Mutawalli, while the dispute remained undecided. This point has no force whatever.

The question which seemed to have largely engaged attention in the High Court, namely, whether the delegation was only of powers or also of duties of the Board, was not argued before us, though it formed the subject of considerable discussion in the statements of the case. It is without substance. Where powers and duties are interconnected and it is not possible to separate one from the other in such wise that powers may be delegated while duties are retained and *vice versa*, the delegation of powers takes with it the duties. The proposition hardly needs authority; but if one were necessary, reference may be made to *Mungoni* v. *Attorney-General of Northern Rhodesia* (1).

In our opinion, the appeal has no force whatever. The appellant chose the extraordinary course of dragging the respondents twice to the High Court and again to this Court merely to challenge an order of temporary duration, while the main controversy remained outstanding for years and could have been decided by now.

The appeal fails, and is dismissed. The appellant shall pay the costs of the respondents, who have entered appearance.

Appeal dismissed.

MAHANTH RAM DAS

v.

GANGA DAS.

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Court fee—Appeal to stand dismissed if court fee not paid within time granted—Extension of time, if can be granted—Code of Civil Procedure, 1908 (V of 1908), ss. 148, 149, 151, O. 47, r. 1.

The High Court passed a peremptory order that "the appeal will stand dismissed" if a certain amount of court fee was not paid within the time granted by the court. The appellant being unable to find money made an application for extension of time before the expiry of the time granted, and offering to make a partial payment asked for further time. The application was

(1) [1960] A.C. 336.

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heard after the expiry of the time and was dismissed on the ground that the appeal had already "stood dismissed" owing to non-payment within the time allowed. The appellant's applications under s. 151 and O. 47, r. 1 of the Code of Civil Procedure were also dismissed on the same ground although the court expressed sympathy for the appellant. On appeal with a certificate of High Court:

Held, that such procedural orders though peremptory (conditional decrees apart) are, in essence, *in terrorem*, so that dilatory litigants might put themselves in order and avoid delay but they do not completely estop a court from taking note of events and circumstances which happen within the time fixed and time should have been extended in the circumstances of the case and the court was not powerless to deal with events happening after the peremptory order.

Lachmi Narain Marwari v. *Balmakund Marwari* (1925) I.L.R. 4 Pat. 61 (P.C.), referred to.

Section 148 of the Code of Civil Procedure, in terms, allows extension of time, even if the original period fixed expired and s. 149 is equally liberal; the High Court had ample power to apply those sections and to exercise its inherent powers under s. 151 in order to do justice to a litigant for whom it had expressed considerable sympathy.

Latham v. *Johnson* [1913] 1 K.B. 398, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 432 of 1957.

Appeal from the judgment and order dated September 27, 1955, of the Patna High Court in Civil Revision No. 24 of 1954.

R. C. Prasad, for the appellant.

The respondent did not appear.

1961. February 7. The Judgment of the Court was delivered by

Hidayatullah J.

HIDAYATULLAH, J.—The appellant who was plaintiff in a title suit in the Court of the Subordinate Judge II, Gaya, has appealed against the dismissal of his suit by the High Court at Patna, with a certificate from that Court. In the suit he had asked for a declaration that he was nominated Mahant of Moghal Juan Sangat by his *Guru*, Mahanth Gulab Das, by a registered deed dated October 21, 1944, and that he had thus the right to manage the Sangat and other off-shoots thereof. His suit was dismissed by the trial Judge on May 31, 1947. He then appealed to the High Court at Patna, and on November 26, 1951, the appeal was decided in

his favour on condition that he paid court fee on the amended relief of possession of properties involved in the suit, for which purpose the case was sent to the Court of First Instance for determining the value of the properties and for fixing the amount of court fee to be paid. After the report from the Subordinate Judge was received, the case was placed for final orders before the High Court. V. Ramaswami, J. and C. P. Sinha, J. (as they then were) held that the valuation for the purpose of the suit was Rs. 12,178-4-0, and that *ad valorem* court fee was payable on it. They, therefore, made a direction as follows :

