

applicant purchased the share in the year 1923 and he did not exercise his right to avoid the agreement to purchase the share till the date on which the application for the winding up of the company was filed in this Court. Indeed it is only now when the applicant has been put on the list of contributories that he wants to be released from the agreement for the purchase of the share. This cannot be allowed. The official liquidators were therefore right in including the applicant in the list of contributories. I accordingly dismiss this application with costs.

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JAGANNATH
PRASAD
"
OFFICIAL
LIQUIDATORS

REVISIONAL CIVIL

Before Mr. Justice Harries and Mr. Justice Rachhpal Singh

ABDUL NOOR (JUDGMENT-DEBTOR) *v.* BRIJMOHAN
SARAN (DECREE-HOLDER)*

1937
December, 13

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 30—Applicability to decrees passed after the Act—No bar of res judicata—Civil Procedure Code, section 115—Material irregularity—Wrong interpretation of section.

Section 30(2) of the U. P. Agriculturists' Relief Act is applicable to decrees passed after the Act came into force. The words, "if a decree has already been passed", refer to the date on which the debtor makes his application under section 30 for reduction of interest, and do not relate only to those cases in which decrees have been passed before the Act came into force.

The Act confers an absolute privilege on debtors to claim a reduction of interest, and a debtor is entitled to ask for that relief, at any stage before the decree is satisfied, irrespective of whether he made or did not make such a claim before the decree was passed. The general principle of *res judicata* is not applicable in bar of the debtor's right to get a reduction of the interest, although he made no such claim before the decree was passed or did make such a claim but did not appear thereafter and allowed an *ex parte* decree to be passed against him for the whole interest.

Where the court, upon a wrong interpretation of section 30 (2), had deprived the debtor of his absolute right to get a

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reduction of interest, it was *held* that the court had acted with material irregularity within the meaning of section 115 of the Civil Procedure Code and the High Court should interfere in revision.

Mr. *A. M. Khwaja*, for the applicant.

Mr. *S. N. Seth*, for the opposite party.

HARRIES and RACHHPAL SINGH, JJ.:—This is a revision application by a judgment-debtor. The facts which have given rise to this application, briefly put, are these. Sahu Brijmohan Saran obtained a decree against Hafiz Abdul Noor for a large sum of money on the foot of a mortgage deed on the 24th of September, 1937. The judgment-debtor made an application under sections 30, 4 and 5 of the Agriculturists' Relief Act of 1934. He alleged that he was an agriculturist. It was pleaded by him that the rate of interest agreed upon under the terms of the deed was excessive and should therefore be reduced. He also asked that the decree should be amended and converted into a decree under which he should be permitted to pay the amount due, in instalments.

The decree-holder opposed the application. It was pleaded that before a preliminary decree had been passed, the judgment-debtor raised objections about the interest being excessive; but that he did not appear in the court later and therefore an *ex parte* decree was passed. The decree-holder in these circumstances pleaded that the present application was barred by the principle of *res judicata*.

The learned Judge allowed the application so far as the prayer for instalments was concerned. He, however, came to the conclusion that the judgment-debtor was not entitled to ask for the reduction of interest and therefore refused to grant that request. The judgment-debtor has preferred this revision against that order.

The question which we have to consider in this case is whether the view taken by the learned Judge of the court below refusing to reduce the interest is correct. At the

very outset it may be pointed out that there are two single Judge rulings which are in favour of the judgment-debtor's contentions. One of them is *Baryar Singh v. Ram Dularey* (1). This case was decided a few days before the order in the present appeal was passed by the court below and very likely the attention of the learned Judge could not have been drawn to it. It was held in the above mentioned ruling that a judgment-debtor in the case of a decree which was passed after the coming into force of the U. P. Agriculturists' Relief Act can apply for relief under section 30(2) of that Act. The other case is *Nurain Singh v. Banke Behari Lal* (2). In this case also the same view was taken.

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According to the argument addressed to us by learned counsel appearing for the respondent the view taken in these two cases is not accurate and we have therefore been asked not to follow them. The decision of the question depends on the interpretation to be placed on section 30 of the Agriculturists' Relief Act. Section 30 runs as follows:

"(1) 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 January, 1, 1930, till such date as may be fixed by the Local Government in the Gazette in this behalf.

"(2) 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."

The question for consideration is as to what is the meaning of the words, "if a decree has already been passed on the basis of a loan". Do the words "already passed" refer to decrees passed before the Act came into force or to the decrees passed before the date on which the application is made by a judgment-debtor? The interpretation put on these words by the court below is that it

(1) I.L.R. [1937] All. 403.

