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Secondly, assuming section 423(c) and (d) are otherwise applicable, they are applicable only if an operative "order" is passed. Under sections 476, 476A or 476B the court passes no such order, but merely records a finding and makes a complaint like an ordinary individual. There is no other provision in the Criminal Procedure Code allowing a remand for fresh inquiry corresponding to a retrial in a case of conviction.

I answer the first question in the affirmative and the second in the negative.

BENNET, J.:—I agree with the judgment of NIAMAT-ULLAH, J.

BY THE COURT:—Of the two questions referred to the Full Bench the first is answered in the affirmative and the second in the negative. Lay the case before the Bench concerned.

REVISIONAL CIVIL

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

MANMOHAN DAS (DECREE-HOLDER) v. IZHAR HUSAIN
 AND OTHERS (JUDGMENT-DEBTORS)*

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 January, 7

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), sections 4, 5—Conversion of decree into instalment decree—Original decree a compromise decree—Reduction of future interest—Whether conversion into instalment decree and reduction of future interest can both be done—Applicability of section 4 where original decree was not an instalment decree—Varying rates of future interest.

Section 5 of the U. P. Agriculturists' Relief Act is applicable to a compromise decree for money. Any decree for money, whether passed after contest or *ex parte*, or whether passed on the merits or on an award or compromise, comes within the scope of section 5.

The words, "any order for grant of instalments", in section 4 of the Act are not confined to such orders passed at the time of the passing of the original decree, but refer to any such order

passed under the Act, whether that order be passed under section 3 or section 5. Accordingly, when a decree for money is converted under section 5 into an instalment decree, the court must also modify and fix the rate of future interest in accordance with the provisions of section 4.

Section 4(2) lays down future rates of interest applicable for definite periods according to successive notifications by the Local Government, and it is not necessary that there should be one inflexible rate after the date of the decree. So where a decree giving future interest at 10 per cent. per annum was converted under section 5 into an instalment decree, and a Government notification had provided the rate of $3\frac{1}{2}$ per cent. for future interest with effect from 8th May, 1935, and a fresh notification fixed the rate of $3\frac{1}{4}$ per cent. with effect from 15th January, 1936, the future interest in the instalment decree was fixed at the rate of 10 per cent. from the date of the original decree until the 7th May, 1935, and at the rate of $3\frac{1}{2}$ per cent. from 8th May, 1935, to 14th January, 1936, and at the rate of $3\frac{1}{4}$ per cent. from 15th January, 1936, until any further notification.

Mr. *Gopalji Mehrotra*, for the applicant.

Mr. *Mukhtar Ahmad*, for the opposite parties.

SULAIMAN, C.J., and BENNET, J.:—(This is a decree-holder's application in revision from an order of the Munsif of Allahabad, allowing an application of the judgment-debtor under section 5 of the Agriculturists' Relief Act. The decree for money in this case was based on a compromise between the parties under which a certain amount was decreed, and carried future interest at Rs.10 per cent. per annum. The court below has granted a decree for instalments, and has also reduced the future interest to Rs.3 per cent. per annum with effect from 15th December, 1935. On behalf of the decree-holder it is urged first that section 5 of the Act has no application to a compromise decree at all and that accordingly no instalments should have been allowed; and secondly it is contended that when an order for payment by instalments is made, future interest cannot be reduced under section 4. He relies strongly on a case of the Oudh Chief Court, *Kailash Kuar v. Amar Nath* (1). That case certainly supports the second contention.

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It is unnecessary for us to express any opinion on the interpretation of section 30, nor is it necessary to consider the effect of the provision in that section that the amended decree should bear the date of the original decree, as in the case before us the judgment-debtor did not apply under that section at all.

We see no reason why section 5 should not apply to a decree for money based on a compromise. The section is expressly made applicable to "*any decree for money*". It matters little whether the decree has been passed after contest or is *ex parte*, or whether it is passed on the merits or whether it has been passed on the basis of an award or compromise. So long as it is a decree for money, it comes within the scope of section 5. The legislature has by using the word "any" made the expression quite general and comprehensive. We have therefore no hesitation in holding that this compromise decree can under section 5 be converted into a decree for payment by instalments in accordance with the provisions of section 3.

