FULL BENCH

1937
April, 29

Before Sir Shah Muhammad Sulaiman, Chief Justice, Mr. Justice Thom and Mr. Justice Bennet

RAGHUBIR SINGH (APPLICANT) *v.* MUL CHAND AND ANOTHER (OPPOSITE PARTIES)*

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 30(2)—Reduction of interest already allowed by a decree—Reduced rate to be calculated on the principal sum and not on the accumulated principal and interest due on 31st December, 1929—"Interest"—"Loan"—Civil Procedure Code, section 115—Material irregularity—Court not applying its mind to a material question.

The rate of interest to be fixed by the court in an application under section 30 of the U. P. Agriculturists' Relief Act is to be calculated not on the accumulated amount due under the loan as at the 31st of December, 1929, but upon the principal amount advanced as loan.

Having regard to the definitions of the words "loan" and "interest" as given in section 2 of the Act it is clear that the word "loan" can not include any interest on the principal sum that may accrue as a result of the contractual liability of the debtor after the advance had been made. It follows that the expression "pay interest on a loan taken", contained in section 30(2), must refer to the whole of the excess return which the debtor is liable to pay on the principal sum which had been advanced by the creditor, and must include interest payable on the principal, plus interest on interest which has accrued. Further, reading schedule III of the Act as part of section 30 to which alone it refers, it is clear that the word "interest" in section 30 must mean both simple and compound interest, and that therefore the word "loan", even quite apart from its definition, must mean the principal sum on which the simple and compound interest have become due.

An application in civil revision will lie in the High Court where the court below has acted with material irregularity in the exercise of its jurisdiction, e.g. where it has failed to consider a material question raised by a party and has not applied its mind at all to the mandatory provisions of the law on that question.

*First Appeal No. 243 of 1935, from an order of P. D. Pande, Second Civil Judge of Meerut, dated the 24th of August, 1935.

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Mr. *Panna Lal*, for the appellant.

Mr. *B. Mukerji*, for the respondents.

SULAIMAN, C.J.:—This case raises two questions of law which have been referred to a Full Bench by a Division Bench before which a first appeal which was converted into a revision came up for hearing. On the 11th of October, 1923, a mortgage deed for Rs.4,500, and on the 24th of October, 1923, another mortgage deed for Rs.40,500 were executed by the same mortgagor in favour of the predecessor of the respondents, both carrying interest at Rs.0-11-6 per cent. per mensem compoundable every six months. It appears that the judgment-debtor from time to time paid Rs.22,000 towards the discharge of this loan. A suit was brought for recovery of the consolidated amount due and a decree was passed on the 24th of November, 1934, for a sum of Rs.1,34,921-13-0, which included interest at the contractual rate up to the date of the decree, that is, *pendente lite* interest, and carried future interest at 6 per cent. per annum. It may be mentioned that under the documents a higher rate of interest, namely 1 per cent. per mensem was chargeable on unpaid interest after the expiry of every period of six months. It was on this account that the amount decreed was much more than the amount originally advanced.

The judgment-debtor applied to the court below under section 5 and section 30 of the U. P. Agriculturists' Relief Act (Act XXVII of 1934) for a direction that the amount should be ordered to be payable by instalments, and for a reduction of the rate of interest fixed under the decree. The decree-holder was satisfied with the order of the court below but the judgment-debtor preferred a first appeal, and as no appeal lay it was treated as a revision. No question now remains before us as regards the fixing of the instalments ordered by the court below. The only questions are:

(1) Whether the rate of interest to be fixed by the court in an application under section 30 of the Agricul-

turists' Relief Act is to be calculated on the accumulated amount due under the loan as at the 31st of December, 1929, or upon the original amount advanced on loan?

(2) Is an application in civil revision against an order of the Civil Judge directing that future interest shall be calculated on the accumulated amount due under a loan as at December 31, 1929, in an application under section 30 of the Agriculturists' Relief Act maintainable?

