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September, 6

## APPELLATE CIVIL

*Before Mr. Justice Niamat-ullah and Mr. Justice Allsop*

SHIAM LAL (JUDGMENT-DEBTOR) *v.* RAM GOPAL  
(DECREE-HOLDER)\*

*Civil Procedure Code, section 115—"Case decided"—Order refusing to stay execution sale upon judgment-debtor's application for instalment decree under section 5 of U. P. Agriculturists' Relief Act—Failure to apply its mind and exercise jurisdiction.*

A judgment-debtor applied under section 5 of the U. P. Agriculturists' Relief Act for conversion of the decree into an instalment decree. Thereafter he applied to the court which was executing the original decree, praying that the sale in execution of that decree should be stayed; and that court passed the order, "No good ground; rejected."

*Held*, that although ordinarily a mere order refusing to postpone the sale, or any other order granting or refusing a postponement, would not be a final decision of a "case" between the parties, yet, in this particular matter, the court by refusing to postpone the sale did decide a substantial question in issue, for if the sale were held and confirmed it would render the redress of the judgment-debtor under section 5 of the U. P. Agriculturists' Relief Act wholly nugatory; and the order did amount to a "case decided" within the meaning of section 115 of the Civil Procedure Code. Further, it appeared from the order that the court did not really apply its mind and consider the matter in issue, and it failed to exercise any real jurisdiction; the case was therefore a fit one for revision.

Messrs. *B. Malik* and *L. N. Gupta*, for the appellant.

*Mr. G. S. Pathak*, for the respondent.

NIAMAT-ULLAH and ALLSOP, JJ.:—This purports to be an appeal against an order passed by the learned Subordinate Judge of Pilibhit. The appellant was a judgment-debtor. He made an application under section 5 of the Agriculturists' Relief Act of 1934 that the decree should be converted into an instalment decree. Thereafter he made an application to the court executing the original decree that the sale in execution of that decree should be stayed. The court executing the

\*First Appeal No. 67 of 1936, from an order of Zorawar Singh, Civil Judge of Pilibhit, dated the 19th of November, 1935.

decree was also that of the Subordinate Judge of Pilibhit. The learned Judge passed this order, "No good ground. Rejected." A preliminary objection has been taken that there is no appeal provided against an order refusing to stay a sale in execution of a decree. It seems to us, however, although the contention of the respondent is good upon this point, that we should interfere in this matter in exercise of our jurisdiction by way of revision. The result of the order refusing to stay the sale was this that once the sale had taken place and had been confirmed, the judgment-debtor would have had no redress under section 5 of the Agriculturists' Relief Act, because he would have lost his property and the original decree would have been satisfied. It has been argued that this is not a proper case for interference in revision, because the order of the court below did not finally decide any case between the parties. We quite agree that in the majority of instances a mere order refusing to postpone the sale or any other order of postponement would not be a final decision of what may be described as a case between the parties. We think however that this particular matter before us is an exception, because the court by refusing to postpone the sale did decide a substantial question in issue. On an examination of the order passed and considering the circumstances of the case we do not think that the court could really have gone into the matter in issue or exercised any real jurisdiction. No grounds are given for refusing to pass an order which in the circumstances, it seems to us, would have been the ordinary order to pass. That being so, we think that we should interfere. We have decided in the exercise of our jurisdiction to direct that the sale shall not be confirmed until the court has passed an order on the application under section 5 of the Agriculturists' Relief Act. If under that section the court converts the original decree to a decree for instalments the sale should not be confirmed. If on

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the other hand the court holds that the judgment-debtor was not an agriculturist to whom the Act applies or for some other reason decides that no decree for instalments should be passed, then proceedings for the confirmation of the sale may continue as they would have done if this order by us had not been passed. The parties will bear their own costs in this Court.

Before Sir John Thom, Acting Chief Justice, and  
 Mr. Justice Ismail

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BUDH SEN (APPLICANT) v. ASHARFI LAL AND OTHERS  
 (OPPOSITE PARTIES)\*

*Provincial Insolvency Act (V of 1920), sections 4, 75—Question “of any nature whatsoever”—Ejusdem generis—Rate of interest provided in the scheme—Approving scheme providing more than 6 per cent.—Second appeal—Provincial Insolvency Act, section 48.*

Section 75(1), proviso, of the Provincial Insolvency Act was not intended to allow a second appeal on every question which might arise between the parties in insolvency proceedings. The phrase, “or of any nature whatsoever”, in section 4 of the Act is no doubt a very wide one, but it must, however, be read in conjunction with the earlier part of the section which refers to questions “whether of title or priority”, i.e. it must be subject to the limitation of *ejusdem generis*. A question about the rate of interest provided in the scheme of arrangement, and whether it could or should not be higher than the 6 per cent. mentioned in section 48 of the Act, was not a question coming within the provisions of section 4 and no second appeal therefore lay under section 75(1), proviso, from the decision of such a question by a District Judge on appeal.

Mr. Mansur Alam, for the appellant.

Mr. G. S. Pathak, for the respondents.

THOM, A.C.J., and ISMAIL, J.:—This is a second appeal from an order of the learned District Judge of Bareilly in an insolvency matter.

The appellant was declared insolvent, and finally a scheme was propounded by the official receiver, which

\*Second Appeal No. 11 of 1936, from an order of A. H. Gurney, District Judge of Bareilly, dated the 27th of January, 1936.