The second contention is certainly not so simple and the applicant has the authority of the Chief Court of Oudh in his favour. But the learned Judges of Oudh themselves felt considerable difficulty in coming to the conclusion that future interest cannot be reduced when instalments are ordered. They considered that such a view would lead to the result that the judgment-debtor would get the benefit of instalments and also an additional benefit of a reduced rate of future interest, while if his application under section 5 is not allowed, the rate of future interest would not be reduced. They considered that this result was anomalous. The learned Judges considered: "It is true that the words, 'any order for grant of instalments passed against an agriculturist', used in section 4 are quite general, yet we think that in order to avoid the absurdity pointed out above the proper construction to be placed upon them is to restrict their application to orders for grant of instalments

passed under section 3." We regret we are unable to see that there is any absurdity at all. The learned Judges felt compelled to hold that "Section 5 which provides for the fixing of instalments after the passing of decrees is therefore quite out of place in this chapter. Thus it will be seen that the position in which section 5 has been placed is by no means logical or accurate. We cannot therefore help feeling that the drafting lacks precision and is rather inartistic." On these grounds, they felt that the general words "any order for grant of instalments" should in the context be confined to such orders passed at the time of the passing of the decree.

We feel that it is the duty of the court not to hold, if possible, that section 5 has been misplaced by the legislature or that its position in the chapter is not logical or accurate or that there is some defect in drafting which lacks precision and an artistic character.

We rather think that the reason why the provisions of section 5 come immediately after sections 3 and 4 is that it was intended that when the decree is converted into a new decree for payment by instalments, the provisions of section 4 would naturally apply. Future interest obviously means interest which is to run on the decretal amount from the date of the decree. If the decree is converted into a new decree for payment by instalments, the amount due as future interest may have to be necessarily altered. It may also perhaps be suggested that under section 34 of the Code of Civil Procedure the court when granting a decree for money can fix *future interest at a reasonable rate*. We think that when a new decree is passed under section 5, the court must in fixing the future interest act in accordance with the provisions of section 4. We may point out an anomaly which would arise if the contrary view were to be entertained. The maximum rate of interest allowable for secured loans exceeding Rs.20,000 would be less than Rs.6 per cent. and yet, if future interest were not to be reduced, its rate may be higher. The words

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used in section 4 "any order for grant of instalments" are very wide, and in our opinion refer to any such order passed under the Act, whether that order be passed under section 3 or passed under section 5.

It is further to be borne in mind that the rate mentioned in section 4 as notified by the Local Government is the maximum rate prescribed which should not be exceeded. It is open to the court to fix any rate for future interest not exceeding such a maximum limit, and the maximum limit is fixed by the rate notified which is in force at the time when the decree or order is passed. Sub-section (2) makes it further clear that "that rate shall be the rate in force for future interest from such date as may be notified by the Local Government until such date as it is superseded by a new rate." This sub-section shows that the rate to be notified by Government is to remain in force for a definite period commencing from one date and ending with another, and that when a new rate is notified with effect from the last date until a further date, the new rate would supersede the previous one. Section 4, sub-section (2) therefore seems to lay down future rates of interest for definite periods, and it is not necessary that there should be one inflexible rate after the date of the decree. That this is the policy of the legislature is also suggested by the United Provinces Agriculturists' Relief (Amendment) Act, III of 1935, section 2, where the footnote of schedule III has been amended and the following words substituted, "the rate for the time being notified under section 4 *in respect of the period* for which each such rate is in force."

We find that in the notification of the Local Government dated 1st May, 1935, it was provided "that with effect from 8th May, 1935, until such date as may hereafter be notified, $3\frac{1}{2}$ per cent. shall be the maximum rate to be allowed as future interest in any decree for payment of money or for sale in default of payment of money, or for foreclosure, or in any order for grant of

instalments passed against an agriculturist as defined in the aforesaid Act." Thus the rate was fixed for a definite period commencing from the 8th May, 1935, and was to be applicable to every order for grant of instalments. A fresh notification dated 7th January, 1936, fixed $3\frac{1}{4}$ per cent. "with effect from 15th January, 1936, until such date as may hereafter be notified" as the maximum rate to be allowed as future interest.

In the present case the court below made its order on the 25th of May, 1935. As no rate of interest had been notified by Government for the period prior to the 8th of May, 1935, and the rate of $3\frac{1}{2}$ per cent. notified was to run with effect from 8th of May, 1935, onwards, the court below could not reduce the future rate of interest for the period prior to the 8th of May, 1935. But we think that the court had full jurisdiction to reduce the rate to $3\frac{1}{2}$ per cent. from the 8th of May, 1935, till the 14th January, 1936. We also think that the rate of future interest allowable with effect from 15th of January, 1936, should be the notified rate of $3\frac{1}{4}$ per cent. until such date when a new rate of interest is notified.

The period of instalments fixed would continue to run from the date fixed by the court below. We accordingly allow the revision in part and fix the contractual rate of future interest from the date of the decree till the 7th of May, 1935, and direct that future interest should be reduced to $3\frac{1}{2}$ per cent. from the 8th of May, 1935, till the 14th of January, 1936, and to $3\frac{1}{4}$ per cent. from the 15th of January, 1936, onwards until further notification. As the revision has partly failed and partly succeeded, we direct that the parties should bear their own costs of this revision.

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