

REVISIONAL CIVIL

Before Mr. Justice Rachhpal Singh

1940
March, 28

GIRDHARI LAL AND OTHERS (APPLICANTS) v. JANG SINGH
AND OTHERS (OPPOSITE PARTIES)*

U. P. Encumbered Estates Act (Local Act XXV of 1934), sections 14(4), 15—Determination of amount due on a decree—Interest—Civil Procedure Code, section 115—Illegality—Jurisdiction—Awarding more interest than is legally allowable.

The effect of section 15, read with section 14(4), of the U. P. Encumbered Estates Act is that in determining the amount due on a debt, in respect of which a decree has already been passed by a court, the Special Judge has no jurisdiction to assess the amount of interest due on the date of the application at a sum larger than the amount of the principal which remained due on the date of the application.

Where the Special Judge awards interest in contravention of the provisions of sections 14(4) and 15 he acts without jurisdiction and a revision lies against his order.

Mr. *Baleshwari Prasad*, for the applicants.

Mr. *B. S. Darbari*, for the opposite parties.

RACHHPAL SINGH, J.:—This is a revision application arising out of proceedings under the Encumbered Estates Act. Girdhari Lal and others applicants made an application under section 4 of the Encumbered Estates Act which was sent to the Special Judge under the provisions of section 6. The opposite parties, Jang Singh and others, had a claim against the landlord debtors and they preferred their claim which was based on foot of a mortgage decree, dated the 6th of December, 1929, in the court of the Special Judge. It may be noted here that the application under the Encumbered Estates Act had been made on the 11th of April, 1936. The main question for consideration in the present appeal is whether the lower appellate court was right in allowing interest to the creditors in defiance of the provisions of section 14 of the Encumbered Estates Act. Both parties are agreed that the principal amount due from the landlord debtors

to the creditors was a sum of Rs.3,240. Section 14 of the Encumbered Estates Act among other things ordains as follows: “(4) In examining each claim the Special Judge shall have and exercise all the powers of the court in which a suit for the recovery of the money due would lie and shall decide the questions in issue on the same principles as those on which such court would decide them, subject to the following provisions, namely—(a) the amount of interest held to be due on the date of the application shall not exceed that portion of the principal which may still be found to be due on the date of the application.” Section 15 of the Encumbered Estates Act enjoins as follows: “In determining the amount due on the basis of a loan which has been the subject of a decree the Special Judge shall accept the findings of the court which passed the decree except in so far as they are inconsistent with the provisions of section 14.” If we read the provisions of these two sections carefully, it becomes at once apparent that in the matter of granting interest the powers of the court are curtailed to a considerable extent. To me it is clear that under the provisions of section 14 the court can grant a decree for the principal sum due, which in the present case was Rs.3,240, plus interest which shall not exceed the principal amount which was due on the date of the application. In view of these provisions it is no longer open to the court to award interest on some other consideration. The fact that a decree has been obtained on the basis of a loan does not make the slightest difference because section 15 makes it clear that the powers of the court in determining the amount are subject to the provisions of section 14 and according to that section interest cannot possibly exceed the principal amount which was due on the date of the application. Learned counsel for the respondents relied on *Ramsagar Prasad v. Mst. Shayama* (1), a case decided by the Chief Court of Oudh. The first portion of the headnote certainly goes against the contention raised on behalf of the

1940

 GERDHARI
 LAL
 v.
 JANG
 SINGH

1940

GIRDHARI
LAL
v.
JANG
SINGH

respondents. But there are observations in the concluding portion which might be said to be in favour of the respondents. If that case be an authority that in spite of the provisions of section 14 the court can grant interest more than the principal sum due on the date of the application, then I must respectfully beg to dissent from that view. As I have observed, the matter has been made perfectly clear by the provisions of section 14, clause (4). In no case can the interest exceed the principal sum due on the date on which the application was made.

Learned counsel for the respondents also urged that this was a case in which this Court should not interfere in revision because at the most what could be said was that the court committed illegality but it was urged that it had jurisdiction to determine the matter in dispute. I am not in agreement with this contention of learned counsel for the respondents. In my opinion the court had no jurisdiction, having regard to the provisions of section 14, to pass an order which would permit the creditors to realise by way of interest more than the amount which was due as principal on the date of the application.

For the reasons given above I allow this revision application and modify the decree of the lower appellate court to this extent that the decree of the lower appellate court awarding interest to the respondents at $4\frac{1}{2}$ per cent. from the date of filing of suit No. 54 of 1929 on the sum of Rs.6,481-4-0 only up to the date of the filing of the application under the Encumbered Estates Act is set aside. No interest will be allowed to the respondents for this period. In other respects the decree of the lower appellate court is upheld. So far as the costs in this Court are concerned, parties will bear their own costs.