

**APPELLATE CIVIL.**

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*Before Mr. Justice Scott-Smith and Mr. Justice Fforde.*

**BAHADUR SHAH AND OTHERS (DEFENDANTS)**

Appellants

*versus*

**AHMAD SHAH (PLAINTIFF) AND } Respondents.**  
**KARAM HUSSAIN (DEFENDANT) }**

Civil Appeal No. 742 of 1921.

*Punjab Pre-emption Act, I of 1913, section 22, sub-section (4)—Plaintiff failing to deposit 1/5th of purchase money as ordered—and subsequently filing a security bond which Court ordered to be put on the record—Whether such order can be presumed to be equivalent to an extension of time—Second Appeal—Illegality—Civil Procedure Code, Act V of 1908, section 99.*

Where the trial Court ordered the deposit of 1/5th of the purchase money by the 2nd December 1919, and the plaintiff did not put in a security bond till the 23rd February 1920, after various adjournments of the case, and the Court ordered the bond to be placed on the record and disallowed a subsequent application of the defendant that the plaint should be rejected on this account saying that such an order could not be made at such a late stage and decreed the claim, which decree was upheld by the Lower Appellate Court—

*Held*, that the mere fact that the trial Court received and placed on the record the security bond on the 23rd February 1920 did not warrant the presumption that the Court altered its previous order or extended the time within the meaning of sub-section (4) of section 22 of the Punjab Pre-emption Act.

*Muhammad Hayat v. Raghbar Dial* (1), followed.

*Held, also*, that the provisions of the said sub-section that the plaint shall be rejected is a mandatory one, and the trial Court's omission to pass an order in accordance therewith was an illegality such as could not be covered by section 99

of the Code of Civil Procedure and the plaint must accordingly be rejected by the High Court in second appeal.

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*Second appeal from the decree of J. Addison, Esquire, District Judge, Rawalpindi, dated the 1st December 1920, affirming that of Khan Zaka-ud-Din, Subordinate Judge, 2nd Class, Rawalpindi, dated the 3rd August 1920, decreeing the claim.*

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DEV RAJ SAWHNEY, for Appellants.

M. S. BHAGAT, for Respondents.

The judgment of the Court was delivered by—

SCOTT-SMITH J.—This is an appeal by defendants vendees from the order of the Lower Appellate Court decreeing plaintiff's claim for pre-emption of the land in suit.

The only point argued before us at the hearing was whether the plaintiff having failed within the time fixed by the trial Court to deposit 1/5th of the probable value of the land as required under section 22 of the Punjab Pre-emption Act, the Court should not forthwith have rejected the plaint. The facts in connection with this point are as follows:—

The suit was instituted on the 3rd of November 1919 and on the 11th of November the Court ordered that 1/5th of the purchase money should be paid into Court by the 2nd of December. On the 2nd of December the case was adjourned because it was found that the process fee for summoning the defendants had not been paid. The 1/5th of the purchase money had not by that date been paid into Court and no order was passed extending the time. Subsequently the case came up on five different dates and was adjourned for one cause or another without any notice being taken of the fact that the sum ordered had not as yet been

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deposited and without any order for extension of the time being passed. On the 23rd of February 1920 one witness for the plaintiff was examined and a security deed was filed and attested before the Court. The order endorsed on it is "to be placed on the record." Subsequently the vendees applied that the plaint should be rejected as the order for depositing 1/5th of the money had not been complied with. The Court, however, rejected this application, holding that such an order could not be passed at such a late stage.

The point was argued before the learned District Judge who was of opinion that he must presume that everything was done rightly in the trial Court and that therefore the Court in accepting security on the 23rd of February 1920 had changed its previous order of the 11th of November 1919 and had extended the time.

A different view was taken by a Division Bench of the Chief Court in the case of *Muhammad Hayat v. Raghbar Dial* (1) wherein it was held that the mere fact that a Court receives, attests and places on the record a security bond filed after the date fixed by the Court for putting it in, does not by implication extend the time within which the security was to be furnished, and in such a case the plaint should be rejected under section 22 (4) of the Punjab Pre-emption Act. This decision appears to us to be on all fours with the facts of the present case. We hold that the mere fact that the trial Court received the security bond and placed it on the record on the 23rd of February, 1920 does not warrant the presumption that the Court altered its previous order or extended the time within

the meaning of sub-section (4) of section 22 of the Act.

It is, however, contended by Mr. Bhagat that the case is covered by section 99, Civil Procedure Code, which lays down that no decree shall be reversed or substantially varied on account of any error, defect or irregularity in any proceedings in the suit not affecting the merits of the case or the jurisdiction of the Court. He urges that the lower Court's omission to reject the plaint in accordance with sub-section (4) of section 22 was merely an error covered by section 99, Civil Procedure Code. He even goes so far as to say that there is nothing to prevent a Court from ignoring this provision of the law and, instead of rejecting a plaint, allowing the suit to continue and ultimately granting the plaintiff a decree for pre-emption. In our opinion the provision in sub-section (4) that the plaint shall be rejected is a mandatory one and the trial Court's omission to pass an order in accordance therewith was an illegality such as cannot be covered by section 99, Civil Procedure Code.

Another point urged by Mr. Bhagat was that it could not be said that the decision of the District Judge is contrary to law within the meaning of section 100 (1) (a), Civil Procedure Code. This very point had to be decided by the District Judge, and in our opinion he decided it wrongly and therefore his decision was contrary to law.

It was finally urged that there may have been sufficient reason for extending the time under section 22, sub-section (4), Pre-emption Act, and that the trial Court would perhaps have extended the time had an application with this object been made to it. We note, however, that it was not until the fifth hearing

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after the date fixed for paying in 1/5th of the purchase money that the plaintiff filed a security bond. During all that time he never made any application for extension of the time. In our opinion there could have been no sufficient reason for extending the time so frequently.

To sum up. We hold that there are no grounds for supposing that the trial Court extended the time or that there was any sufficient ground for extending it up to the 23rd of February 1920. The plaint accordingly should have been rejected and the suit should not have been decreed. We therefore accept the appeal and setting aside the order of the Lower Appellate Court reject the plaint and we direct that the plaintiff should pay the defendant-appellants' costs throughout.

A. N. C.

*Appeal accepted.*

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