The matter has been referred to a Full Bench because of the importance of the question, on which there are two decisions of a learned Judge of this Court in conflict with the opinion expressed by a Division Bench of the Oudh Chief Court. In the case of *Kailash Kuer* v. *Amar Nath* (1) it was observed that section 30 provides only for a reduction of the rate of interest, and the court cannot interfere with the terms of the contract in any other way, and was then held that in view of the use of the words "on a loan", which was paraphrased as "in respect of a loan", and in view of the fact that in section 31 the words used are "the sum originally borrowed" there was no justification for any interference with the amount found due under the terms of the contract or decree up to the 31st of December, 1929. It was accordingly held that the compound interest would continue to run even after the 31st of December, 1929. On the other hand BENNET, J., in *Ramman Lal* v. *Kamla Dat* (2) and *Hakim Kamla Datt* v. *Ram Man Lal* (3) held that the court was empowered to reduce not merely the rate of interest in accordance with the provision of sub-section (1) but also "the amount decreed on account of interest". Stress was laid on the fact that in sub-section (2) of section 30 the word "amount" has been intentionally used. The expression "interest on a loan" was taken to be different from the expression "interest on the loan plus the amount of interest

(1) (1936) I.L.R., 12 Luck., 175. (2) [1937] A.L.J., 12.
(3) A.I.R., 1937 All., 114.

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accruing by the date of the suit". It was held that the legislature intended to empower the court to reduce the *pendente lite* rate of interest not merely as a rate but also to reduce the amount by providing that that interest should only be on the loan, that is the principal of the loan, and not on accrued interest.

Now fortunately the Agriculturists' Relief Act defines both the terms "loan" and "interest". Section 2(10) (*a*) lays down that "loan" means an advance to an agriculturist, whether of money or in kind, and shall include any transaction which is in substance a loan, but shall not include three things excepted therein. The explanation to the definition also shows that a loan advanced as one transaction is to be deemed to be one loan even though it is evidenced by several separate documents or by separate entries in a document. On the other hand section 2(8) lays down that "interest" includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or in the form of service or otherwise. It is therefore obvious that there is a sharp distinction between the word "loan", which means advance of money or in kind and which would embrace one transaction consisting of separate loans given at one time, and the word "interest" which means the return to be made over and above what had been actually lent. Taking these two definitions together it is difficult to see how it can be argued that the word "loan" includes some interest on the sum actually lent as well, when the definition of "interest" talks of it as a return made over and above what had been actually lent. Unfortunately the attention of the Oudh Chief Court was apparently not drawn by the learned counsel who appeared for the parties to the definition of the word "interest" as given in the Act, for there is no reference to it in the judgment.

Coming to section 30 we find that the primary object of that provision is that the rule laid down there should

prevail as against any contract to the contrary that may be in existence. It provides that no debtor shall be liable to pay *interest* on a *loan* taken before this Act comes into force at a rate higher than that specified in schedule III for the period from January 1, 1930, till such date as may be fixed by the Local Government in the Gazette in this behalf. It may be noted that this sub-section contains both the words "interest" and "loan" which have been expressly defined in section 2, and therefore it must be given the meanings which have been ascribed to them by the legislature. It is not open to a court to try to construe the section by giving a different meaning to the word "loan" from what has been given to it in the definition.

The very idea of a loan as defined is "the advance of money or in kind", which obviously means a consideration which has passed from the creditor to the debtor, i.e., the cash or the property which has passed from the one to the other. It cannot include any interest that may accrue as a result of the contractual liability of the debtor after the advance had been made. The interest that accrues is not an advance made by the creditor to the debtor at all, but is a return to be made, over and above the advance, which under the contract between the parties the debtor is liable to make. The legislature has thought it necessary to make it clear that "interest" includes every kind of return which is in excess of the amount actually lent. The word "lent" is of course derived from the word "loan" and therefore section 2(8) means that interest will include any return that is made over and above the amount which had been advanced actually as a loan. Taking these two definitions together there can be no doubt that the "loan" as meaning "an advance made" means the principal amount, whereas the interest is the excess amount which has become payable as a result of the contract. It follows that the expression "pay interest on a loan taken" must refer to the whole of the excess return

