

## APPELLATE CIVIL

*Before Mr. Justice Iqbal Ahmad and Mr. Justice Bajpai*

TARA CHAND (DEFENDANT) *v.* COLLECTOR OF ALIGARH  
(PLAINTIFF)\*

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*U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 33(2)—Declaration of amount due amounts to a decree—Appeal—Civil Procedure Code, section 96—Forum of appeal—Valuation of suit—General Rules (Civil Courts), chapter XX, rule 28(3)—Suits Valuation Act (VII of 1887), section 11(1)(a)—U. P. Agriculturists' Relief Act, sections 30, 33, schedule III—Rates of interest—Alteration of compound interest to simple interest—Power to do so.*

The declaration contemplated by section 33(2) of the U. P. Agriculturists' Relief Act, when made by the court, constitutes the formal expression of adjudication by the court as regards the dispute between the parties to the suit and therefore amounts to a decree as defined by section 2(2) of the Civil Procedure Code, and the decree must, in the absence of any provision in the U. P. Agriculturists' Relief Act or in any other law barring an appeal from such decree, be appealable in accordance with the provisions of section 96 of the Civil Procedure Code.

Where, in contravention of rule 28(3) of chapter XX of the General Rules for Civil Courts, a suit under section 33 of the U. P. Agriculturists' Relief Act was valued at rupees six lakhs odd, but no objection was taken and the suit was heard and decided by the Civil Judge instead of by the Munsif, no objection could be raised afterwards according to section 11(1)(a) of the Suits Valuation Act and the appeal would lie to the High Court.

Having regard to the provisions of section 30 of the U. P. Agriculturists' Relief Act it is incumbent on the court in settling accounts in a suit under section 33 of the Act to calculate the interest in accordance with schedule III of the Act, which provides different rates to be applied according to whether the stipulated interest was compound interest or simple interest. There is no provision in the Act which justifies an interference by the court as regards the stipulation as to payment of simple or compound interest, and a stipulation as to payment of compound interest has to be respected and can be interfered with only to this extent that the

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\*First Appeal No. 31 of 1937, from a decree of A. P. Ghildial, Civil Judge of Aligarh, dated the 21st of October, 1936.

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interest is to be compounded with yearly rests, as provided by schedule III. Even where the defendant creditor himself prays for it, the court cannot alter the stipulated compound interest to simple interest.

Messrs. *P. L. Banerji* and *Din Dayal*, for the appellant.

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

**IQBAL AHMAD and BAJPAI, JJ.**:—This appeal arises out of a suit filed by the Collector of Aligarh as representing the Court of Wards (in charge of the estate of Raja Kishori Raman Singh Bahadur of Mursan) under section 33 of the U. P. Agriculturists' Relief Act (Act No. XXVII of 1934). The suit was for accounts and for a declaration as to the amount which was payable by the plaintiff to the defendant Rai Bahadur Seth Tara Chand.

It appears that on the 20th of June, 1924, the Raja of Mursan executed a mortgage deed in favour of the defendant for a sum of Rs.5,11,000. The interest stipulated in the bond was at the rate of Re.0-9-9 per cent. per mensem, compoundable with six-monthly rests. Again on the 23rd of May, 1929, the Raja of Mursan executed another mortgage deed in favour of the defendant for a sum of Rs.1,35,000 and the rate of interest provided in this deed was at the rate of Re.0-9-4 per cent. per mensem, compoundable with six-monthly rests.

It is common ground that the interest accruing due on the amounts advanced under the two deeds was paid by the debtor to the creditor from time to time. Some interest, however, remained due to the creditor. According to the case put forward by the plaintiff in the court below the amount due to the defendant on the basis of the two mortgage deeds was Rs.6,72,988 and accordingly the plaintiff claimed a declaration to this effect. The value of the subject-matter of the suit for purposes of jurisdiction was stated in the plaint to be Rs.6,72,988.

