

REVISIONAL CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava
and Mr. Justice E. M. Nanavutty*

THAKURAIN KAILASH KUER (JUDGMENT-DEBTOR-
APPLICANT) *v.* LALA AMAR NATH (DECREE-HOLDER-
OPPOSITE-PARTY)*

1936
April, 9

United Provinces Agriculturists' Relief Act (XXVII of 1934), sections 3, 4, 5, 30 and 31 and Schedule III—Sections 30 and 31, U. P. Agriculturists' Relief Act, 1934, scope and applicability of—Words “on loan” in section 30, meaning of—Section 30, U. P. Agriculturists' Relief Act, provides for reduction of interest—Interest, calculation of—Rate of interest on loans of over Rs.20,000 under Government notification, dated the 1st May, 1935—“Any order for grant of instalments passed against an agriculturist” in section 4, meaning of—Interest before and after trial Court's decree, rate of.

The words “on loan” in section 30, Agriculturists' Act, mean no more than “in respect of a loan”. The word “loan” used in section 30(1) in contrast with words “the sum originally borrowed” used in section 31 is not intended to signify only the principal amount but implies the amount found due under the terms of a contract or decree up to 31st December, 1929. Section 30 provides only for reduction of the rate of interest from 1st January, 1930, on the amount found due under the terms of the contract under clause (1) or under the terms of the decree under clause (2) of section 30.

The Agriculturists' Relief Act does not authorize the calculation of interest at different rates before and after the date fixed for payment under the preliminary decree in a mortgage suit. The rate of interest payable on loan over Rs.20,000 with effect from 8th May, 1935—the date from which the maximum rate in Schedule III has been reduced to $3\frac{1}{2}$ per cent. under Local Government notification, dated the 1st May, 1935—should be reduced from $5\frac{1}{2}$ to $4\frac{1}{2}$ per cent.

The words “any order for grant of instalments passed against an agriculturist” used in section 4, Agriculturists' Relief Act, should be confined in their application to orders passed under section 3. Consequently interest both before as well as after

*Section 115 Application No. 113 of 1935, against the order of Babu Bhagwati Prasad, Subordinate Judge of Lucknow, dated the 14th of September, 1935.

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the date of the lower Court's decree should be calculated according to the rate applicable to the case under Schedule III.

Mr. *Habib Ali Khan*, for the applicant.

Messrs. *Radha Krishna Srivastava* and *Padam Chand Srimal*, for the opposite-party.

SRIVASTAVA and NANAVUTTY, JJ.:—These are cross-applications in revision by the judgment-debtor and the decree-holder. They arise out of an application made to the Subordinate Judge of Lucknow for amendment of a decree in accordance with the provisions of sections 4, 5 and 30 of the United Provinces Agriculturists' Relief Act (XXVII of 1934).

The history of the debt which gave rise to these applications is that on the 19th of December, 1925, Narendra Bikramjit Singh, husband of the judgment-debtor, executed a deed of mortgage for Rs.33,000 carrying interest at 1 per cent. per mensem compoundable half-yearly. The principal sum of Rs.33,000 included an item of Rs.1,593 which was due for interest on a previous loan. On the 3rd of August, 1932, the mortgagee obtained a preliminary decree for sale for Rs.68,406 with future interest at 6 per cent. per annum after the date fixed for payment. This decree was made final for a sum of Rs.70,778-15-4 on the 1st of August, 1933. The application for amendment of the decree under the provisions of the Agriculturists' Relief Act was made on the 15th of May, 1935. The Subordinate Judge ordered the decree to be amended as follows:

“(1) Interest will be calculated on the principal sum secured by the mortgage at the contractual rate from the date of the mortgage up to 31st December, 1929.”

“(2) Interest on the total amount found due on 31st December, 1929 will be calculated at the rate of Rs.5½ per cent. per annum compoundable with yearly rest from 1st January, 1930 up to 3rd February, 1933, the date fixed for payment under the preliminary decree.”

“(3) Interest on the total amount found due on the 3rd February, 1933 will be calculated at the rate of 6 per

cent. per annum simple from 4th February, 1933 up to this date."

"(4) Interest on the total amount found due on this date including the cost will run at the rate of $3\frac{1}{2}$ per cent. per annum."

"(5) The judgment-debtor will pay the amount found due on this date together with future interest in 10 years in six-monthly equal instalments payable in Aghan and Jeth of every year. If any three instalments are in arrears execution will issue for the whole then remaining unpaid."

The first contention urged on behalf of the judgment-debtor is that with effect from 1st January, 1930, interest at the reduced rate should be allowed only on the principal amount of the mortgage and not on the total amount due on that date. It is also argued that the sum of Rs.1,593 which represented previous interest, although included in the principal sum secured by the mortgage, should not be treated as principal money for the purpose of calculating interest. It has been urged that the word used in section 30, clause (1) is "loan" and that the definition of the word "Loan" as given in section 2(10) of the Act shows that it is meant to refer only to the principal amount. We are of opinion that the contention is without substance. Section 30 provides only for reduction in the rate of interest. It is a matter of common knowledge that economic depression and slump in prices began in the early part of 1930. The section therefore makes provision for an equitable rate of interest being charged with effect from 1st January, 1930. There is nothing in the terms of the section to suggest any intention on the part of the legislature to interfere with the terms of the contract, except as regards the rate of interest. The material words of the section are:

"Notwithstanding anything in any contract to the contrary no debtor shall be liable to pay interest on a loan . . . at a rate higher than . . ."