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which the debtor is liable to pay on the principal sum which had been advanced by the creditor, and must include interest payable on the principal plus interest on interest which has accrued. The learned Judges of the Oudh Chief Court have after considering the definition of the word "loan" emphasised that the section was intended to make a provision for an equitable rate of interest being charged and that there was nothing in the terms of the section to suggest any intention on the part of the legislature to interfere with the terms of the contract except as regards the rate of interest. That is perfectly true. It is the rate of interest which has to be altered and reduced to the maximum figure prescribed in schedule III, but that of course necessarily involves a reduction of the total amount due. The only other argument which found favour with the Oudh Bench was that the legislature has thought fit to use the words "the sum originally borrowed" in section 31 instead of the word "loan" as used in section 30. But it is quite obvious that no other expression would have been appropriate for section 31. The "loan",so far as section 30 is concerned, is the principal amount remaining due after deducting any repayment of the principal that has been made in the past, whereas section 31 speaks of two sums, one the sum originally borrowed, and secondly such part of it as has not already been repaid by a sum equal to the sum originally borrowed. It was therefore absolutely necessary to use the expression "the sum originally borrowed" in section 31 in contradistinction to the expression "such part of it as has not already been repaid". But the mere fact, even if it were so, that the word "loan" has not been used in section 31 and that another expression has been used by the legislature would not justify the giving to that word "loan" in section 30 a meaning different from the definition of it. We would then still have to give to it in section 30 the same meaning as the legislature has given to it by section 2.

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Section 30 specifically refers to the third schedule. The third schedule has been added to the Act for the express and the exclusive purpose of section 30 and for no other purpose. Schedule III must therefore be read as part of section 30. In schedule III we have four columns, two of which refer to simple interest and two to compound interest, and maximum rates for these two kinds of interest have been fixed and they both come under the general heading "Rates of interest for section 30". It is thus obvious that the word "interest" used in section 30 coupled with the schedule must mean both simple and compound interest, and that therefore the word "loan", even quite apart from its definition, must mean the principal sum on which the simple and compound interest have become due. We also find a note (*a*) added to schedule III that a certain period has to run from the date on which the loan was taken. Obviously it means the date on which the principal sum was advanced.

The learned counsel for the respondents has argued before us that once interest has accrued it becomes a loan and must be treated as an advance made by the creditor to the debtor. According to this argument interest accrues from day to day and therefore there would be advances made by the creditor from day to day and there would not be any particular date on which the loan was taken, but all the dates from the time of the original advance until the date of repayment will be the dates of the loan. This would not be in harmony with the provisions of the notes added to schedule III. It may also be pointed out that stamp duty has to be charged on documents evidencing such a loan and that duty has been fixed on the principal sum advanced on the date and not according to the interest that would accumulate thereafter. Had the legislature intended that in section 30 the word "loan" should mean the principal and interest, there was no reason why it would not have used the words "money due" instead of the

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word "loan" which had been previously defined. Let us consider for a moment the consequences of the interpretation put upon the section by the court below. The rate of interest on the loan will have to be reduced from 1st January, 1930, so that the total amount of interest will also be reduced, and yet the compound interest will have to be charged at the imaginary and unreduced amount of interest, regardless of the fact that that interest itself has been disallowed.

It seems that the legislature has thought fit to curtail the total amount of interest which should be payable; that is to say, it has thought fit to curtail the return which would be made to the creditor over and above the amount actually lent. It has accordingly prescribed certain maximum rates beyond which the courts have no power to go. If we were to allow the maximum rate of interest prescribed to a creditor, and on the top of that we were to allow interest on the accumulated amount of interest even after the 1st January, 1930, the net result would be that the creditor would have an amount of return over and above the amount actually lent far in excess of the prescribed maximum which has been fixed in the schedule. This would be contrary to the express provisions of the Act. It may also be noted that the rates of interest prescribed in schedule III are the maximum rates beyond which the interest cannot be allowed. They are not necessarily the rates which should be allowed in every case by the courts. There may, therefore, well be a case where a lower rate may be allowed.

