

Assistant Collector or from the order altering his previous finding. Our answer to the question referred to us is that no appeal lies at all to any court.

1937
 JOKHAI
 v.
 JAWAHIR
 LAL

APPELLATE CIVIL

Before Mr. Justice Harries and Mr. Justice Rachhpal Singh

KAILASH CHANDRA (JUDGMENT-DEBTOR) v. RADHEY
 SHIAM AND ANOTHER (DECREE-HOLDERS)*

1937
 March, 17

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 5(2)—Appeal—Order of remand—District Judge allowing appeal from refusal to grant instalments and remanding case to lower court—Whether decision final.

No appeal lies from an order of the appellate court allowing an appeal from an order which refused to grant instalments, under the U. P. Agriculturists' Relief Act, for the payment of the decretal amount, and remanding the case to the lower court for determination according to law. What is made final in sub-section (2) of section 5 of the Act is the "decision" of the appellate court, though it may not amount to a decree or final order.

Messrs. G. Agarwala and K. N. Agarwala, for the appellant.

Mr. Shiva Prasad Sinha, for the respondents.

HARRIES and RACHHPAL SINGH, JJ.:—This is an application by a judgment-debtor appellant praying that this Court should extend the time for filing an appeal under the provisions of section 5 of the Limitation Act.

The proposed appeal is against an order of the District Judge passed on appeal in a case arising out of the Agriculturists' Relief Act.

The proceedings commenced by an application by the judgment-debtor in the court of the Civil Judge that the interest under a certain mortgage decree should be reduced and that it should be ordered that the amount due under that decree be paid by instalments. The Civil Judge came to the conclusion that the

*First Appeal No. Nil of 1936, from an order of Shamsul Hasan, District Judge of Aligarh, dated the 2nd of June, 1936.

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judgment-debtor was not an agriculturist and therefore was not entitled to claim the benefits of sections 5 and 30 of the Agriculturists' Relief Act, 1934. The judgment-debtor appealed to the District Judge. It would appear that in the grounds of appeal he complained against the refusal of the court of first instance to reduce the interest and to grant instalments, but it is clear that in the court of the District Judge he confined the appeal to the refusal of the Civil Judge to grant payment by instalments. Counsel for the judgment-debtor made a statement before the District Judge making it abundantly clear that the appeal was confined purely to the question of instalments. The District Judge having heard the case came to the conclusion that the judgment-debtor was an agriculturist and allowed the appeal and remanded the case to the lower court to be heard and determined according to law. Against this order the present applicant desires to file an appeal and by this application prays that the time for filing such appeal be extended.

In our judgment no appeal lies to this Court in a case of this kind. As we have stated, the judgment-debtor confined his case in the district court to the question of the Civil Judge's refusal to grant instalments. He is given a right of appeal, where the court of first instance refuses to grant instalments, to the court to which the court of first instance is immediately subordinate. In this case he had a right of appeal to the court of the District Judge, but in our view the order passed by the learned District Judge is final.

Sub-section (2) of section 5 of the U. P. Agriculturists' Relief Act, 1934, provides: "If, on the application of the judgment-debtor, the court refuses to grant instalments, or grants a number or period of instalments which the judgment-debtor considers inadequate, its order shall be appealable to the court to which the court passing the order is immediately subordinate, and the decision of the appellate court shall be final."

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It has been argued that this sub-section cannot bar an appeal in this case because the order of the District Judge is not a final order. It is an order allowing the appeal and remanding the case to the court below for decision according to law, but it is to be observed that what is made final in sub-section (2) of section 5 of the U. P. Agriculturists' Relief Act is the decision of the appellate court. The appellate court in this case came to the conclusion that the view taken by the Civil Judge was wrong and that his order would have to be reversed and the case re-considered by the court below and determined according to law. In our judgment this is a decision which is made final by the terms of sub-section (2) of section 5 to which we have referred, and that being so there can be no appeal from such order to this Court. As no appeal lies in a case such as this, clearly we cannot accede to an application praying that the time for filing this appeal be extended.

Mr. *Agarwala* who has argued this case on behalf of the judgment-debtor has asked us to treat the appeal as a revision and to admit it as such, but in our judgment we cannot do this. The only ground upon which we could treat this appeal as a revision is that the learned District Judge had refused to consider the question of reduction of interest, but, as we have pointed out, the appeal by the judgment-debtor was confined to the question of instalments and the question of reduction of interest was abandoned. On the question of instalments the learned District Judge has directed a rehearing which is entirely in favour of the judgment-debtor, and that being so there is nothing in the order of the learned District Judge which the present applicant can ask us to vary or alter by way of revision.

The result, therefore, is that as no appeal lies and there is no ground for interference by way of revision this application is dismissed with costs.