

debenture holders be regarded as a "receipt" that receipt did not arise out of any business or the exercise of a profession, vocation or occupation and was of a casual or non-recurring nature.

In the result we hold that the Income-tax Officer was not entitled to assess Major A. U. John for income-tax in respect of the sum above referred to.

We would answer the questions referred as follows:

1(a) The item of Rs.1,04,000 is not liable to income-tax as income accruing and arising in British India within the meaning of section 4(1) of the Act.

(b) Even if the same assessee be regarded as having received the sum of Rs.1,04,000, this receipt is exempt under section 4(3)(vii) of the Act.

In view of our answer to question 1, question 2 does not arise.

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 JOHN
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 COMMISSIONER
 OF INCOME-
 TAX

MISCELLANEOUS CIVIL

Before Mr. Justice Collister and Mr. Justice Bajpai

KALYAN SINGH (DECREE-HOLDER) v. AJUDHIA PRASAD
 (JUDGMENT-DEBTOR)*

1938
 April, 26

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 6—"Decree", whether passed before or after the commencement of the Act—"First application for execution" whether made before or after the commencement of the Act—New law curtailing period of limitation—Retrospective effect—Vested rights.

The word "decree" in section 6 of the U. P. Agriculturists' Relief Act applies both to decrees passed prior to the commencement of the Act and decrees passed after it.

The words "first application for execution" in that section refer to the first application for execution, whether it was made before or after the commencement of the Act.

No substantive rights seem to have been interfered with by the enactment of that section. A litigant has no vested right in any period of limitation, and a suit or proceeding is ordi-

*Miscellaneous Case No. 431 of 1937.

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narily governed by the law of limitation which is actually in force at the time when it is instituted. The provisions of section 6 have to be construed retrospectively.

Parties were not represented.

COLLISTER and BAJPAI, JJ.:—This is a reference by the Munsif of Tilhar through the District Judge of Shahjahanpur on two questions of law on which the court below entertains a reasonable doubt and they have been submitted to us for our opinion. The facts are that one Kalyan Singh held a simple money decree No. 939 of 1929 of small cause court of Tilhar against Ajudhia Prasad. The first application for execution of the decree was made on the 11th of March, 1932, and the application which has given rise to the present reference is an application for execution, dated the 19th of March, 1937, and execution is sought by attachment and sale of the agricultural produce of Ajudhia Prasad, the judgment-debtor. Presumably the decree has been kept alive. Ajudhia Prasad has objected, and his contention is that he is an agriculturist within the meaning of the U. P. Agriculturists' Relief Act, Local Act XXVII of 1934, and under section 6 no decree passed by a civil court against an agriculturist shall be executed by attachment or sale of agricultural produce after a period of four years calculated from the date of the filing of the first application for execution. As we said before, the first application for execution was made on the 11th of March, 1932, and the present application, dated the 19th of March, 1937, has been filed more than four years after the first application and is for attachment and sale of the agricultural produce of the judgment-debtor.

The learned Munsif has, therefore, asked us to give an opinion on the following two points:

(1) Whether section 6 of the Agriculturists' Relief Act only applies to decrees passed after the commencement of the Agriculturists' Relief Act or also to decrees passed prior to its commencement?

(2) Whether the "first application for execution" referred to in section 6 means the first application for execution made after the commencement of the Agriculturists' Relief Act or the first application for execution of the decree whether made before or after the commencement of the Agriculturists' Relief Act?

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It seems that it was argued before the court below by the decree-holder that the operation of section 6 was limited to decrees passed after the commencement of the Act, and the first application for execution mentioned in the section applied to the first application after the commencement of the Act, and the argument seems to be based on the principle that the legislature has no authority to pass a law which may have the effect of curtailing or divesting vested rights.

The learned Munsif is of opinion that the section applies both to decrees passed prior to the commencement of the Act and after it and that the "first application for execution" referred to in section 6 means the "first application for execution made after the commencement of the Act". He holds the view that the second proviso of section 6 makes a reference to section 5 which applies both to decrees passed prior to the commencement of the Act and also after it and that gives a clear indication that section 6 was intended to apply to all decrees whether passed before or after the commencement of the Agriculturists' Relief Act, but the expression "first application for execution" in section 6 cannot be given a retrospective effect because that would have the effect of curtailing the valuable period of limitation.

The word "decree" and the phrase "first application for execution" occurring in section 6 are not qualified by any limitations and are general in their application; the section, as it reads, would apply to "all decrees" and to "all first applications for execution", and the only question that we have got to decide is whether we ought to impose any limitations by reason of

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any well recognized principle. Now it cannot be denied that the legislature has full authority to pass retrospective laws even to the divestment of vested rights; but when it intends to do so it must do so by clear expression or unmistakable indication on the face of the law itself. It was held in the case of *Lal Mohun Mukerjee v. Jogendra Chunder Roy* (1) by a Bench that "The provision of an Act which creates a new right cannot, in the absence of express legislation or direct implication, have a retrospective effect." In the absence of any such guides to the ascertainment of the intention the presumption is that a statute depriving the subject of a vested right is not retrospective. Maxwell in his book on the Interpretation of Statutes, 7th edition, page 187, says that "Every statute which takes away or impairs vested rights acquired under existing laws or prejudicially affects the legal character of past transactions by creating a new obligation, attaching a new disability or imposing a new duty must be presumed to be intended not to have a retrospective operation." Such a presumption, however, does not exist where a statute is remedial and merely affects the procedure in courts of justice, and where its language in terms applies to all actions, whether before or after the Act, the new procedure may be retrospectively applied, but where the change in procedure is complicated by the divestment of a pre-existing right the presumption against its retrospectivity revives in its full strength: See the observations of WESTROPP, C.J., at page 180 in *In the matter of the petition of Ratansi Kalianji* (2).

It is well established that nobody has a vested right in procedure, and statutes of limitation, as distinguished from statutes of prescription, are generally regarded as Acts regulating procedure and would govern all proceedings from the moment of their enactment even

(1) (1887) I.L.R. 14 Cal. 636.

(2) (1877) I.L.R. 2 Bom. 148.

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though the cause of action might have accrued before the Acts came into existence. Section 6 of the Agriculturists' Relief Act, when it says that a decree shall not be executed by attachment or sale of the agricultural produce of an agriculturist judgment-debtor after a period of four years from the date of the filing of the first application for execution, does curtail the limit of time prescribed for execution by section 48 of the Civil Procedure Code which says among other things that no order for the execution of a decree shall be made upon any fresh application presented after the expiration of twelve years from the date of the decree sought to be executed. A litigant has no vested right in any period of limitation, and a suit or proceeding is ordinarily governed by the law of limitation which is actually in force at the time when it is instituted, and in the absence of any hardship or injustice the provisions of the section under discussion have to be construed retrospectively. All that has been enacted is that if a decree-holder wants to execute his decree by attachment or sale of the agricultural produce of an agriculturist judgment-debtor, he must apply within four years of the "first application for execution". Any other remedy by way of execution and which might be taken within the limit of twelve years prescribed by section 48 of the Civil Procedure Code still remains intact. It is to be observed that this limit of twelve years also occurs in a procedural Act, and thus no substantive rights seem to have been interfered with by the enactment of section 6 of the Agriculturists' Relief Act.

Like the learned Munsif, we are of the opinion that the word "decree" appearing in section 6 applies both to decrees passed prior to the commencement of the Act and after it, and unlike the learned Munsif we are of the opinion that the words "first application for execution" occurring in the same section also apply to "first applications for execution" made before or after the commencement of the Act, and these are our answers to the two questions referred to us.