

1936

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the Lahore case, with the decision of which we agree, and we think the application should be allowed.

It was said that the proper remedy for the applicant was to have appealed against or applied for a review of the judgment and decree but we are not prepared to hold that that was the only remedy open to the applicant. In the Lahore case also no appeal had been brought by the applicant against the decree and yet his application for amendment was granted under section 152 of the Code of Civil Procedure.

The application is therefore decreed with costs and the amendment prayed for is allowed.

*Application allowed.*

## REVISIONAL CIVIL

*Before Mr. Justice Ziaul Hasan*

LALA KANHAIYA LAL (APPLICANT) v. CHHANGA AND  
ANOTHER (OPPOSITE-PARTY)\*

1936

October, 28

*United Provinces Agriculturists' Relief Act (XXVII of 1934), sections 2(2)(f), 3(1) and 30(2)—Judgment-debtor paying less than Rs.500 as rent—Instalments granted, whether can be extended beyond four years from date of decree—Costs—Court's power to reduce costs under section 30(2).*

Where a judgment-debtor pays rent to the extent of less than Rs.500, he is an agriculturist within the meaning of that term in section 2(2)(f) to whom chapter III of the Act applies and so according to the proviso to section 3(1) of the Act, instalments granted to such an agriculturist should not extend beyond four years from the date of the decree. Where in such a case the court makes the decree payable in twelve years the order is wrong and without jurisdiction.

Section 30(2) provides for reducing the amount of interest but not of costs and so the court acts without jurisdiction if it reduces the amount of costs awarded by the original decree.

Mr. P. D. Rastogi, for the applicant.

Mr. Ram Nath, for the opposite party.

\*Section 25 Application No. 52 of 1936, against the decree of Syed Shaukat Husain. Judge, Small Cause Court, Lucknow, dated the 15th of February, 1936.

ZIAUL HASAN, J.:—The applicant-decree-holder obtained a decree against the judgment-debtor on the 14th of November, 1934. On the 4th of November, 1935, the judgment-debtor applied for amendment of the decree under sections 5 and 30 of the Agriculturists' Relief Act. The court below, the learned Judge of the Small Cause Court, Lucknow, reduced the interest from  $37\frac{1}{2}$  per cent. to 14 per cent. per annum and made the decretal amount payable by instalments covering a period of twelve years. He also reduced the amount of costs by making them proportionate to the amount decreed.

It is urged in the first place that the learned Judge of the court below had no jurisdiction to extend the instalments beyond four years and in the second, that he had no power to reduce the amount of costs awarded by the original decree.

I have heard the learned counsel for both parties ~~and am of opinion~~ that the application should be allowed on both the grounds. It is not denied that the judgment-debtor pays rent to the extent of less than Rs.500. He is therefore an agriculturist within the meaning of that term in section 2(2)(f). He is therefore an agriculturist to whom chapter III of the Act applies. According to the proviso to section 3(1) of the Act, instalments granted to an agriculturist to whom chapter III applies should not extend beyond four years from the date of the decree. The order of the court below making the decree payable in twelve years was therefore wrong and without jurisdiction.

I also agree that the court below had no jurisdiction to alter the terms of the original decree so far as it related to costs. Section 30(2) provides for reducing the amount of interest but not of costs.

Moreover ordinarily no court has jurisdiction to alter the terms of its own decree and it is only by virtue of the provisions of the Agriculturists' Relief Act that the terms of decrees already passed can be altered.

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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.