

Rahim Bux Vs. Nundo Lal Gossami and anr. and Sital Chunder Mukerji and ors.

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Court : Kolkata

Decided On : Feb-02-1887

Reported in : (1887)ILR14Cal321

Judge : Prinsep and ;Beverley, JJ.

Appellant : Rahim Bux

Respondent : Nundo Lal Gossami and anr. and Sital Chunder Mukerji and ors.

Judgement :

1. This is a matter under Section 174 of the Bengal Tenancy Act, in which the Subordinate Judge has set aside the sale on receiving from the debtor what, in his opinion, represented the money due to the decree-holder, and the percentage allowed to the auction-purchaser. Three objections are raised before us : first, that the case does not come within the Bengal Tenancy Act ; secondly, that the deposit was not made in time ; and, thirdly, that from the nature of the deposit made, it was not a proper deposit such as would entitle the judgment-debtor to relief. It is unnecessary in the view that we take of the merits of the case to consider the first point. The facts found by the Subordinate Judge seem sufficiently to show that the deposit, if it were a proper deposit, was made in proper time. We are, however, of opinion that the third objection is fatal. The judgment-debtor deposited a sum of money in cash and also a Government Promissory Note for Rs. 1,000, which, if

negotiated, would probably be more than sufficient to cover the balance due. The auction-purchaser and the decree-holder both objected to this kind of deposit, and represented that there was no power to negotiate this Government Promissory Note. Two days later, the debtor came to terms with the decree-holder, and on certain conditions connected with the probable difficulty to negotiate this Promissory Note, the decree-holder agreed to accept this Government Promissory Note, and the balance in cash paid in in satisfaction of the amount due to him. The auction-purchaser, however, still objected, although the payment to him was apparently to be made in cash. We think that to claim the benefit of Section 174 the judgment-debtor is bound strictly to comply with its provisions, and that the deposit made should be of such a nature as to be at once payable to the parties. In the present case it is quite possible that no objections may have arisen, but if a deposit otherwise than in the currency of the country were receivable, the finality which the law contemplates in such a transaction would be completely lost, and the time of the Court would be unnecessarily occupied in determining various points which the Legislature never contemplated in such a matter. Under such circumstances we think that the order of the Subordinate Judge must be set aside and the sale confirmed. The petitioner will be entitled to his costs, which we assess at Rs. 50.