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revenue etc. is the only person who can apply. Normally such a person in a joint Hindu family would be the karta. In the present case it is found that Babu Lal was the karta of the family, and the property held by the family was recorded in his name. Therefore he was the only person who could for the purposes of section 5 or any of the sections of chapter IV be regarded as an agriculturist. The court has held that Babu Lal is not an agriculturist, and in our view that concludes the matter. The other members of the family could not by reason of explanation II, section 2(2), be regarded as agriculturists for the purposes of this application before us, and consequently the application of Prakash Nath should have been dismissed by the learned Civil Judge.

For the reasons given above we allow this application, set aside the order of the learned Civil Judge and dismiss the judgment-debtor's application. The applicants will have the costs of this application in this Court and in the court below.

*Before Sir Shah Muhammad Sulaiman, Chief Justice,
 and Mr. Justice Harries*

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BABU RAM AND OTHERS (JUDGMENT-DEBTORS) v.
 MANOHAR LAL (DECREE-HOLDER)*

U. P. Encumbered Estates Act (Local Act XXV of 1934), sections 7(1)(a) and 9(5)—Stay of execution proceedings—Court to which application for stay is to be made—Stay as against all judgment-debtors although only some have applied under the Act—Civil Procedure Code, section 115—Revision of decision of first court, though confirmed by decision of appellate court from which no revision lies—Civil Procedure Code, section 115—"Case decided"—Order refusing to stay proceedings in accordance with the U. P. Encumbered Estates Act, section 7(1).

Where there is a decree for money passed jointly against several judgment-debtors, and even one of them applies under

the U. P. Encumbered Estates Act and thereupon an order under section 6 of the Act is passed, then, whether the other joint debtors be or be not persons entitled to apply under the Act, all pending proceedings in execution of the decree must be stayed, in accordance with the provisions of section 7(1)(a) read with section 9(5) of the Act, as against all the judgment-debtors, unless and until the Special Judge has determined and apportioned the amounts payable by the several judgment-debtors, as required to be done by section 9(5). It is clear from section 9(5)(b) that it is only when the Special Judge has determined what amount out of the joint judgment-debt is due by the non-applying judgment-debtors that the decree-holder becomes entitled to recover that amount from them in execution of his decree.

The appropriate court in which an application should be made under section 7(1)(a) of the Act for the stay of proceedings pending in a civil court in execution of a decree is the civil court in which such proceedings are pending, and not the court of the Special Judge.

The High Court has power, under section 115 of the Civil Procedure Code, to interfere in revision with the decision of the first court, in a case in which no appeal lies to the High Court, although that decision has been affirmed in appeal and a revision from the decision of the appellate court does not lie.

An application under section 7(1)(a) of the U. P. Encumbered Estates Act for the stay of proceedings pending in an execution court starts a fresh proceeding, and the dismissal of the application terminates that proceeding and amounts to a "case decided" within the meaning of section 115 of the Civil Procedure Code.

Mr. *Shiva Prasad Sinha*, for the applicants.

Messrs. *S. N. Seth* and *S. B. L. Gaur*, for the opposite party.

SULAIMAN, C.J., and HARRIES, J.:—This is an application by the judgment-debtors under section 115 of the Civil Procedure Code. A suit was brought against (1) Cut Piece Co., Ltd., (2) Babu Ram, (3) Shankar Lal and (4) Raghunandan Lal as proprietor of the firm Bhup Singh Bihari Lal. The suit was ultimately decreed on the basis of a compromise and

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a joint decree against the Cut Piece Co., Ltd., as well as the three other defendants was passed. It is not now necessary to go behind the compromise decree and try to find out what the basis of the claim was. Babu Ram, Shankar Lal and Raghunandan Lal applied to the Collector under the U. P. Encumbered Estates Act and it is not disputed that the Act applies to them. Afterwards an application was filed by these three persons to the execution court which was executing the respondent's decree, with the prayer that the proceedings should be stayed under section 7 of the U. P. Encumbered Estates Act. The court summarily rejected the application, ordering that the execution should proceed. An appeal was preferred to the court of the District Judge and along with it there was an application for stay; and both were dismissed by the District Judge. The judgment-debtors have come in revision to this Court, praying that the order of the District Judge should be cancelled.

The position really is that we have before us the entire record including the order of the execution court refusing the judgment-debtors' application made under section 7 of the Encumbered Estates Act. A preliminary objection is taken that as there was a remedy by way of appeal from the order of the execution court to the District Judge, no revision lies. It is, however, conceded that no appeal lies to the High Court. That being so, this Court has jurisdiction under section 115 of the Civil Procedure Code to entertain the revision if no appeal lies to it. It has been held by a Full Bench of this Court in *Gobardhan Das v. Dau Dayal* (1) that the High Court can interfere in revision with the order of the first court if no appeal lies to the High Court.