> "The High Court office will calculate the amount of court fee payable on the valuation we have given and communicate to the counsel for plaintiff-appellant what is the amount of the court-fee he has got to pay both on the plaint and on the memorandum of appeal. We grant the plaintiff three months' time to pay the court-fee for the Trial Court and also for the High Court. The time will be computed from the date counsel for appellant is informed of the calculation by the Deputy Registrar of the High Court. If the amount is not paid within the time given, the appeal will stand dismissed. If the court fee is paid within the time given, the appeal will be allowed with costs and the suit brought by the plaintiff will stand decreed with costs and the plaintiff will be granted a decree declaring....."

The office of the High Court gave intimation on April 8, 1954, that the deficit court fee payable was Rs. 1,987-8-0. The time was to expire on July 8, 1954; but the appellant was not able to find the money. It appears that the appellant's advocate in the High Court asked the case to be mentioned before the Vacation Judge on July 8, 1954, so that a request for extension of time could be made. No Division Bench, however, was sitting on that date, and the appellant filed an application on July 8, 1954, requesting that he be allowed to pay Rs. 1,400 immediately, and the balance, within a month thereafter. This application was placed before a Division Bench consisting of Ramaswami and Ahmad, JJ., when the following order was passed :

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"This application for extension of time must be dismissed. By virtue of the order of the Bench dated the 30th March, 1954, the appeal has already stood dismissed as the amount was not paid within the time given."

The appellant then moved an application under s. 151, which was rejected by Imam, C.J. and Narayan, J., on September 2, 1954. They, however, felt that the proper remedy was review. The appellant then filed another petition under s. 151, read with O. 47, R. 1 of the Code of Civil Procedure, setting out the reasons why he was unable to find the money. He stated that he was seriously ill, and though he had attempted to raise a loan, he was unable to get sufficient money, as the grain market had slumped suddenly, and people were unable to advance money. He offered to pay the deficit court fee within such further time as the High Court might fix.

This application for review was heard on September 27, 1955, by Ramaswami and Sinha, JJ. They first considered it from the viewpoint of O. 47, R. 1 of the Code of Civil Procedure, and held that the application did not fall within the Order. The argument of counsel that time could have been extended under s. 148 or s. 149 of the Code of Civil Procedure was also not accepted. The learned Judges held that these sections applied only to cases which were not finally disposed of, and that time under them could be extended only before the final order was actually made. The request to extend the time under the inherent powers of the Court was also rejected for the same reason. Ramaswami, J., concluded his order by saying:

"I have considerable sympathy towards the plaintiff petitioner who has placed himself in an unfortunate position, but we must be careful not to allow our sympathy to affect our judgment. To quote the language of Farwell, J. in another context 'sentiment is a dangerous will-o-the wisp to take as a guide in the search for legal principles' (*Latham* v. *Johnson* (1))."

(1) [1913] 1 K. B. 398.

In the result, the petition was dismissed, but without costs.

The appellant then moved the High Court for a certificate, and the case was heard by K. K. Banerji and R. K. Chaudhary, JJ. Though the decree was one of affirmance, the learned Judges fortunately found it possible to grant a certificate, and the present appeal has been filed.

The case is an unfortunate and unusual one. The application for extension of time was made before the time fixed by the High Court for payment of deficit court fee had actually run out. That application appears not to have been considered at all, in view of the peremptory order which had been passed earlier by the Division Bench hearing the appeal, mainly because on the date of the hearing of the petition for extension of time, the period had expired. The short question is whether the High Court, in the circumstances of the case, was powerless to enlarge the time, even though it had peremptorily fixed the period for payment. If the Court had considered the application and rejected it on merits, other considerations might have arisen; but the High Court in the order quoted, went by the letter of the original order under which time for payment had been fixed. Section 148 of the Code, in terms, allows extension of time, even if the original period fixed has expired, and s. 149 is equally liberal. *A fortiori*, those sections could be invoked by the applicant, when the time had not actually expired. That the application was filed in the vacation when a Division Bench was not sitting should have been considered in dealing with it even on July 13, 1954, when it was actually heard. The order, though passed after the expiry of the time fixed by the original judgment, would have operated from July 8, 1954. How undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out, often enough to be inexpedient. Such procedural orders, though peremptory (conditional decrees apart) are, in essence, *in terrorem*, so that dilatory litigants might

