

Mackertich Vs. Rebeiro

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Court : Kolkata

Decided On : Jun-03-1885

Reported in : (1885)ILR11Cal628

Judge : Pigot, J.

Appellant : Mackertich

Respondent : Rebeiro

Judgement :

Pigot, J.

1. I regret very much that Mr. Rebeiro, through his own negligence and obstinacy, though through no actual misconduct, (further than the delay he has shown in doing what he was bound to do), should be brought into Court, and that it should be necessary for me to award costs against him. The position of a trustee is undoubtedly a thankless one; and this Court therefore is, and has always been, most anxious to see that he sustains no loss in carrying out a trust, and is always prepared to show to him every consideration in discharge of the duties he is good enough to perform.

2. In this case I regret to say that I cannot, gladly as I would avail myself of the opportunity, find any excuse permitting me to relieve Mr. Rebeiro from paying the costs of this suit. There appears to be no excuse whatever for the delay in the

execution of the deed which he was bound to execute. It appears that he was fully informed, after a conversation with the cestuis que trust, of the assignment many weeks before, when, on being pressed to execute the conveyance two months before the filing of the plaint, he had instructed his attorney to consider the papers and advise him in the matter. He then resumes the obstinate silence which he had preserved during the greater part of the period between the 21st August and the 11th December. It would be a very serious inconvenience to cestuis que trust, desirous of disposing of their property, if the purchaser had before him the prospect of such a long, troublesome process of extracting from the trustee a deed as has occurred in this case. For these reasons, I am bound to hold that the trustee must pay the costs of the suit. That question is the only one discussed in the suit, for it is not seriously contended that the defendant is not bound to execute the conveyance. The question of costs is divided by Mr. Bonnerjee into two heads--one that the trustee should get his costs; the other, that he should not have to pay them. I think he must pay them. He is entitled to his costs of and attending the conveyance, but as his conduct has been unreasonable, and led to the suit, he must suffer for it by paying the costs of this suit.