

REVISIONAL CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice A. H. deB. Hamilton*

1937
November, 1

AMBIKA PRASAD (APPLICANT) *v.* AJODHIA PRASAD
(OPPOSITE-PARTY)*

United Provinces Temporary Regulation of Execution Act (XXIV of 1934), section 7—Period of 30 days, when begins to run—Civil Procedure Code (Act V of 1908), section 148—Power of court to extend period fixed under section 7, United Provinces Temporary Regulation of Execution Act.

The maximum period of thirty days which can be allowed by the court for payment of the 25 per cent. of the amount due under the decree under section 7 of the United Provinces Temporary Regulation of Execution Act means thirty days from the date of the order, and not thirty days from the date of the application.

Under section 148 of the Code of Civil Procedure and also in the exercise of its inherent powers the court has jurisdiction to enlarge the period fixed by it under section 7 of the United Provinces Temporary Regulation of Execution Act, but the enlargement could not extend beyond 30 days.

Mr. S. C. Das for Mr. S. N. Roy, for the applicant
Messrs. K. P. Misra and S. P. Avasthi, for the
opposite-party.

SRIVASTAVA, C. J. and HAMILTON, J.:—This is an application in revision against an order dated the 19th of November, 1935, of the learned Munsif of Purwa at Unao.

The facts which have given rise to this application are that on the 12th of October, 1935, one Musammat Moona made an application under section 6 of the United Provinces Temporary Regulation of Execution Act (XXIV of 1934). On the 14th of October, 1935, the Munsif ordered Musammat Moona to deposit 25 per cent. of the decretal amount within 25 days from that day, and the application was ordered to be put up

*Section 115 Application No. 132 of 1935, against the order of Pandit Amrit Deo Bhattacharya, Munsif of Purwa at Unao, dated the 19th of November, 1935.

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on the 12th of November. The court being closed on the 12th November on account of Shab-i-barat, the case was taken up on the 13th of November at 11 a.m. in the absence of Musammat Moona. The application under section 6 was dismissed, as the decretal amount had not been deposited, and consequently the sale was confirmed. About 10 minutes after the passing of the said order Musammat Moona came to court with the money, but nothing more appears to have been done that day. Thereafter Musammat Moona made an application on the 14th November and three more applications on the 18th of November, 1935. The main object of these applications was to have the confirmation of sale set aside and the time for depositing money under section 6 of Act XXIV of 1934 extended. The learned Munsif dismissed all the four applications by his order, dated the 19th of November, 1935. Musammat Moona being dead, the present application for revision has been made by her reversioner against the last mentioned order of the Munsif.

Section 7 of Act XXIV of 1934 is as follows:

"Any person making an application under section 6 shall pay into court to the credit of the decree-holder either on the date of the application or on some other date within a period to be fixed by the court and not exceeding thirty days a sum equivalent to 25 per cent. of the amount due under the decree if the decree is for payment of money, or, under the preliminary decree, if the decree is a final decree for sale."

We are clearly of opinion that the maximum period of thirty days which can be allowed by the court for payment of the 25 per cent. of the amount due under the decree means thirty days from the date of the order and not thirty days from the date of the application. It is conceivable that the application itself may not be put up before the court and no order under section 7 might be passed until after the expiry of thirty days from the date of the application. Even ordinarily it

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can seldom be possible for an order under section 7 to be passed on the very day on which the application is fixed. Therefore if the period of thirty days is calculated from the date of the application it would ordinarily be impossible to allow the maximum period in any case in which the order is not passed on the date of the making of the application. The context in which the words "not exceeding thirty days" have been used also supports the same interpretation. Thus we have no doubt that the learned Munsif had in this case jurisdiction to allow the judgment-debtor Musammat Moona to pay the one-fourth amount of the decree within a period not exceeding thirty days from the 14th of October, 1935, on which date the order was passed. This period of thirty days was to elapse on the 13th of November, 1935, but as a matter of fact he allowed her a period of only 25 days which expired on the 8th of November.

We are further of opinion that under section 148 of the Code of Civil Procedure and also in the exercise of its inherent powers the court had jurisdiction to enlarge the period of 25 days fixed by it by its order of the 14th October, but the enlargement could not extend beyond the 13th November.

The learned Munsif has remarked that he took up the case on the 13th November at 11 a.m. as the decree-holder said that he was suffering from fever. He has also observed that it appeared to him afterwards that the decree-holder deceived him by telling a lie. There is nothing in his order to show the grounds on which he formed this opinion. In another part of his order he has also remarked that the application of the judgment-debtor would have been dismissed on the 13th of November, 1935, even if she had been present on that day because the money had not been deposited by her as ordered. This remark may be based either on the ground that he had no jurisdiction to extend the time from the 8th November to the 13th November or on

the ground that even though he had jurisdiction he would not have been prepared to exercise his discretion in favour of enlarging the time. It is well possible, as contended by the applicant, that the learned Munsif laboured under the impression that no extension could be granted. The learned counsel for the decree-holder opposite-party has also contended that no question of extension did arise, as no application for enlargement of time was made by Musammat Moona on the 13th of November, 1935, when she appeared in court with the money. Taking all the circumstances of the case into consideration we think that in the interests of justice it would be proper for the matter to be decided afresh by the learned Munsif.

We accordingly set aside the order of the lower court and send the case back to that court for being decided afresh in the light of the remarks made by us above. Costs here and hitherto will abide the result.

Application allowed.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge

GAURI SHANKAR (DEFENDANT-APPELLANT) v. LALA AND ANOTHER, PLAINTIFFS AND ANOTHER, DEFENDANTS
(RESPONDENTS)*

1937
September,
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Mortgage—Redemption—Suit on specific mortgage—Plaintiff's failure to prove that mortgage—Different mortgage proved—Plaintiff cannot get decree on the new mortgage established.

Where the plaintiff brings a suit on the basis of a specific mortgage it is his duty to establish the existence of that mortgage and he cannot on his failure to prove the specific mortgage set up by him be allowed to make out a new case by claiming a decree on the basis of the defendant being admitted or proved to be a mortgagee—whether under some unknown mortgage or

*Second Civil Appeal No. 166 of 1935, against the decree of K. N. Wanchoo, Esq., I.C.S., District Judge of Rae Bareilly, dated the 25th of March, 1935, upholding the decree of Saiyid Abbas Raza, Munsif of Rae Bareilly, dated the 3rd of August, 1934.

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