

1886.

VISHNU
SAKHARÁM
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KRISHNARÁO
MALHÁR.

remedies, "*renunciavit juri pro se introducto.*" The public interest is not concerned when the matter has once been placed before a Court having full jurisdiction over the person and the cause, and an omission to urge objections there is to be treated when the proceedings have been completed as conclusive.

We annul the decree of the Subordinate Judge with costs.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánabhái Hariddás.

1886.
August 5.

DAULAT AND JAGJIVAN, SONS OF LAKHMIDA'S, v. BHUKANDA'S
MANEKCHAND.*

Practice—Decree—Execution of mortgage—Decree for redemption directing payment of mortgage-debt within a specified time—Computation of time allowed for payment when the decree is affirmed in appeal.

Where, in a suit by a mortgagee on a mortgage, the decree of the Court of first instance directed payment of the mortgage-debt within two months from the date of the decree from which the defendants appealed, but which was confirmed by the Appellate Court,

Held, under the circumstances of the case, that it was the intention of the Appellate Court that the term of two months allowed for payment should be counted from the date of its own decision, and not from the date of the original decree.

THIS was a second appeal from the decision of Shripat Babáji Thákur, Acting Assistant Judge of Surat, in Appeal No. 29 of 1883.

The facts of this case were as follows:—The plaintiff, Bhukan Manekchand, brought a suit against one Daulat Lakhmidás and his brother Jagjivan to recover the principal and interest due under a mortgage-bond. The Assistant Judge of Surat passed a decree in appeal, directing that the defendants should pay Rs. 200 to the plaintiff in satisfaction of the mortgage-debt within two months from the date of the decree (*i. e.* the Assistant Judge's decree). The defendants preferred a second appeal to the High Court, which confirmed the decree of the Assistant Judge.

Thereupon the defendants made an application to be allowed to pay Rs. 200 within two months of the date of the High Court's decree.

* Second Appeal, No. 747 of 1884.

The plaintiff objected to this application, on the ground that it was too late. His contention was allowed by the Court of first instance, which dismissed the application.

On appeal, the Assistant Judge confirmed the order of dismissal.

The defendants now preferred a second appeal to the High Court.

Shántārām Nārāyan for the appellants.

Mānekshāh Jahāngirshāh for the respondent.

WEST, J. :—The recent case of *Noor Ali Choudhuri v. Kōñi Meak*⁽¹⁾ is, in principle, a direct authority for saying that where a decree of a lower Court is confirmed in appeal, and that decree directs something to be done within a specified time, the time is to be counted from the date of the appellate decree. It is a common practice, in mortgage cases, to give the same time from the decree in appeal for redemption that had previously been given by the original decree from its date; but that a confirmation and incorporation of a decree should be attended with a change of time, though nothing is said to that effect, is a conclusion that presents not a little difficulty. Still, in the absence of any other quoted authority directly in point and seeing that it is very unlikely that this Court (Westropp, C. J., and Melvill, J.,) should not have dealt with the actual lapse of more than two months from the original decision, had it intended that to be still the term for payment, we must hold that the decision intended the two months to be counted from its own date. It drew up the decree of the lower Court, and gave it existence as if made on the day upon which it was thus adopted.

We consequently reverse the decree of the Assistant Judge, and direct that the decree be executed, subject by assent to a term of four months instead of the term formerly assigned computed as from the date of this Court's judgment. Each party to bear his own costs.

Decree reversed.

(1) I. L. R., 13 Calc., 13.