

given his first award he became *functus officio* and it was no longer open to him to make a second award. The result is that both the awards made by the arbitrator are in fact no awards and cannot stand. We must, therefore, hold that the decision of the learned Civil Judge on this point is not correct.

The result is that this appeal is allowed, the order passed by the court below directing that a decree be passed in terms of the awards is set aside and the suit of the plaintiff is dismissed with costs in both the courts.

Before Mr. Justice Bennet and Mr. Justice Ismail

RADHA KISHEN (DEFENDANT) *v.* MAHARAJA OF BENARES
(PLAINTIFF)*

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v.
INDAR SINGH

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*Interest—Legal or equitable ground for awarding interest—
Haq-i-chaharum—No demand for interest before suit—Interest Act (XXXII of 1839)—Delay in filing suit.*

Where the plaintiff, who was entitled to get his *haq-i-chaharum* upon the sale of a house in Benares, made no demand for interest in the notice which was served on the defendant $3\frac{1}{2}$ years after the sale, and made an inordinate delay of $5\frac{1}{2}$ years in filing the suit, it was held that neither in law nor in equity was the plaintiff entitled to any interest on the amount up to the date of suit; no right to interest arose out of contract or under the Interest Act, and this was not a case for the exercise of equitable jurisdiction to award interest. *Pendente lite* and future interest was, however, allowable.

Mr. Govind Das, for the appellant.

Mr. B. Malik, for the respondent.

BENNET and ISMAIL, JJ.:—This is a first appeal by a defendant, purchaser of a house in Benares, against the part of a decree awarding the plaintiff, H. H. Maharaja of Benares, interest on *zar-i-chaharum* of Rs.3,287-8 at 6 per cent. per annum from the date of sale on the 18th January, 1928. The appeal is taken only on the ground that the court below should not have allowed interest. Now the facts are that this

*First Appeal No. 219 of 1934, from a decree of Bindbasni Prasad, Additional Civil Judge of Benares, dated the 30th of April, 1934.

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sale deed was duly registered in 1928 and it was open to the agents of the plaintiff to ascertain that fact from the office of the sub-registrar. It was not until 1931 that a notice of demand for the *zar-i-chaharum* was sent by the plaintiff to the defendant. The date of delivery of that notice is 7th July, 1931. That notice might have included a demand for interest, and if it had, the provisions of the Interest Act (XXXII of 1839) would have applied and from that date the plaintiff would have been entitled to interest. The notice shows that there was no demand for interest. Again, there was a long delay before the plaintiff brought his suit on the 20th of September, 1933. The result is that there has been a delay from the sale deed till the date of suit of $5\frac{1}{2}$ years. The plaintiff now comes forward with an equitable claim for the award of this amount of interest. The lower court has not considered whether there are any reasonable grounds for awarding interest. A decree based on equitable grounds is always one at the discretion of the court. It appears that the delay was solely due to the negligence of the agents of the plaintiff and therefore in equity there exists no ground at all for awarding interest.

Learned counsel for the appellant has contended that the decree based on equitable grounds was bad in law. The court below recognized that there was no basis of any contract or under the Interest Act for the award of interest, but the court considered that a decree could be granted on equitable grounds and the court referred to the following three rulings. The first is that in *Hamira Bibi v. Zubaida Bibi* (1). This was a case where a Muhammadan widow had been in possession for a number of years of her deceased husband's landed property under her lien for unpaid dower and the other heirs had sued her to recover possession of their shares and prayed for accounts and the question arose whether in taking such accounts she was entitled to

(1) (1916) I.L.R. 38 All. 581.

interest on her dower. Their Lordships held that it would be inequitable to make her account for the profits except on the terms of allowing her reasonable interest on her dower debt. There appears to be a great difference between that case and the present case and that case is not an authority for allowing interest in a case like the present.

The next ruling to which reference was made was *Maharaj Bahadur Singh v. A. H. Forbes* (1). That was a case where interest was allowed under the provisions of Civil Procedure Code, order XXI, rule 93 and therefore it has no application to the present case.

The remaining case is that of *Kishwar Jahan Begam v. Zafar Muhammad Khan* (2). That was a ruling by a Bench of this Court, of which one of us was a member, to the effect that where a beneficiary under a deed of wakf institutes a suit to recover his share of the profits from the property from a mutwalli under the deed and there is unreasonable delay in payment the beneficiary is entitled to interest on the amount of his claim. On page 168 the Bench stated that the rule laid down by the Privy Council appeared to be that "Where a case, in England, would fall within the common law jurisdiction, no equitable principles are to be applied in awarding or withholding interest; but where a case fell within the equitable jurisdiction exercised by the Court of Chancery, equitable considerations might induce the court to allow interest" and the Bench proceeded to hold that because the question between the mutwalli and the beneficiary was one which in a similar matter would come under the Court of Chancery in England therefore equitable considerations might be applied. That ruling therefore is no authority in favour of the plaintiff in the present case.

Two rulings were shown in regard to interest on *zar-i-chaharum* claims. One of these by a single Judge is

(1) (1920) 19 A.L.J. 101.

(2) (1932) I.L.R. 55 All. 164.

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in *Kalicharan Chowdhari v. Beni Madho Prasad* (1). In that case interest was disallowed on the ground that the claim could not be made in law. Another ruling was unreported, *Bishunath Upadhya v. Asharfi Singh* (2), and the decision that interest could not be allowed on the claim for *zar-i-chaharum* was upheld in Letters Patent appeal No. 25 of 1935, decided on 9th December, 1935.

On the other hand learned counsel for plaintiff respondent is not able to show any case of *haq-i-chaharum* where interest has been allowed. We consider therefore that both on grounds of law and on the ground of no cause being made out for the exercise of equitable jurisdiction, the court below was wrong in allowing interest to the plaintiff. We therefore allow this appeal with costs and direct that the amount of interest Rs.1,118-8-0 should be struck off from the decree of the court below, which is the amount of interest up to the date of the suit, but *pendente lite* and future interests will remain in the decree. The amount of costs in the lower court was proportionate and as the decree has now been reduced the amount of costs in the lower court will be correspondingly reduced.

Before Mr. Justice Niamat-ullah, Acting Chief Justice,
and Mr. Justice Verma

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December, 2 MUKAT BEHARI LAL (DEFENDANT) v. MANMOHAN LAL
(PLAINTIFF)*

U. P. Encumbered Estates Act (Local Act XXV of 1934), section 7(1)(b)—Interpretation—"Process" whether includes suits—Suit for ejectment from house for non-payment of rent—Suit "in respect of" a debt—Interpretation of statutes—Intention.

An interpretation of section 7(1)(b) of the U. P. Encumbered Estates Act, which is more in consonance with the intention of

*Second Appeal No. 513 of 1936, from a decree of A. H. Gurney, District Judge of Bareilly, dated the 4th of March, 1936, modifying a decree of Niraj Nath Mukerji, City Munsif of Bareilly, dated the 6th of January, 1936.

(1) [1937] A.L.J. 168.

(2) S. A. No. 1034 of 1932, decided on 19th December, 1934.