It may also be mentioned that there are various sections in the Act where a distinction has been drawn between the principal and interest. For instance, section 30 itself. In sub-section (4) of that section, and again in sub-section (2) of section 31, it is laid down that any amount already received by the creditor on account of *interest* in excess of that due under the provisions of this section shall be credited towards *princi-*

pal; but that a debtor cannot claim a refund of any part of the interest already paid by him. Bearing in mind the definitions of the two words used in the section there seems to be no doubt that the word "interest" in section 30 must include both the simple and the compound interest, and the word "loan" in that section must mean the principal sum advanced which remains outstanding at the time when the application is made.

The second question referred to us is whether the High Court can in this case interfere in revision. In the application that was made by the debtor it was prayed that the rate of interest should be reduced. Paragraph 4 of the application was in these terms: "The rate of interest is excessive and penal. Moreover the opposite party can under the new Agriculturists' Relief Act get interest on the amount of principal from the 1st of January, 1930, at the rate of Rs.5-8-0 per cent. per mensem although the interest has been calculated in the decree at the rate of more than Rs.10-8-0 per cent. At any rate the interest is fit to be reduced under section 30." There was therefore a clear and express objection taken that the interest in the decree should be recalculated on the amount of the *principal* from the 1st January, 1930, and not on the accumulated amount of the decree. In the reply which was filed on behalf of the decree-holder the plea was taken that section 30 had no application whatsoever, but there was no suggestion that if section 30 applied then the interest should not be calculated on the principal sum from the 1st January, 1930. Accordingly the court took up only two points for consideration, namely whether the applicant was an agriculturist and whether the decree in question being a preliminary decree was not liable to amendment. Both these points were decided by the court below in favour of the judgment-debtor. There is not a word in the judgment itself, as distinct from the operative portion of the "order", to show that the court ever considered the question whether interest

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should be allowed on the principal sum or on the consolidated sum. There is no reference to it and there is no expression of any opinion upon it at all, but when the court came to pass the order it said: "Ordered: Let the decree No. 97 of 1932 be revised as follows." Under the head (*b*) the court directed that "Interest from 1st January, 1930, to 8th May, 1935, shall be calculated at the rate of $5\frac{1}{2}$ per cent., compoundable yearly, on the aggregate amount due on 31st December, 1929, under head (*a*)." Thus although the judgment itself gave no indication of the point having been considered at all, the order actually passed was adverse to the interest of the judgment-debtor. It has been laid down by their Lordships of the Privy Council in several cases that where a lower court comes to an erroneous view of the law or decides a case erroneously, it does not act with material irregularity in the exercise of its jurisdiction, nor does it act without jurisdiction, and that therefore the High Court has no power in revision at all. But where there is not merely a question of error of law or an erroneous decision, but there has been a material irregularity in the acting of the court below while exercising its jurisdiction, it is well settled that a High Court can interfere. In the present case there is not a question of any error of law made by the court below, but it is a material irregularity in the exercise of jurisdiction, because the court did not at all apply its mind to the objection raised by the applicant, which had been either conceded or at any rate not disputed on behalf of the decree-holder. The point had certainly been made that interest should be calculated on the principal sum and it does not appear to have been expressly disputed on behalf of the decree-holder. The court, without any reference to the provision of section 30 of the Act and the definitions of the words "loan" and "interest" as given in the Act, has in the operative portion of its order, but not by its main judgment, directed that the interest should be calculated

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on the aggregate amount. This has resulted in giving to the decree-holder a large sum exceeding Rs.10,000 which has grossly prejudiced the judgment-debtor. Had the court borne in mind that the point was really not in controversy or even had the court paused to consider the relevant sections of the Act, it is possible that the court would itself have come to a different conclusion. The court below without considering the matter has taken it for granted that the decree should be in the form given in the operative portion of the order. It has not given any reasons in support of that direction. The case therefore is not merely one of an erroneous decision, but is one in which there has been a material irregularity in the exercise of jurisdiction because there has been no consideration of the point at all. As in view of the provisions of section 30(3) no appeal lies, the High Court has power to interfere on the revisional side. This was held in *Bireshwar Das Bapuli* v. *Uma Kant Panday* (1). The order has been passed by a court subordinate to this Court in the execution department and that court therefore is subject to the revisional jurisdiction of this Court. The answer to the second question is in the affirmative.

