

## REVISIONAL CIVIL

Before Mr. Justice Collister and Mr. Justice Bajpai  
GURCHARAN PRASAD AND OTHERS (DEGREE-HOLDERS) v.

ALI SAJJAD AND OTHERS (JUDGMENT-DEBTORS)\*

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934),  
sections 4, 5, 30—Conversion of decree into instalment  
decree—Reduction of future interest—Section 4 applicable  
to decrees passed before the Act and amended under section  
30(2)—Schedule III—Maximum rates of interest—Varying  
rates of future interest.

1938  
September,  
13

Section 4 of the U. P. Agriculturists' Relief Act is applicable to decrees passed before the coming into force of that Act. The expression, "or in any order for grant of instalments passed against an agriculturist", occurring in that section is *prima facie* wide enough to cover all such orders, whether passed in respect to a decree anterior to or posterior to the Act; and when section 3 was made applicable by section 5, it was the intention of the legislature that the provisions of section 4 should automatically come into operation where a decree, whether passed before or after the Act, is converted into a decree or order granting instalments. The application of section 4 to the case of decrees passed before the Act came into force would not result in any conflict with section 30(2).

When once an order for instalments is passed, it is the intention of the legislature that the maximum rates of interest should be those given in the various notifications under section 4, being no longer subject to Note (b) to schedule III. Under section 30(1) the rates fixed in schedule III will be applicable only till such date as may be fixed by the Local Government in the Gazette in this behalf.

The interest from the 1st of January, 1930, up to the date of the order fixing instalments should be not higher than the rates given in schedule III, read with Notes (a) and (b). From the date of the aforesaid order future interest should be calculated according to the various notifications which may have been or be issued by Government under section 4.

Section 30(1) provides that the rate of interest shall not be higher than that specified in schedule III, and this implies that the court is at liberty to allow, in a particular case, a lower rate than that specified.

*Nannu Mal v. Hoti Lal* (1), disapproved.

\*Civil Revision No. 98 of 1937.  
(1) I.L.R. [1937] All. 771.

1938

GUR.  
CHARAN  
PRASAD  
v.  
ALI  
SAJJAD

Mr. *A. Sanyal*, for the applicants.

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

COLLISTER and BAJPAL, JJ.:—This is an application in revision by certain creditors in respect to an order which was passed by the Civil Judge of Jaunpur under the U. P. Agriculturists' Relief Act (Local Act No. XXVII of 1934) on the 10th July, 1936. The opposite parties are the judgment-debtors of the applicants. They executed a mortgage in 1911, the principal sum secured being Rs.26,000. The rate of interest was 10 annas per cent. per mensem compoundable annually (equivalent to  $7\frac{1}{2}$  per cent. per annum). On the 29th of January, 1926, the mortgagees' suit upon the mortgage was decreed for Rs.47,230-11-6. Rs.19,000 had been realised before the suit, and it appears that after the decree a further sum of Rs.36,000 was realised. The decree-holders then applied in execution with a view to realise the balance, amounting to Rs.38,000. The opposite party preferred an application purporting to be under sections 4 and 50 of the Agriculturists' Relief Act. Their prayer, as contained in paragraphs 7 and 8 of the application, was as follows:

"7. Under section 30, Act XXVII of 1934, the interest from the 1st of January, 1930, up to the 8th of May, 1935, should be awarded at the rate mentioned in schedule III.

"8. Under section 4 of the aforesaid Act the rate of future interest shall not exceed the rate notified by the Local Government in the Gazette."

They also prayed for the fixing of instalments,—presumably under section 5 of the Act.

The operative part of the lower court's order is in the following terms:

"I would allow the petition of the judgment-debtor and order that the interest be reduced in accordance with the provisions of section 30 of the U. P. Agriculturists' Relief Act and further order that the sum that may thus be found payable by the judgment-debtor be payable by instalments extending over a space of ten years at the rate of one-tenth of the debt for

1938

---

 GUR-  
 CHARAN  
 PRASAD  
 v.  
 ALI  
 SAJJAD

each year, commencing from the 31st of December, 1937, and in default of payment of any two consecutive instalments the amount of those two instalments would become at once realisable by execution of the decree. I would allow no future interest in view of the fact that already a very exorbitant amount has been realised by the creditor from the judgment-debtor."

