purchaser consenting to accept
deposit and have sale set aside—Jurisdiction of Court to
extend time by consent of parties.*

If a decree-holder who is himself the auction-purchaser con-
sents to accept a deposit made by the judgment-debtor in full
satisfaction of his decree, and consents to have the sale set aside
on receipt of such deposit, then it is open to the Court to
set aside the sale although the deposit is made beyond the
period prescribed in the Limitation Act. *Rameshwar Misser
v. Sureshwar Misser (1)*, referred to.

Mr. N. Banerji, for the applicant.

Mr. Hyder Husain, for the opposite party.

KING, C.J. and SMITH, J.:—This is an application in
revision against an order, passed by the learned District
Judge in appeal, setting aside an order of the trial Court,
and setting aside sale under order XXI, rule 89 of the
Code of Civil Procedure.

In execution of a decree for money the decree-holder
attached a house and a shop belonging to the judgment-
debtor. On the 13th of March, 1934, the property was
sold by auction being purchased by the decree-holder
himself.

On the 13th of April, 1934, that is on the thirty-first
day after the sale, the judgment-debtor made an applica-
tion under order XXI, rule 89 for having the sale set
aside on deposit of the decretal amount together with

*Section 115 Application 91 of 1934, against the order of Chaudhri Akbar Husain, I.C.S., District Judge of Sitapur, dated the 2nd of June, 1934, reversing the order of Pandit Pradyumna Krishna Kaul, Subordinate Judge of Sitapur, dated the 30th of April, 1934.

(1) (1917) 39 I.C., 664.

the prescribed penalty. He did not, however, make any deposit on that day. On the 16th of April, 1934, he made the requisite deposit, but the decree-holder refused to accept it as it was beyond time.

The execution Court held that, as the application and the deposit were both made beyond the period prescribed by law, he had no jurisdiction to set aside the sale under order XXI, rule 89 of the Code of Civil Procedure.

The learned District Judge held that although the application and deposit were made beyond the period of thirty days prescribed by Article 166 of the Limitation Act, nevertheless it was open to the Court to extend the period of limitation by consent of parties. He held that as a matter of fact there had been such a consent arrived at on the 14th of April, 1934. He also found that the equities were in favour of the judgment-debtor, and he accordingly set aside the sale.

For the applicant it has been argued that the Court below was not justified in arriving at the conclusion that any compromise had been arrived at between the parties on the 14th of April about extending the time for making the necessary deposit. The materials upon which the Court has come to its conclusion are somewhat vague and indefinite, but the finding is a finding of fact, and we are not disposed to interfere with such a finding in revision. We take it that the Court below has found that the parties agreed on the 14th of April, 1934, that the deposit under order XXI, rule 89 would be accepted by the decree-holder if made on the 16th of April. As a matter of fact the deposit was made on that date, and the Court below was of opinion that the decree-holder resiled from his previous agreement when he refused to accept the deposit on the 16th of April.

The Court below has relied upon the case of *Chaudhry Rameshwar Misser v. Chaudhry Sureshwar Misser* (1), for the proposition that the Court has jurisdiction to

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extend the time for making the deposit under order XXI, rule 8g with the consent of the parties. For the applicant certain rulings have been cited as showing that the period of limitation prescribed by the Limitation Act cannot be varied by consent of parties. This is no doubt correct as an abstract proposition, but we think that in a case of this sort if a decree-holder consents to accept a deposit made by the judgment-debtor in full satisfaction of his decree, and consents to have the sale set aside on receipt of such deposit, then it is open to the Court to set aside the sale although the deposit was made beyond the period prescribed in the Limitation Act. It would seem futile to confirm the sale if the decree-holder does not wish it to be confirmed.

In our opinion this is not a case in which we should interfere in revision with the order of the Court below. The equities are all in favour of the judgment-debtor. He has made a deposit of the full decretal amount, together with the penalty, and the decree-holder has no substantial cause of complaint. If the sale is not set aside it means that the judgment-debtor's property will be sold for a grossly inadequate sum. Even if the view of the Court below is wrong in facts or in law, we think we should not interfere. The application is rejected with costs.

Application rejected.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava and
Mr. Justice H. G. Smith*

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SARDAR AMAR SINGH, (DEFENDANT-APPELLANT) v. SARDAR PRATAP SINGH AND ANOTHER (PLAINTIFF AND ANOTHER, DEFENDANT (RESPONDENTS))*

Negotiable Instruments Act (XXVI of 1881), section 80--Promissory note—Words "the same" in section 80, meaning of

*First Civil Appeal 102 of 1933, against the decree of Babu Avadh Behari Lal, Subordinate Judge of Rae Bareilly, dated the 4th of November, 1933.