

1936

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about interest and by way of payment by instalments. It follows therefore that the learned Judge of the court below acted without jurisdiction in reducing the amount of costs awarded by the original decree.

Ziaul Hasan,
J.

The application is therefore allowed with costs and the lower court's order modified to this extent that the decretal amount will be payable by four equal yearly instalments beginning from the 15th of February, 1937, and that the decretal amount will include the entire costs awarded to the decree-holder by the original decree. In other respects the lower court's order will stand.

Application allowed.

REVISIONAL CIVIL

Before Mr Justice Ziaul Hasan

SETH SHIAM BEHARI (DECREE-HOLDER-APPLICANT) v.
BHAYA KISHEN DAT RAM (JUDGMENT-DEBTOR-
OPPOSITE-PARTY)*

1936
October, 28

United Provinces Agriculturists' Relief Act (XXVII of 1934), sections 5 and 30—Instalment decree—Court's power under section 5 to modify instalment decrees—Interest—Decree providing future interest at a particular rate—Court's power to reduce rate of future interest—Court quoting wrong section in its orders, effect of.

A decree may already be an instalment decree but section 5 of the Agriculturists' Relief Act gives court power to provide for payment of instalments in accordance with the provisions of section 3. Merely from the use of the word "converted" it cannot be argued that section 5 of the Act was not intended to apply to cases in which instalments had already been fixed by the decree.

Where a decree provides for payment of future interest at a particular rate the court has power to reduce the rate of interest under section 30 of the Agriculturists' Relief Act. The fact that the Judge quotes a wrong section in his order would

*Section 115 Application No. 7 of 1936, against the order of Babu Gauri Shankar Varma, Civil Judge of Gonda, dated the 20th of November, 1935.

not make the order *ultra vires* if otherwise it is in accordance with law. *Kailash Kuer v. Amarnath* (1), referred to.

Mr. K. N. Tandon, for the applicant.

Mr. S. N. Roy, for the opposite-party.

ZIAUL HASAN, J.:—This is an application in revision by a decree-holder against an order of the learned Civil Judge of Gonda amending a decree of his court under sections 5 and 30 of the Agriculturists' Relief Act.

The decree was a simple money decree for Rs.6,373-15-8 passed on the 7th of December, 1931. It was made payable in seven instalments up to Jeth 1345 Fasli. Future interest was to run at 6 per cent. per annum and it was provided that in case of default about any two successive instalments, the balance would be recoverable at once.

The learned Judge of the court below amended this decree on the 20th of November, 1935, by making the decretal amount payable in eight equal annual instalments. The rate of future interest was reduced from 6 to $4\frac{1}{2}$ per cent. up to the 7th of May, 1935 and thereafter to $3\frac{1}{2}$ per cent. till the date of realisation. The instalments were to be due by the end of Baisakh in each year and it was ordered that default about any three instalments shall make the whole recoverable at once.

On behalf of the applicant-decree-holder it is argued in the first instance that the decree being already an instalment decree, the court below should not have amended it and reliance is placed on the words "converted into a decree for payment by instalments" occurring in section 5(1) of the Agriculturists' Relief Act. It is argued that a thing cannot be converted into what it already is and that it follows that section 5 of the Agriculturists' Relief Act was not intended to apply to cases in which the decree already provides for payment by instalments. I cannot accede to this argu-

(1) (1936) O.W.N., 471.

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J.

ment. The words “-converted into a decree for payment by instalments” should be read along with the following words, namely, “drawn up in such terms as it (the court) thinks fit in accordance with the provisions of section 3.” A decree may already be an instalment decree but section 5 of the Agriculturists’ Relief Act gives the court power to provide for payment of instalments in accordance with the provisions of section 3. Merely from the use of the word “converted” it cannot in my opinion be argued that section 5 of the Act was not intended to apply to cases in which instalments had already been fixed by the decree.

Next it was argued that the court below acted without jurisdiction in reducing the rate of interest purporting to do so under section 4 of the Act and on the authority of the case of *Kailash Kuer v. Amarnath* (1) it was urged that section 4 of the Act applied only to cases covered by section 3 and not to those coming under section 5. No doubt the learned Judge of the court below referred to section 4 of the Act in his order but that does not make his order *ultra vires* if otherwise it is in accordance with law. It cannot be denied that he had power to reduce interest under section 30 of the Act and the learned advocate for the applicant has failed to show that in reducing the rate of interest the learned Judge has contravened the provisions of section 30 or of any other section of the Agriculturists’ Relief Act. It was said that interest should have been fixed according to schedule III of the Act but that schedule only provides for the maximum rates of interest beyond which courts cannot go. The court below did not in my opinion go against the provisions of the Agriculturists’ Relief Act in reducing the rates of interest in the manner it did.

The application has no force and is dismissedⁿ with costs.

Application dismissed.

(1) (1936) O.W.N., 471.