

did not agree with that view and concurred in the view which had been previously expressed in this High Court. Great stress was laid in that ruling on the provisions of rule 95 onwards of the Civil Procedure Code; but the provisions of section 65 do not appear to have been stressed before the Bench by the learned counsel at the Bar, for there is no reference to it in any of the judgments of the Learned Judges.

It is quite clear therefore that the view taken in this Court has been consistent throughout, that there is a very great preponderance of authority in favour of that view and that there is nothing in the rulings of their Lordships of the Privy Council in the two cases mentioned above which in any way destroys the effect of this long series of rulings. Both on principle and in view of the rulings of this Court the answer to the question referred to us should be in the negative.

THOM, J.:—I agree that for the reasons given by the learned CHIEF JUSTICE, the question referred to us should be answered in the negative.

ALLSOP, J.:—I also agree.

BY THE COURT:—The answer to the question referred to us is in the negative.

## REVISIONAL CIVIL

*Before Justice Sir John Thom*

NARAIN SINGH (DEFENDANT) *v.* BANKE BEHARI LAL  
(PLAINTIFF)\*

1937  
August, 5

*U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 30(2)—Applicability to decrees passed after the Act—No bar of res judicata.*

The provisions of section 30(2) of the U. P. Agriculturists' Relief Act are applicable to decrees passed after the coming into operation of that Act. The words "already been passed" have reference to the date upon which the application under section 30 was made. No doubt, the sub-section (2) is rather ambiguously drafted; but having regard to the policy of the

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legislature in the matter of giving relief to all debtors against whom decrees on loans were passed whether before or after the passing of the Act, the sub-section can not be interpreted to mean that in suits decided after the Act came into force the defendant is bound to apply for relief under section 30 before the decree is passed and that if he fails to do so any future application after the decree has been passed would be barred by section 11 of the Civil Procedure Code.

Mr. *Babu Ram Avasthi*, for the applicant.

Mr. *B. S. Darbari*, for the opposite party.

THOM, J.:—This is an application in civil revision arising out of an application under sections 5 and 30 of the Agriculturists' Relief Act.

A decree was passed against the applicant on the 31st of August, 1935, in a suit brought upon the footing of a mortgage deed. The decree was passed *ex parte*. Later the applicant applied under sections 5 and 30 of the Agriculturists' Relief Act. Under section 5 the court has converted the decree into a decree for payment by instalments. No question arises in regard to the court's order under this section.

The lower court refused, however, to reduce the rate of interest upon the amount due under the decree. The learned Munsif held that section 11 of the Code of Civil Procedure barred the application for the reduction of interest. Sub-section (2) of section 30 is in the following terms: "If a decree has already been passed on the basis of a loan and remains unsatisfied in whole or in part, the court which passed the decree shall, on the application of the judgment-debtor, amend it by reducing, in accordance with the provisions of sub-section (1), the amount decreed on account of interest." Sub-section (1) of section 30 enjoins that no debtor shall be liable to pay interest except at the rate provided by the Act on a loan taken before the Act comes into force. The learned Munsif has held that the decree referred to in sub-section (2) is a decree passed before the Act came into operation; in other words that no applicant was entitled to the benefits of the provisions of section 30 of the

Agriculturists' Relief Act if he allowed a decree to pass against him *after* the Act came into operation without applying for the benefits of the section. I am unable to agree with this interpretation. The question raised was considered by BENNET, J., in the case of *Baryar Singh v. Ram Dularey* (1). In that case the learned Judge held that the words "already passed" referred to the date upon which the application under section 30 was made. With this decision I agree. There is no doubt that sub-section (2) might have been less ambiguously drafted. It is clear, however, in my judgment that the policy of the legislature was to give relief to *all* debtors against whom decrees were passed on the basis of loans either before or after the Act came into operation. It was contended that in suits decided after the Act came into force the defendant was bound to apply for relief thereunder before the decree was passed and if he failed to do so any future application was barred by section 11 of the Civil Procedure Code. This contention in my opinion is unsound. Until decree has passed there is no necessity to apply for relief. Even after the passing of the decree the defendant may not desire to apply immediately for relief. There is no reason in my judgment for holding that in these circumstances he is barred in all time from claiming such relief.

Upon the whole matter I am satisfied that the court below has acted with material irregularity in refusing to give to the applicant the benefits to which the applicant is entitled under section 30 of the Act.

In the result the application is allowed, the order of the learned Munsif refusing to reduce the rate of interest is set aside. The record will be returned with a direction that the learned Munsif will prepare a decree giving effect to the provisions of section 30 of the Act. The applicant is entitled to his costs.

(1) I.L.R., [1937] All., 403.