The next objection taken is that the order passed by the execution court was an interlocutory order refusing to stay proceedings and therefore no case has been

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decided. It is accordingly argued on the strength of *Buddhu Lal v. Mewa Ram* (1) that the High Court has no jurisdiction to interfere. That, however, was a case in which an application had been made under the Code of Civil Procedure during the pendency of the suit. In the present case, the suit has already been disposed of and an application was made under section 7 of the Encumbered Estates Act. This is a special Act, the object of which is that all proceedings pending in any civil or revenue court in respect of any debt to which the landlord is subject shall be stayed. The application therefore starts a fresh proceeding and the dismissal of the application terminates the proceeding which was started by the application. As soon as the application is dismissed, the remedy of the applicant comes to an end and the execution proceedings would not be stayed, with the result that the execution would proceed against him. This is contrary to the express provision of section 7(1)(a). We are therefore of the opinion that the proceeding started by the filing of an application under this section is a fresh proceeding and therefore a case which terminates as soon as the application is dismissed. It follows that a case has been decided within the meaning of section 115 of the Civil Procedure Code.

The next objection taken to the revision is that the application for stay should have been made to the Special Judge and not to the Subordinate Judge who was executing the decree. It so happens that the same officer is both the Subordinate Judge as well as the Special Judge. Nevertheless, it is true that the application was, in form, made to the Subordinate Judge on the execution side and not to him in his capacity of the Special Judge. But we think that this procedure was the proper procedure to adopt. Section 7(1)(a) lays down that all proceedings pending in any civil or revenue court in respect of any debt to which the landlord

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is subject, shall be stayed. It therefore follows that it is the duty of the civil court in which the proceeding is pending to stay it and therefore the application was rightly made to the execution court in which the execution proceeding was pending at the instance of the decree-holder. For the purposes of section 7 the appropriate court to which the application could have been made was the execution court.

Coming to the merits of the case, the main point is whether the proceeding should be stayed so far as the execution against the Cut Piece Co., Ltd., is concerned. The decree-holder having got a joint decree against the Cut Piece Co., Ltd., as well as the three other defendants is trying to execute the decree in full and realise the whole amount from the co-judgment-debtor, the Cut Piece Co., Ltd. It is urged before us that the object of the Act is to protect only encumbered estates and not other judgment-debtors and that accordingly no order should be passed prohibiting the execution of the decree against the Cut Piece Co., Ltd. The relevant portion of section 7(1)(a) is in the following words: "All proceedings pending . . . in any civil or revenue court. . . in respect of any public or private debt to which the landlord is subject. . . shall be stayed." It can not be doubted that the execution proceeding is a proceeding pending in a civil court, nor can it be doubted that it is in respect of a private debt due under the decree dated the 10th of March, 1936, payable by the company as well as the other defendants. Nor indeed can it be doubted that this is a debt to which the defendants Babu Ram, Shankar Lal and Raghunandan are subject. The debt being a joint debt and there being a joint liability, it is certainly a debt to which these defendants also are subject along with the company. It is therefore difficult to bring this case out of the language of the section. That this is the meaning of the section is made clear by the pro-

visions of section 9. Under sub-section (5)(a) of section 9 if one or more of several joint debtors apply but all the joint debtors do not apply, then the Special Judge shall determine the amount of the joint debt which is due by the debtor or debtors who have applied and the amount due by those who have not applied; and for the purposes of such determination the joint debtors who have not applied have to be made parties. It is admitted that the Special Judge has not yet determined the amount of the joint debt due by the debtor or debtors who have applied and the amount due by those who have not applied. There has indeed been so far no such apportionment. Sub-section (5)(b) lays down: "If all the joint debtors have not applied under section 4 the creditor shall have a right to recover from the debtors who have not applied only such amount on account of the joint debt as may be decreed by the Special Judge to be due by them." It is quite clear that the creditor can realise *only* such amount on account of the joint debt as may be decreed by the Special Judge. As no such amount has been decreed by the Special Judge, the decree-holder cannot recover any such amount at all. The object of this provision is to protect the landlord who is one of the joint debtors and execution cannot proceed until the joint debt has been determined and it has also been determined for how much the person who has applied is liable and for how much those who have not applied are liable, for the decree-holder can realise only such amount as may be decreed by the Special Judge.

If the decree-holder were allowed to execute his decree against the company and were to realise the entire amount of the decree, the result would be that he would recover the whole of the decretal amount before the amount payable by the company has been determined by the Special Judge and before there has been any apportionment. The object of the provisions

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of the Act is obviously to reduce the interest or to grant such other reliefs as are provided for therein to the landlord, and in that way a benefit is conferred upon him. If the decree-holder were to realise the entire decretal amount from the co-debtors then he would shift the burden on to the co-debtors who may be unable to recover their share from the landlord who is protected. We do not think that this could have been the intention of the legislature in framing sections 7 and 9. There seems to be no doubt that where there is a joint decree and therefore a joint judgment debt, the execution of that decree must be stayed, even if one of the judgment-debtors applies under the Act, until the Special Judge has determined the amounts required to be determined by section 9(5).

We accordingly think that the court below was bound to stay the proceeding and had no jurisdiction to go on with the execution in spite of the imperative provisions of section 7. We therefore allow this application in revision and setting aside the order of the execution court dated the 24th of July, 1936, direct that the execution proceeding be stayed under section 7 of the Encumbered Estates Act. As the application was directed against the order of the District Judge, we direct that the parties should bear their own costs of this application.