THOM, J.:—I agree. Any doubt which I may have entertained as to the meaning of section 30 of the United Provinces Agriculturists' Relief Act has been resolved by a consideration of the definitions of "interest" and "loan" included in section 2. "Interest" is defined in section 2 in the following terms: "Interest includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or in the form of service or otherwise." Interest, it will be observed, includes the return not *upon* what is actually lent, but the return *over and above* what was actually lent, i.e., what is due as interest on what is lent and interest upon accumulated interest. In the present case, therefore,

(1) I.L.R., [1937] All., 514.

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the accumulated interest as at 31st of December, 1929, must be regarded as a return over and above what was actually lent. Now it is clear that what was actually lent is what is advanced to the agriculturist. In other words, what is actually lent is a loan, defined in sub-section (10) of section 2 as "an advance to the agriculturist whether of money or in kind".

If, therefore, it is held that the rate of interest to be fixed in accordance with the terms of section 30 of the Act is to be calculated upon the accumulated amount as at the 31st of December, 1929, the liability of the debtor would be for interest not merely upon the loan but upon the return on the loan. If one of the rates of interest set forth in schedule III of the Act is allowed upon the accumulated amount and not merely on the amount actually lent, then the liability of the debtor would be greater than the restricted burden defined in section 30; the amount due as interest, i.e., due over and above the amount lent, would represent a higher rate of interest on that sum than schedule III permits.

Taking into consideration the definition of "interest" and "loan" in section 2 of the Act and the other provisions of the Act to which the CHIEF JUSTICE has referred, I am satisfied that the intention of the legislature was to restrict the operations of the rate of interest to be fixed under section 30 of the Act to the amount actually advanced to the debtor.

For the reasons given by the CHIEF JUSTICE I am also in agreement that in this particular case it is open to the court to interfere in an application in civil revision challenging the order of the court below inasmuch as the learned Civil Judge has committed a material irregularity in failing to consider and give effect to material and relevant provisions of the Act.

BENNET, J.:—I agree.

BY THE COURT:—The answer to the first question is that the rate of interest to be fixed by the court in an application under section 30 of the United Provinces

Agriculturists' Relief Act is to be calculated not on the accumulated amount due under the loan as at the 31st of December, 1929, but upon the principal amount advanced as loan.

The answer to the second question is that no application in civil revision would lie if the court below has merely decided a case wrongly, but that an application in revision would lie where it has acted with material irregularity in the exercise of its jurisdiction, which it has done in the present case by not applying its mind at all to the mandatory provisions of the law.

FULL BENCH

Before Sir Shah Muhammad Sulaiman, Chief Justice, Mr. Justice Bennet and Mr. Justice Ganga Nath

MAHADEI KUNWAR (PLAINTIFF) *v.* PADARATH CHAUBE AND ANOTHER (DEFENDANTS)*

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Compromise—Family arrangement—Petition signed by parties in mutation proceedings—"Transfer of property"—Registration, want of—Transfer of Property Act (IV of 1882), sections 5 and 53A—Registration Act (XVI of 1908), sections 17 and 49.

In a contested case of application for mutation of names the applicant and the objector filed a petition signed by both, praying that the applicant's name might be entered in respect of a specified portion of the property and the objector's name in respect of the remainder for her life, and that after the death of the objector the applicant would be the owner of the whole property; there was a further provision that the applicant should discharge certain debts of the deceased owner of the property. This petition of compromise was unregistered. The court, however, acted on it and ordered mutation accordingly. Subsequently the objector filed a suit challenging the compromise on the ground, *inter alia*, that it was not binding for want of registration:

*Second Appeal No. 1259 of 1934, from a decree of R. C. Verma, Additional Civil Judge of Azamgarh, dated the 30th of July, 1934, reversing a decree of Ejaz Husain, City Munsif of Azamgarh, dated the 1st of June, 1933.