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 RAM URAON
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 DOMAN
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 JWALA
 PRASAD, J.

Hence the mortgage, whether for consideration or not, terminated in 1920 and the land reverted to the original tenant, and he does not dispute the right of the plaintiff based upon the surrender and settlement by the manager of the Encumbered Estate. Therefore the plaintiff is entitled to recover possession of the property.

Under those circumstances the appeal must succeed. The decision of the Lower Appellate Court is set aside, the judgment of the Munsif is restored and the plaintiff's suit is decreed with costs throughout.

Ross, J.—I agree.

Appeal decreed.

REVISIONAL CIVIL.

Before Mullick and Bucknill, J.J.

MUSSAMMAT NAND RANI KUER

v.

DURGA DASS NARAIN.*

1923.

July, 3.

Compromise Decree—Extension of time, power of court to grant—Revision—Civil Procedure Code, 1908 (Act V of 1908), section 115.

Where a compromise decree provides that on the defendant's failure to pay the decretal amount by a certain date the plaintiff shall be entitled to a larger sum, the court has power to extend the time fixed for payment without the consent of the plaintiff, *Walter*(²), referred to.

Kandarpa Nag v. Banwari Lal Nag(¹), followed.

Australian Automatic Weighing Machine Company v. Walter(²), referred to.

An order extending the time in such a case is not subject to revision under section 115, Civil Procedure Code.

* Civil Revision No. 248 of 1923, from an order of Rai Bahadur Surandra Nath Mukharji, Subordinate Judge, Patna, dated the 4th June, 1923.

(¹) (1921) 55 Cal. L. J. 244.

(²) (1921) W. N. 170.

Application by the plaintiff.

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A compromise decree was passed against the opposite party ordering that upon payment of a sum of Rs. 1,000 in cash to the plaintiff immediately and the sum of Rs. 12,600 on or before the 31st March, 1923, the claim of the plaintiff would be discharged in full, but that on failure to pay the above instalments the plaintiff would be entitled to realize her full claim for Rs. 20,989-9-0 with costs and future interest. Accordingly the sum of Rs. 1,000 was duly paid on the date of the compromise. But on the 31st May, 1923, the defendants brought into Court a sum of Rs. 6,000 only which the plaintiff received under protest, and as regards the balance of Rs. 6,600 the defendants asked for an extension of time for one month. On the 4th June, 1923, time was allowed by the Subordinate Judge and it was ordered that payment would be accepted on or before the 30th June, 1923, on condition that the defendants paid a sum of Rs. 164 on account of intermediate interest to the plaintiff.

Against this order the plaintiff moved the High Court on the 13th June, 1923, for the exercise of the Court's revisional powers under section 115, Civil Procedure Code.

Banwari Lal, for the applicant.

Kailas Pati, for the opposite party.

MULLICK, J. (after stating the facts, as set out above, proceeded as follows):—

The only question is whether the Court had power to extend the time allowed by an agreement which has resulted in a decree of Court.

It is contended by the petitioner that no extension of time can be given without the consent of the parties and reliance is placed upon *Australian Automatic Weighing Machine Company v. Walter* ⁽¹⁾; but the matter has been exhaustively considered in *Kandarpa Nag v. Banwari Lal Nag* ⁽²⁾ and it seems now settled

(1) (1891) W. N. 170.

(2) (1921) 33 Cal. L. J. 244.

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that no general rule can be laid down and that although a contract may have ripened into a decree the Court will not be precluded from giving relief which it would have been competent to give if it had been called upon to adjudicate upon the contract in the first instance and without its having been embodied in a decree. There are cases which have held that when a compromise takes place between an auction-purchaser, a judgment-debtor and a decree-holder stipulating that the sale would be set aside on the payment of the judgment debt on a certain date time was of the essence of the contract. On the other hand it seems to be now settled that where the agreement is for the payment of money on a prescribed date and that upon default of payment on that date money or land is to be forfeited, time is not of the essence of the contract. Indeed the rule is clear that in every case the Court must determine upon the facts of that case whether relief against forfeiture is to be given or not. I have no doubt that in the present case the Subordinate Judge had jurisdiction to determine whether time was of the essence of the contract. He has decided that it was not and, therefore, it does not seem to me that section 115 can be invoked for the purpose of setting aside the learned Subordinate Judge's order. The learned Subordinate Judge in one part of his judgment expresses the view that section 148 is applicable to the case, but I would prefer to base his jurisdiction on the general rules of equity.

The only question that remains is whether we should further extend the time. Having regard to the fact that the application to this Court was made without much delay and that the defendants were uncertain whether the learned Judge's order would be affirmed by the High Court I think this is a fit case for granting further extension; and we give seven days' further time from this date for complying with the order of the Subordinate Judge.

We direct that if the defendants deposit in the Court of the Subordinate Judge the sum of Rs. 6,600

on account of the decretal sum together with the sum of Rs. 200 on account of intermediate interest, that is to say a total sum of Rs. 6,800 on or before the 10th July, full satisfaction will be entered in respect of the claim as provided by the compromise decree and that on default the terms of the said decree will be duly enforced according to law.

There will be no order as to costs.

BUCKNILL, J.—I agree.

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MULLICK, J.

APPELLATE CIVIL.

Before Mullick and Foster, J.J.

K. B. DUTT

v.

TARAPRASANNA ROY CHAUDHURY.*

1923.

July, 6.

Code of Civil Procedure, 1908 (Act V of 1908), section 39, Order XXI, rule 6—transfer of decree—application for execution must be made in court to which decree transferred.

Under Order XXI, rule 6, read with section 39, Civil Procedure Code, where there has been no application for the execution of the decree in the court which passed the decree, the decree-holder is bound to make an application for execution in the court to which the decree has been transfereed, but when an application for execution of the decree has already been made in the court which passed the decree it is not necessary for the decree-holder to make a second application in the court to which the decree has been transferred.

Therefore, where, on the request of the decree-holder, the court which passed the decree sent it for execution to another court, together with a certificate of non-satisfaction, but omitted to order the execution of the decree or to give a certificate that no order had been made for the same, *held*, that it was not necessary for the decree-holder to make an application for execution of the decree in the court to which

* Appeal from Original Order No. 237 of 1923, from an order of Babu Ashutosh Mukharji, Subordinate Judge of Dhanbad, dated the 31st July, 1922.