(2) I.L.R. [1937] All. 943.

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refers to the decrees which had been passed before the Act came into force and not to the date of the application. It is urged before us that this interpretation which has been placed by the court below is correct. As we have already pointed out, the above mentioned two decisions go against the contention of the respondent. It has been clearly held that the view which has been taken by the learned Judge of the court below is not correct. The view taken by the two learned Judges of this Court is that the benefit of section 30(2) can be claimed even by those persons against whom decrees had been passed after the Act came into force. In order to decide the question it is necessary to consider some of the provisions of the Agriculturists' Relief Act.

Chapter IV of the Act deals with the powers of a court relating to reliefs which may be granted to an agriculturist in the matter of the reduction of interest. Section 28(1) is the first provision relating to this matter. This section refers to the rate of interest, in those cases only in which the loans are taken after the passing of the Act, above which the debtor is not liable to pay. One of the matters enacted by section 28 is that "Notwithstanding anything in any contract to the contrary, no loan taken by an agriculturist after this Act comes into force shall bear interest at a rate higher than that notified by the Local Government under sub-section (2) as the prevailing rate of interest for the particular class of loan at the time the loan was taken". The section has no application to the loans taken before the date on which the Act came into force. Section 29 of the Act gives certain reliefs to agriculturists in the matter of reduction of interest if the loan is repaid within a particular period.

The legislature having made the provisions for the protection of the debtors taking loans after the commencement of the Act, next proceed to consider the case of loans which had been taken by debtors prior to the date on which the Act came into force. Section 30, clause (1) deals with those cases in which loans were taken

before the Act and in respect of which no decrees were passed. The heading of this section is "rate of interest on undecreed loans taken before this Act came into force for the period after January 1st, 1930". Section 30(1) enacts as follows: "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 January 1, 1930, till such date as may be fixed by the Local Government in the Gazette in this behalf." It will be seen that in respect of the loans taken before the Act came into force the relief in the matter of reduction of interest is limited. No relief about reduction of interest is granted in respect of loans taken before the commencement of the Act for the period which expired on the 31st of December, 1929. Up till that date the debtors are to pay interest at the contractual rate but the legislature enacted that for the period running from the 1st of January, 1930, till such date as may be fixed by the Government, no loan shall carry higher rate of interest than the one which may be specified by the Government. Thus it will be seen that there is some difference made by the legislature in respect of the loans taken after the Act comes into force and the loans taken before the Act came into force. Under section 28 of the Act debtors can get a reduction in interest for the entire period of the existence of loan whereas the debtors who had taken loans before the commencement of the Act and in respect of which no decrees have been passed are given the right to claim a reduction of interest for a limited period only, that is, from the 1st of January, 1930. With the exception of this difference there is none other between the positions of the debtors who have taken loans after the commencement of the Act and those who took loans before the Act came into force.

It is important to bear in mind that in the Act itself there are no provisions as to when a debtor has to make an application asking for a reduction of interest. In

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respect of loans contracted after the Act came into force it is open to the debtor to make his application for reducing interest either when a decree is going to be passed or any time after the decree whenever it is sought to be enforced against him. There is nothing in the Act which prohibits a debtor from making such an application after the decree has been passed and this applies to both kinds of cases, that is to cases in which the loan was taken after the Act came into force and also to the loan taken before. The reason is that the legislature in its wisdom ordained that on no account shall a debtor pay a higher rate of interest than the one fixed by the Government. In respect of both kinds of loans the legislature has made mandatory provisions. In section 28 the words used are emphatic and they are, "no loan . . . shall bear interest . . ." Similarly in respect of loans taken before the Act came into force the rule is exactly the same as about the loans taken after the Act came into force. The words used in section 30, clause (1) are " . . . no debtor shall be liable to pay interest . . ." It will therefore be seen that it is an absolute privilege conferred on the debtors of both the descriptions to claim a reduction in interest. In the case of a loan taken after the Act came into force reduction of interest can be claimed as a matter of right for the entire period of the loan, while in the case of a loan taken before the commencement of the Act the period in respect of which reduction of interest can be claimed is limited. With the exception of this difference the position of the debtors is exactly the same in both the cases.