The defendant contested the suit *inter alia* on the ground that he was entitled to simple interest on the amount due under the two bonds at the rate of  $6\frac{1}{2}$  per cent. per annum from the 1st of January, 1930, till the date of the suit and that in calculating the amount due the court should overlook the stipulation as to payment of compound interest in the two mortgage deeds. As the interest accruing due on the mortgage debts was from time to time paid to the defendant, it was to the advantage of the defendant to claim simple interest at the rate specified in schedule III of the Act rather than compound interest in accordance with that schedule.

The court below repelled this contention of the defendant and passed a decree declaring that a sum of Rs.7,30,108 was payable by the plaintiff to the defendant on account of the debts advanced under the two mortgage deeds. The defendant being dissatisfied with the decree passed by the court below has preferred the present appeal. The appeal has been valued at a sum of Rs.15,000 and the prayer contained in the memorandum of appeal is that the amount declared by the court below to be due to the defendant be increased by a sum of Rs.15,000.

The first question that arises for consideration in the present appeal is whether an appeal lies against the decree passed by the court below, and if that decree is appealable, whether the appeal lies to this Court or to the court of the District Judge.

Under Notification No. 7067/30—3(4) of the 17th of December, 1935, this Court, with the previous sanction of the Local Government, framed certain rules under the powers conferred upon it by section 9 of the Suits Valuation Act. These rules are to be found in chapter XX of the rules framed by this Court for the civil courts. One of these rules, viz., rule 28(3) provides:

“Suits in which the plaintiff in the plaint asks for accounts only, not being suits to recover the amount

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which may be found due to the plaintiff on taking unsettled accounts between him and the defendant, or suits of either of the kinds described in order XX, rule 13, of the Code of Civil Procedure—

“Value—(a) For the purposes of the Court Fees Act, 1870—as determined by that Act;

“(b) For the purposes of the Suits Valuation Act, 1887—such amount exceeding Rs.100, and not exceeding Rs.500, as the plaintiff may state in the plaint.”

A suit under section 33 of the Agriculturists' Relief Act is a suit for account of money lent or advanced to the agriculturist plaintiff in the suit. Such a suit has, therefore, to be valued in accordance with the provisions of rule 28(3) framed by this Court that has been quoted above. It follows that the valuation of such a suit for the purposes of the Suits Valuation Act must be between Rs.100 and Rs.500, irrespective of the amount that may be due to the defendant from the plaintiff.

The suit giving rise to the present appeal was filed after the enforcement of the said rule and accordingly the proper valuation of the suit for the purposes of jurisdiction of the court was below Rs.500. The suit was, therefore, wrongly valued at Rs.6,72,988 and in view of this wrong valuation the suit, instead of being filed in the court of the Munsif, was filed in the court of the Civil Judge of Aligarh. No objection as to the valuation for the purposes of jurisdiction was, however, taken by the defendant in the court below, with the result that the learned Civil Judge proceeded with the trial and the decision of the suit.

In view of the provisions of section 11(1)(a) of the Suits Valuation Act (Act VII of 1887) no objection as to the improper valuation of the suit for jurisdictional purposes can now be taken, for the simple reason that no such objection was taken in the court below. We must, therefore, proceed on the assumption that the suit was properly valued and the appeal against the

decision of the learned Civil Judge, if entertainable, lies to this Court and not to the court of the District Judge.

The question, however, remains whether the decree passed by the learned Civil Judge is appealable. It is to be noted at the very outset that though by section 5(2) and by section 23 of the Agriculturists' Relief Act provision is made for appeals against certain orders passed under the Act, the Act is silent as to appeals against decrees passed under the Act. The orders that have been made appealable are orders passed on applications and not in suits filed under the Act. Section 33 deals with suits and not with applications, and suits, as distinguished from applications, must culminate in decrees. It is provided by clause (2) of section 33 that the court shall, after taking necessary accounts, declare the amount which is payable by the plaintiff to the defendant, and shall on the application of the defendant pass a decree in favour of the defendant. The declaration contemplated by this clause when made by the court constitutes the formal expression of adjudication by the court as regards the dispute between the parties and therefore amounts to a decree as defined by section 2(2) of the Civil Procedure Code, and the decree must, in the absence of any statutory provision to the contrary, be appealable in accordance with the provisions of section 96 of the Code which *inter alia* provides: "Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorised to hear appeals from the decisions of such court."