The first plea taken before us by learned counsel for the applicants is that the court below was in error in directing that in default of payment of two instalments only those two instalments should become realisable. This plea is well founded; but a reference to section 3(4) of the Act shows that the Judge's order is erroneous in another respect also. Sub-section (4) provides: "If the decree provides for payment by instalments, the court shall direct that, where the number of instalments allowed is four or five and any two instalments are in arrears, or where the number allowed is six or more and any three instalments are in arrears, the decree-holder may, notwithstanding the provisions of any law for the time being in force, immediately enforce payment of the whole amount then remaining due under the decree . . ."

It is thus obvious that in the present case, since the instalments are more than six, the decree-holders will not be at liberty to take out execution unless and until there has been default in three instalments—the section does not say whether they should be consecutive or otherwise—and that then the *whole amount* remaining due would become realisable.

The other plea taken before us on behalf of the applicants is that interest should be allowed from the 1st of January, 1930, up to and after the date of the order fixing instalments at the rates provided in the Act. The applicants did not ask for, and were not competent to ask for, any reduction of interest up to the 1st of January, 1930. What they claim is that interest from the 1st of January, 1930, should be awarded at the rate mentioned in schedule III up to the date of the order fixing instalments and that thereafter it should be

1938

GUR-  
CHARAN  
PRASAD  
v.  
ALI  
SAJJAD

awarded in accordance with the various notifications which have been issued by the Government under section 4 of the Act. The lower court has directed that interest be reduced according to the provisions of section 30, but has not specified the exact manner of such reduction. It has not allowed future interest.

As regards future interest, i.e. interest from the date of the order fixing instalments, there has been considerable discussion before us as to whether section 4 is or is not applicable to decrees passed before the coming into force of the Act. Section 4(1) provides that "Notwithstanding anything contained in the Code of Civil Procedure, 1908, the rate at which future interest may be allowed 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 shall not exceed the rate notified by the Local Government in the Gazette under sub-section (2) as in force at the time when the decree or order, as the case may be, is passed."

It is contended on behalf of the applicants that section 4 relates only to decrees passed after the Act came into force and does not apply to cases in which a decree previously passed is to be amended under section 30(2), and reliance is placed on a single Judge decision, *Nannu Mal v. Hoti Lal* (1). Against this there is a Bench decision, *Manmohan Das v. Izhar Husain* (2). As regards the last named case, the judgment does not show whether the decree was passed before or after the Act; but we have sent for the record and we find that the decree dates back to a time prior to the passing of the Act. The court had converted the decree originally passed into a decree for instalments. At page 539 the learned Judges (SULAIMAN, C.J., and BENNET, J.) observed: "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

(1) I.L.R. [1937] All. 771.

(2) I.L.R. [1937] All. 536.

1938

GUR-  
CHARAN  
PRASAD  
v.  
ALI  
SAJJAD

a new decree for payment by instalments, the provisions of section 4 would naturally apply." Further on they say: "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." Towards the end of the judgment, at page 541, the learned Judges say: "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 the 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 of January, 1936. We also think that the rate of future interest allowable with effect from the 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."

Section 30 of the Act was not considered in that case. The Court observed (page 538): "It is unnecessary for us to express any opinion on the interpretation of section 30, . . . as in the case before us the judgment-debtor did not apply under that section at all."

In the case of *Nannu Mal v. Hoti Lal* (1), which we have already mentioned, NIAMAT-ULLAH, J., held that section 4 of the Agriculturists' Relief Act is confined to cases in which a decree is passed after the Act comes into force and does not at all apply to cases in which a decree previously passed is to be amended under section 30(2) of the Act. The learned Judge at page 773 says "It is said that the word 'passed' indicates that section 4 applies to decrees previously passed. I am unable to accept this contention, mainly because such an interpretation would bring section 4 in conflict with section 30(2). If section 4 is applicable, as is contended, the

(1) I.L.R. [1937] All. 771.

1938  
 GUR-  
 CHARAN  
 PRASAD  
 P.  
 ALI  
 SAJJAD

court can reduce future interest to  $3\frac{1}{2}$  per cent. whereas section 30(2) makes it incumbent upon the court to allow interest for the period after the 1st of January, 1930, at the scheduled rate, which is in most cases higher than  $3\frac{1}{2}$  per cent."

