

*Before Mr. Justice Sale.*

1894.  
Feb. 26.

KANYE LALL DASS *v.* SHAMA CHURN DAWN.\*

*Practice—Purchase-money, payment of, into Court—Conditions of sale—  
Interest—Registrar's sale—Costs.*

Where the purchaser of a property at a Registrar's sale is out of time in paying into Court the balance of his purchase-money, the practice of the Original Side of the High Court is that payment of interest shall follow as a matter of course. But if there has been delay on the part of the party having the carriage of the proceedings, and if that party appears on the summons taken out by the purchaser for the purpose of paying into Court the balance of such purchase-money, he shall not be allowed his costs against the purchaser.

THIS was an application made in Chambers, on notice to all parties, by a purchaser of a property sold by the Registrar under a decree of the High Court, for leave to pay the balance of his purchase-money into Court, the period for payment of such balance having at the time of the application expired. The conditions of sale provided that a deposit of 25 per cent. should be deposited by the purchaser at the time of sale and the balance paid within one month; in default, interest at 12 per cent. being made payable from the end of one month from the day of sale until payment. The conditions further provided that the Registrar's certificate as to the result of the sale should be filed within eight days after the sale, the purchaser being at liberty to file it should the party having the carriage of the proceedings fail to do so, and to retain his costs of so doing out of the purchase money. Mr. *Swinhoe*, the attorney for the plaintiff, claimed interest on the ground that the time fixed for payment under the conditions of sale had expired. To this Mr. *N. C. Bose*, who appeared for the purchaser's attorney, objected, on the ground that the certificate of sale had not been filed within the time required by the conditions of sale, and that this default had caused the delay in paying in the money. Mr. *Swinhoe* pointed out that the purchaser had the remedy in his own hands, as he was entitled to file the certificate himself if default were made by the party having the carriage of the proceedings, and could do so at the cost of such party.

\* Original Civil Suit 606 of 1891.

SALE, J.—This is an application by the purchaser at a Registrar's sale for liberty to pay into Court the balance of the purchase-money. The only question is what order should be made regarding the payment of interest on the purchase-money, the period for payment of the balance of the purchase-money having expired before the application for leave to pay it in was made.

It appears that, by the conditions of sale, the purchaser was required to pay a deposit of 25 per cent. on the purchase-money at the time of the sale, and to pay the balance within one month from the day of sale, and, in default of payment within one month from the day of sale, to pay such balance with interest at 12 per cent. from the end of one month from the day of sale until payment.

It is also required by the conditions that the Registrar's certificate as to the result of the sale should be filed within eight days after the sale, the purchaser being at liberty to file it if the party having the carriage of the proceedings should fail to do so, and to retain the costs of so doing out of the purchase-money. This is also provided for by Rule 415 of the Rules of Court. See Belchambers' Rules and Orders, p. 196.

After a certificate as to the result of a sale has become binding, the purchaser may apply by summons for leave to pay the balance of the purchase-money into Court. A certificate of sale, if not objected to, becomes binding at the end of 14 days from the date of its being filed. This leaves the purchaser a period of about a week to apply for leave to pay the balance of the purchase-money into Court. It is obvious, therefore, that if there be any delay in filing the certificate as to the result of the sale, the purchaser may be placed at a disadvantage. But the position of the purchaser is, I think, sufficiently protected by the rule above referred to, which is also a condition of sale, permitting him to file the certificate if the party having the carriage of the proceedings fails to do so in proper time, and retain the costs out of the purchase-money. It seems impossible to adopt any course which is practicable in these cases, except to proceed strictly in accordance with the conditions of sale and the practice laid down by the Rules of Court; and I desire therefore to indicate that for the future the practice will be in all cases, where the purchaser is out of time, to make the payment of interest follow as a matter of course, subject only to this, that if

1894

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 LALL DASS  
 v.  
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there has been delay on the part of the party having the carriage of the proceedings, and, if that party appears on the summons taken out by the purchaser, to disallow him any costs as against the purchaser.

In this matter the purchaser will be at liberty to pay in the balance of the purchase-money, but he will be required to pay interest from the end of one month from the date of sale until payment of the balance of the purchase-money. The only remission I can make in his favour is to exclude the period during which the matter has been *sub judice*, that is the period between the day on which this application was made and to-day. The purchaser will bear his own costs of this application. The plaintiff's costs will be costs in the cause.

*Application allowed.*

Attorney for the plaintiff: Mr. *Swinhoe*.

Attorney for the purchaser: Babu *J. C. Dutt*.

T. A. P.

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## FULL BENCH.

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*Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Prinsep, Mr. Justice Norris, Mr. Justice O'Keenaly, and Mr. Justice Ghose.*

1894  
 April 2.

MUCHIRAM BARIK (PLAINTIFF) v. ISHAN CHUNDER CHUCKERBUTTI AND OTHERS (DEFENDANTS).\*

*Transfer of Property Act (IV of 1882), s. 135 (cl. d.).—Actionable claim—Mortgage bond.*

*Per PETHERAM, C.J., NORRIS, O'KINHALY and GHOSE, JJ. (PRINSEP, J., dissenting).*—The right to recover a loan secured by a mortgage of immoveable property is an "actionable claim" within the provisions of section 135 of the Transfer of Property Act.

*Per PETHERAM, C.J., NORRIS and GHOSE, JJ.*—Where an actionable claim has been assigned, the debtor may be discharged from all liability by payment to the buyer of the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it; provided that such payment is made at any time before a judgment of a competent

\* Full Bench reference in special appeal 99 of 1891, against the decree of the District Judge of Midnapore, dated 30th August 1890, modifying the decree of the 1st Subordinate Judge of that district, dated 28th January 1890.