

have applied for it. When the order for a foreclosure is made, it operates of itself to transfer the ownership when the time has expired, and the ownership having passed to the mortgagee cannot be taken back from him by a subsequent order not founded on any new transaction or change in the jural relations of the parties. Until the order operates to transfer the ownership, it is subject to revision on good cause shown. After it has operated, the effect can be get rid of only on some special ground, such as fraud or inevitable accident, which should be the subject of a special proceeding. The Court would thereon consider the possibility of acceding to the application without injustice, especially to new rights which might have intermediately arisen. A mere application to the Court for an order to pay by instalments cannot give the Court authority to take away the property vested by its previous order. The new owner may have sold the property, and boundless confusion might arise from the allowance of such applications as the one made in the present case. We think it cannot be entertained.

1883

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 LADU  
 CHIMAJI  
 v.  
 BABAJI  
 KHANDUJI.

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 APPELLATE CIVIL.
 

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*Before Mr. Justice West and Mr. Justice Nanabhai Haridas*  
 ERAKSHAH DHANJISETH, PETITIONER, v. ADARJI DORABJI  
 AND ANOTHER, OPPONENTS.\*

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 1883  
 September 6.
 

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*Court fees—Petition to wind up partnership—Indian Contract Act (IX of 1872),  
 Sec. 265—Plaint—Court Fees Act VII of 1870, Sch. I, Art. 1.*

An application for the winding up, by the Court, of the business of a firm after the termination of partnership, under section 265 of the Indian Contract Act (IX of 1872), whatever it be called, is essentially a plaint, and must be paid for in fees at the same rate as any other plaint for an account extending to a like amount of valuation.

THIS was a reference by E. Cordeaux, Judge of Poona, under section 617 of the Code of Civil Procedure, for the orders of the High Court. In submitting the case he said :—

“In the present case the relief contemplated by section 265 of the Contract Act was sought by a petition on an eight-anna stamp paper, and the question is whether this petition should be

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\* Civil Reference, No. 29 of 1883.

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treated as a plaint in a suit for the purpose of stamp duty. I am of opinion that as a petition, and not a plaint, has been presented, the proper stamp duty has been paid. It appears to me that the last clause of section 213 of the Code of Civil Procedure is not sufficient authority for holding that applications under section 265 of the Contract Act are to be deemed to be plaints within the meaning of article 1 of Schedule I of the Court Fees Act, 1870. I am respectfully of opinion that the ruling in *Bhogilal v. Popatbhai*<sup>(1)</sup> relates only to cases under the above section in which plaints, and not applications, are presented. At the same time I can see no reason why any distinction should be drawn between parties who seek the relief contemplated by section 265 of the Contract Act, and, whether they do so by application or by plaint, why they should not pay the *ad-valorem* court-fee stamp required for a suit for accounts; and if, as the law stands, such a distinction does exist, it is surely one which should be abolished by the Legislature".

Neither party was represented in the High Court.

The judgment was delivered by

WEST, J.—We are of opinion that, whether the relief sought under section 265 of Act IX of 1872 be sought by an application called a plaint, or by one called a petition, the nature of the remedy is not affected. Nor is the nature of the inquiry requisite for an adjudication affected by the title of the demand made for it. This demand is essentially a plaint, and must be paid for in fees at the same rate as any other plaint for an account extending to a like amount of valuation.

*Answer accordingly.*

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(1) I. L. R., 7 Bom., 125.