There is another argument which has been advanced before us by learned counsel for the applicants, and it is as follows: Section 3 of the Act provides for fixing of instalments in a decree which has been passed after the Act came into force. Section 5 gives the court power to convert a decree, whether passed before or after the Act came into force, into a decree for instalments, and it makes section 3 applicable for the purpose of fixing instalments. It is argued that since section 4 was not made applicable, it was not the intention of the legislature that the provisions of that section should apply to decrees passed before the Act came into force. Section 5, however, as we have already said, is concerned with *all* decrees, whether passed before or after the Act came into force, and it merely provides for converting a decree as originally passed into an instalment decree in the manner laid down in section 3. The expression occurring in section 4, "or in any order for grant of instalments passed against an agriculturist", is apparently, as it stands, wide enough to cover all such orders, whether passed in respect to a decree anterior to or posterior to the Act, and we are inclined to think that when section 3 was made applicable by section 5, it was the intention that the provisions of section 4 should automatically come into operation where a decree, whether passed before or after the Act, is converted into a decree or order granting instalments. This was precisely the view which was taken by this Court in the case of *Manmohan Das v. Izhar Husain* (1) already referred to.

As regards the single Judge decision in *Nannu Mal v. Hoti Lal* (2), with great respect we are not inclined

(1) I.L.R. [1937] All. 536.

(2) I.L.R. [1937] All. 771.

to agree with the learned Judge that section 4, if held to be applicable in the case of decrees passed before the Act came into force, would be in conflict with section 30(2). Section 30(1) provides: "Notwithstanding anything in any contract to the contrary 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 the 1st of January, 1930, till such date as may be fixed by the Local Government in the Gazette in this behalf."

Sub-section (2) says: "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."

Under schedule III certain maximum rates are prescribed with effect from the 1st of January, 1930, and these rates were thereafter subject to modification in accordance with rates which might be notified by Government under section 4, subject to the provisions of Note (b); but when once an order for instalments was passed, it seems to us that it was the intention of the legislature that the maximum rates should be those given in the various notifications under section 4, being no longer subject to Note (b) to schedule III. Under section 30(1) the rates fixed in schedule III will be applicable only till such date as may be fixed by the Local Government in the Gazette in this behalf.

In our opinion the interest from the 1st of January, 1930, up to the date of the order under revision, i.e., the order fixing instalments, should be not higher than the rates given in schedule III read with Notes (a) and (b); and we think the court below was wrong in refusing future interest. From the date of the aforesaid order interest should be calculated according to the various notifications which may have been issued by Government under section 4.

1938

---

GUR-  
CHARAN  
PRASAD  
v.  
ALI  
SAJJAD

1938

GUR-  
CHARAN  
PRASAD  
v.  
ALI  
SAJJAD

Learned counsel for the applicants contends that we are not justified in allowing interest at rates lower than the maximum rates which have been prescribed by the Act. In the present case the rate of future interest originally decreed was 6 per cent. per annum, whereas the rate prescribed in schedule III for the period from the 1st of January, 1930, up to the date of the first notification, i.e., the 8th of May, 1930, works out at  $6\frac{1}{2}$  per cent. Learned counsel maintains that this is the rate which we ought to allow. We are unable to accept this contention. Section 30(1) provides that the rate of interest shall not be *higher than* that specified in schedule III, and this does not imply that the court is not at liberty to allow a lower rate than that prescribed by the Act. In a Full Bench case, *Raghubir Singh v. Mul Chand* (1), the Court observed: "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."

That same Full Bench held that the rate of interest to be fixed by the court in an application under section 30 of the Act is to be calculated, not on the accumulated amount due under the loan, but upon the principal amount advanced as loan, and it is thus clear that interest in the present case with effect from the 1st of January, 1930, will be calculated on the principal sum.

In the result we modify the lower court's order in the following manner. We direct that interest from the 1st of January, 1930, shall be calculated under schedule III, Note (a), of the Act upon the principal sum at 6 per cent. per annum simple up to the 8th of May, 1935, (the date of the first notification), that thereafter it shall be calculated in the manner prescribed in Note

(1) J.L.R. [1937] All. 805.



(b) to schedule III up to the date of the order granting instalments and that thereafter it shall be calculated at the rate prescribed in the notification of the 11th of January, 1936, and shall thereafter be modified in accordance with any subsequent notifications which may have been or may be issued. As regards the matter of instalments we direct, in accordance with section 3(4) of the Act, that where any three instalments are in arrears the decree-holder will be at liberty to enforce payment of the whole amount then remaining due under the decree.

We make no order as to costs.

1938  
 GUN-  
 CHAFAN  
 PRASAD  
 v.  
 ALI  
 SAJJAD