In the case before us the loan had been taken before the Act came into force; but the decree was passed after the Act came into force. It has been strenuously contended before us that the words in section 30, clause (2), "if a decree has already been passed on the basis of a loan" mean a decree which has already been passed before the Act came into force. In other words it is contended that if a decree in respect of a loan taken prior to the date on

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which the Act came into force is obtained after the Act came into force, then the debtor is not competent to make an application for the reduction of interest after the decree. We are of opinion that this contention cannot be accepted. One of the special purposes of the Act was to give relief to the debtors in the matter of interest. If the contention raised on behalf of the respondent is accepted, then one of the objects of the Act would be completely frustrated. In clause (1), section 30, a mandatory provision is made that in respect of loans taken before the Act came into force interest shall be reduced from the period running from the 1st January, 1930. According to the argument of the respondent the court is incompetent to grant a relief in the matter of interest to the debtor against whom a suit is filed in respect of loans taken before the Act came into force but in which the decree is passed after the Act came into force, and consequently the debtor is deprived of the right to make an application. We think that the legislature could not possibly have this result in contemplation. We are justified in saying that had there been any intention on the part of the legislature to deprive some debtors of the relief in the matter of interest, then that intention would have been made clear. In our opinion it would not be right to hold, in the absence of any provisions to the contrary, that in particular classes of cases debtors are deprived of this privilege. It appears to us that the view taken in the above mentioned two rulings, if we may say so with great respect, is perfectly correct and that the words "if a decree has already been passed" refer to the date on which the debtor makes his application under section 30 and have no reference to the decree. It cannot be held that they relate only to those cases in which decrees have been passed before the Act came into force.

It was argued before us that the principle of *res judicata* applies to the case before us. We find ourselves unable to agree with this contention. It is well known that generally speaking in pending suits every order passed

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during the proceedings decides a point in issue finally and therefore the principle of *res judicata* applies. Section 11 cannot be said to have any application to such a matter; but the principle of the doctrine of *res judicata* is applicable. The reason is that there will be no end to litigation if it were open to parties to re-agitate every question in pending cases in which decision has already been given. That principle has, however, no application to the cases in which applications are made for the reduction of interest under the provisions of the Agriculturists' Relief Act. Suppose an *ex parte* decree is passed against a debtor. According to law it was the duty of the debtor to have raised all points in his defence. As he permitted an *ex parte* decree to be passed against him it is no longer open to him to go to the court later on and ask that he should be permitted to raise fresh points. If he wanted a reduction of interest it was his duty to appear in the case before a decree was passed and to claim a reduction for the reasons given by him; but as he did not do so he could not later on be permitted to raise the same point. This rule of law is, however, not at all applicable to cases to which the Agriculturists' Relief Act applies. The reason is that here the legislature has made specific provisions conferring a benefit on a debtor to make an application for the reduction of interest at any stage before the decree is satisfied. There may be cases in which the debtors may think that as the Agriculturists' Relief Act has been passed the creditor would understand that he has to get interest at a particular rate and that he himself may reduce the rate of interest. He may further think that as there are specific provisions in the Act itself under which the court is bound to reduce interest, there is no necessity for him to go and defend the suit. There may be other reasons for which a debtor may not think it necessary to go to the court before a decree is passed. His absolute privilege, however, is that the interest shall be reduced and he is entitled to ask for that relief so long as the decree is not satisfied, and the

principle of *res judicata* can possibly have no application to his case. We may be permitted to say that sub-section (2) of section 30 is not happily worded; but having regard to the provisions of section 30, clause (1), we have no doubt in our mind that a debtor is entitled to claim relief at any stage before the decree is satisfied. We find nothing in the provisions of clause (2) of section 30 which would warrant us in holding that it was the intention of the legislature to deprive certain classes of debtors from making an application for reduction of interest when we find clear provisions in section 30, clause (1) to the effect that the interest shall be reduced. We, therefore, hold that the court below was not justified in holding that the principle of *res judicata* was applicable to the present application which has given rise to this appeal.

The next question for consideration is whether the revision application made before us is competent. We have come to the conclusion that the applicant has made out a case for interference in revision. The court below had jurisdiction to decide the question as to whether or not the applicant was entitled to claim a reduction of interest. It wrongly interpreted section 30 and came to the conclusion that that relief could not be granted. It, therefore, acted with material irregularity and therefore this Court should interfere in revision. Under the provisions of the Act the applicant was entitled as a matter of right to claim this relief and it was wrongly refused to him.

For the reasons given above we allow this application and send back the case to the court below with direction that the applicant should be allowed reduction of interest with reference to the provisions of section 30 of the Act and then a decree be prepared in the case. The applicant will get his costs in this Court from the opposite party

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