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put themselves in order and avoid delay. They do not, however, completely estop a Court from taking note of events and circumstances which happen within the time fixed. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves on the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians. Cases are known in which Courts have moulded their practice to meet a situation such as this and to have restored a suit or proceeding, even though a final order had been passed. We need cite only one such case, and that is *Lachmi Narain Marwari* v. *Balmakund Marwari* (1). No doubt, as observed by Lord Phillimore, we do not wish to place an impediment in the way of Courts in enforcing prompt obedience and avoidance of delay, any more than did the Privy Council. But we are of opinion that in this case the Court could have exercised its powers first on July 13, 1954, when the petition filed within time was before it, and again under the exercise of its inherent powers, when the two petitions under s. 151 of the Code of Civil Procedure were filed. If the High Court had felt disposed to take action on any of these occasions, ss. 148 and 149 would have clothed them with ample power to do justice to a litigant for whom it entertained considerable sympathy, but to whose aid it erroneously felt unable to come.

In our opinion, the High Court was in error on both the occasions. Time should have been extended on July 13, 1954, if sufficient cause was made out and again, when the petitions were made for the exercise of the inherent powers. We, therefore, set aside the order of July 13, 1954, and the orders made subsequently. We need not send the case back for the trial of the petition made on July 8, 1954, because that would be only productive of more delay. None has appeared to contest the appeal in this Court. We have perused the application and the affidavit, and we are satisfied that sufficient cause had been made out for

(1) (1925) I.L.R. 4 Patna 61 (P.C.).

extension of time. We, accordingly, set aside the dismissal of the appeal and the suit, and grant the appellant two months' time from today for payment of the deficit court fee. We only hope that, after the lesson which the appellant has learnt, he will not ask the Court perhaps vainly, to show him any more indulgence. There will be no order about costs in this Court as the appeal was heard *ex parte*.

Appeal allowed.

KAUSHALYA DEVI AND OTHERS

v.

BAIJNATH SAYAL AND OTHERS.

(P. B. GAJENDRAGADKAR and K. N. WANCHOO JJ.)

Suit against Minor—Preliminary decree on consent by guardian without leave of court—If a nullity—If can be set aside in appeal against final decree—Code of Civil Procedure, 1908 (Act V of 1908), s. 97, O. 32, r. 7.

Order 32, r. 7(2) of the Code of Civil Procedure, which is intended to protect the interest of the minor, really means that an agreement or compromise entered into on behalf of the minor in contravention of O. 32, r. 7(1) is voidable only at the instance of the minor and not at the instance of any other party to it. Such contravention does not render the agreement or decree a nullity and the same has to be avoided in an appropriate proceeding.

Manohar Lal v. *Jadu Nath Singh* (1906) L.R. 33 I.A. 128, referred to.

Chhabba Lal v. *Kallu Lal* (1946) L.R. 73 I.A. 52, *Jamna Bai* v. *Vasanta Rao* (1916) L.R. 43 I.A. 99 and *Khiarajmal* v. *Daim* (1904) L.R. 32 I.A. 23, held inapplicable.

Where a preliminary decree is passed in non-compliance with the provision of O. 32, r. 7(1), the remedy of the minor is by way of an appeal against that decree and not against the final decree since s. 97 of the Code is a bar to the challenging of the preliminary decree in an appeal against the final decree.

Consequently, in a suit for the partition where preliminary decree by consent was passed against the minor in contravention of O. 32, r. 7(1) and that decree having been sought to be set aside in an appeal from the final decree the High Court held that s. 97 of the Code precluded the appellant from doing so.

Held, that the decision of the High Court was correct and must be affirmed.