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The words "on a loan" in the passage quoted above, in our opinion, mean no more than "in respect of a loan". It is worthy of note that under section 31 which follows immediately after this section the words used are:

"Notwithstanding anything in any contract to the contrary no loan taken after this Act comes into force shall bear interest at a rate higher than that specified in Schedule IV, calculated on the sum originally borrowed . . ."

If the legislature intended that the use of the word "Loan" in section 30, clause (1) should signify only the principal amount, then it was to be expected that the words "the sum originally borrowed" used in section 31 or other words to the same effect should have been used in this section also. Our conclusion therefore is that section 30 does not justify any interference with the amount found due under the terms of the contract or decree up to 31st December, 1929. All that it provides is for reduction of the rate of interest from 1st January, 1930, on the amount found due on that date under the terms of the contract under clause (1) or under the terms of the decree under clause (2) of section 30.

The next objection raised is as regards the method of calculation adopted by the learned Subordinate Judge under clauses (2) and (3) of his order quoted above. We think the objection is correct. There is no authority in the Agriculturists' Relief Act for making the calculation at different rates before and after the date fixed for payment under the preliminary decree. What section 30 provides is that interest will not be allowed 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. Schedule III prescribes four scales of rates, two for secured loans and two for unsecured loans, according as the interest is compoundable or simple. These rates also vary according to the amount of the loan. The parties are agreed that according to the rate applicable to this case under Schedule III, in accordance with the

notification of the Local Government, interest from 1st January, 1930, up to the 8th May, 1935, is payable at the rate of $5\frac{1}{2}$ per cent. The only question is as regards the rate of interest payable after the 8th May, 1935, from which date under a subsequent notification of the Local Government, dated the 1st of May, 1935, the maximum rate or in other words the value of X in Schedule III was reduced to $3\frac{1}{2}$ per cent. It seems to us clear that as a result of the later notification interest with effect from 8th May, 1935 must be reduced from $5\frac{1}{2}$ per cent. to $4\frac{1}{2}$ per cent.

The next question is as regards the future rate of interest after the date of the order of the lower Court which was passed on the 14th of September, 1935. It has been argued on behalf of the decree-holder that the rate of interest applicable to the case under Schedule III should continue to run until the realisation of the debt. On the other hand the judgment-debtor's contention is that as an order for grant of instalments has been made under section 5 therefore the case is governed by section 4 of the Act and future interest from the date of the lower Court's order should not exceed the rate prescribed in that section. There can be no doubt that if an order fixing instalments had not been made, then under section 30 the rate of interest prescribed by Schedule III would have continued to run even after the date of the order. It is also obvious that an order fixing instalments is an order made for the benefit of the judgment-debtor. If we accept the judgment-debtor's contention the result would be that if he gets the benefit of instalments he should also get the additional benefit of a reduced rate of future interest. On the other hand if the relief of payment by instalments is not asked or for some reason disallowed, then in that case there would be no diminution in the rate of future interest and interest for the entire period from 1st January, 1930 till realization would run at the rate prescribed by Schedule III. We feel certain that such an anomalous result could never have been intended by the legislature. It is true that

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the words "any order for grant of instalments passed against an agriculturist" used in section 4 are quite general, yet we think that in order to avoid the absurdity pointed out above the proper construction to be placed upon them is to restrict their application to orders for grant of instalments passed under section 3. It may be pointed out that the preceding words of section 4, namely "the rate at which future interest may be allowed in any decree for payment of money or for sale in default of payment of money or for foreclosure" clearly refer to the provision for future interest to be made in decrees passed subsequent to the passing of the United Provinces Agriculturists' Relief Act which are dealt with in section 3. As section 4 comes in immediately after this section it is very likely that the order for grant of instalments mentioned in section 4 was intended to refer only to such orders made under section 3. It may also be pointed out that Chapter II which consists of sections 3 to 8 is headed "Suits against Agriculturists". Section 5 which provides for the fixing of instalments after the passing of decrees is therefore quite out of place in this Chapter. Thus it will be seen that the position in which section 5 has been placed is by no means logical or accurate. We cannot therefore help feeling that the drafting lacks precision and is rather inartistic. Thus we are of opinion that the words "any order for grant of instalments passed against an agriculturist" used in section 4 should in the context be confined to such orders passed at the time of the passing of the decree or in other words must be limited in their application to orders passed under section 3. Therefore it follows that interest both before as well as after the date of the lower Court's decree must be calculated according to the rate applicable to the case under Schedule III.

This disposes of all the contentions raised on behalf of the parties. The result therefore is that in place of

clauses (2), (3) and (4) of the lower Court's order quoted by us above the following clause shall be substituted:

“(2) Interest on the total amount found due on the 31st December, 1929, will be calculated at the rate of $5\frac{1}{2}$ per cent. compoundable with yearly rest from 1st January, 1930 to 7th May, 1935, and at $4\frac{1}{2}$ per cent. from 8th May, 1935 till realization.

As a consequence of the above clause (5) of the lower Court's order will be read as clause (3).

We would also direct that in calculating interest under clause (1) credit will be given to the judgment-debtor for any payment of interest made during the period on the date of such payment. As regards costs we order that in section 115 application No. 113 of 1935 parties shall bear their own costs and that the decree-holder-applicant will get his costs from the judgment-debtor in section 115 application No. 16 of 1936.

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