There is no provision in the Agriculturists' Relief Act or in any other law barring appeals from decrees passed by a court under section 33 of the U. P. Agriculturists' Relief Act. Such decrees are, therefore, appealable decrees. The view that we take is in consonance with the view taken in *Mahadeo Prasad v. Lal Bakhsh*

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*Singh* (1). The appeal was, therefore, rightly filed in this Court and has to be decided on its merits.

By clause (2) of section 33 the court in settling the account with a view to the ascertainment of the amount payable by the plaintiff to the defendant is enjoined to follow the provisions of chapter IV of the Act, which chapter deals with the question of "Rates of interest". Section 30 in chapter IV provides that "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 1st January, 1930, till such date as may be fixed by the Local Government in the Gazette in this behalf." Having regard to this provision it is incumbent on the court in settling accounts under section 33 to calculate the interest in accordance with schedule III of the Act. By that schedule varying rates of interest have been provided for secured and unsecured loans exceeding a particular amount. The case before us falls within clause (d) of that schedule which provides for interest on loans exceeding Rs.20,000. In accordance with that clause the rate of compound interest provided for secured loans is admittedly at the rate of  $5\frac{1}{2}$  per cent. and the rate of simple interest provided for such loans is at the rate of  $6\frac{1}{2}$  per cent. In the present case there was a stipulation for payment of compound interest in the two mortgage bonds. The plaintiff was therefore liable to pay compound interest at the rate of  $5\frac{1}{2}$  per cent. There is no provision in the Act that justifies an interference by the court as regards the stipulation as to payment of simple or compound interest. The only relief that can be given to a debtor under section 30 is as regards the rate of interest. The stipulation between the parties as to payment of compound interest has, however, to be respected and can be interfered with only to this extent that the interest is to be compounded with yearly rests as provided for by schedule III. This was the view taken by a learned

Judge of this Court in *Bisesar Ram Marwari v. Paras-nath* (1). The court below was, therefore, right in calculating the interest at the rate of  $5\frac{1}{2}$  per cent. compoundable with yearly rests.

For the reasons given above, we dismiss this appeal with costs.

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Before Justice Sir Edward Bennet and Mr. Justice Verma

MAGAN BEHARI LAL (PLAINTIFF) v. RAM PARTAP  
SINGH (DEFENDANT)\*

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*Partnership Act (IX of 1932), section 69—Unregistered firm—Suit for dissolution and rendition of accounts—Form of decree to be passed—No liability to render accounts can be enforced—Receiver may be appointed to take accounts—Civil Procedure Code, order XX, rule 15; Form No. 21 of Appendix D—Partnership Act, section 48—Does not deal with liability of a partner to render accounts.*

In a suit by a partner of an unregistered firm against the other partner for dissolution of partnership and for rendition of accounts the defendant cannot, in view of the provisions of section 69 of the Partnership Act, be asked to render accounts; the prayer for an account to be taken may be granted in the limited terms of section 48 of the Act, that is to say the decree in question will be under order XX, rule 15 and form No. 21 of Appendix D of the Civil Procedure Code, and a receiver may, if the plaintiff desires, be appointed to take accounts of the firm, but the decree will state that the relief of making the defendant an accounting party is not granted.

The exception provided by sub-section (3)(a) of section 69 of the Partnership Act does not authorise a decree which would make the defendant an accounting party. It refers to a suit for the dissolution of a firm or for accounts of a dissolved firm; dissolution of a firm is dealt with in chapter VI of the Act, and there is no section in that chapter which gives a right to obtain a decree that the defendant be asked to render accounts; and section 48, which deals with the mode of settling accounts of a dissolved firm, does not deal with the question of making one of the partners an accounting party.

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\*First Appeal No. 103 of 1937, from a decree of Bind Basni Prasad, Civil Judge of Bulandshahr, dated the 9th of November, 1936.