

REVISIONAL CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice H. G. Smith

1937
August, 17

BABU KHUSHAL CHAND (PLAINTIFF-APPLICANT) *v.* RAJA
PIRTHIPAL SINGH (DEFENDANT-OPPOSITE PARTY)*

*United Provinces Agriculturists' Relief Act (XXVII of 1934),
Schedule III and section 30—Secured and unsecured loan—
Loan originally unsecured—Compromise decree passed and
property given in security—Loan, if became unsecured from
date of compromise decree—Interest from 1st January, 1930,
whether to be calculated on principal only or on the whole
amount due for principal and interest on 31st December,
1929.*

Where a loan is originally an unsecured loan but subsequently by a compromise decree passed on the basis of it some property is given as security, the loan for the purposes of applying Schedule III of the United Provinces Agriculturists' Relief Act should be regarded throughout as an unsecured loan. The correct date to take for the division of loans into secured and unsecured is the date on which the loan is taken. *Kunj Behari Lal v. Ketki Kunwar (1)*, followed.

The word "loan" used in section 30(1) of the Act means not only the principal amount, but the whole amount due under the terms of a contract or decree up to the 31st of December, 1929. Hence interest from 1st January, 1930, should be calculated not only on the principal amount but on the whole amount due for principal and interest on the 1st of January, 1930. *Kailash Kuer v. Amarnath (2)*, relied on. *Ramman Lal v. Kamla Dat (3)*, dissented from.

Messrs. *M. Wasim, Makund Behari Lal and Padam Chand Srimal*, for the applicant.

Mr. *B. K. Dhaon*, for the opposite-party.

SRIVASTAVA, C.J. and SMITH, J.:—This is an application in revision by a decree-holder against an order of the learned Subordinate Judge of Malihabad, Lucknow, by which under the provisions of the United Provinces

*Section 115 Application no. 62 of 1936, against the order of Pandit Brij Krishna Topa, Civil Judge of Malihabad at Lucknow, dated the 22nd of December, 1935.

(1) (1937) A. L. J. R., 177.

(2) (1936) I.L.R., 12 Luck., 175.

(3) (1936) A. I. R., All., 864.

Agriculturists' Relief Act he passed orders relating to instalments and rates of interest in connection with a decree, dated the 15th of February, 1932, which was passed by compromise on the basis of a promissory note for Rs.41,380, bearing interest at Re.1-8 per cent. per mensem compoundable six-monthly. By the compromise decree some property was given as security, and the rate of interest was reduced to 6 per cent. per annum simple from the date of the decree (15th February, 1932). The learned Subordinate Judge fixed twenty six-monthly instalments, payable in the months of Jeth and Aghan. As to interest, he ordered as follows:

(1) Interest was ordered to run on the principal amount (Rs.41,380) from the date of the promissory-note (11th May, 1928), till 31st December, 1929, at the contractual rate.

(2) Interest was ordered to run on the principal amount from 1st January, 1930 till 15th February, 1932, at 7 per cent. per annum compoundable annually, according to the provisions of Schedule III of the Act.

(3) From 15th February, 1932 till 7th May, 1935, interest was ordered to run on the principal amount at $5\frac{1}{2}$ per cent. per annum compoundable annually.

(4) From 8th May, 1935 till 23rd December, 1935 (the date of the Subordinate Judge's order), interest was ordered to run on the principal amount at $4\frac{1}{2}$ per cent. per annum compoundable yearly.

(5) Interest after 23rd December, 1935, was ordered to run "on the amount found due including costs (if unpaid)" at $3\frac{1}{2}$ per cent. per annum.

The learned Subordinate Judge regarded the loan as a secured loan from the date of the compromise decree, since under the compromise, as has been mentioned already, some property was given as a security. He applied the provisions of section 4 of the Act with regard to the interest for the period after the 23rd of December, 1935.

The contentions of the learned counsel for the applicant are as follows:

(a) It should be made clear that interest at the contractual rate from 11th May, 1928, to 31st

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December, 1929 (*vide* paragraph 1 above), means interest at Re.1-8 per cent. per mensem compoundable six-monthly. We agree that that is so, and the order of the learned court below will be so interpreted. The learned counsel for the opposite-party has no objection to raise on this point.

(b) The interest provided in paragraph 2 above ought to have been ordered to run from 1st January, 1930 till 15th February, 1932, not only on the principal amount of Rs.41,380, but on the whole amount due for principal and interest on the 1st of January, 1930. In that connection reference was made to a decision of this Court reported in *Kailash Kuer, Thakurain v. Amarnath, Lala* (1).

(c) Similarly interest should run from 15th February, 1932 till 7th May, 1935, on the total amount due on the former of those dates, and not only on Rs.41,380. It is further contended that interest during that period should have been allowed at six per cent. per annum simple, instead of $5\frac{1}{2}$ per cent. per annum compound.

(d) Interest from 8th May, 1935 till 23rd December, 1935, should have been at the rate of 6 per cent. per annum simple, and not $4\frac{1}{2}$ per cent. per annum compound.

(e) Future interest should have been allowed at 6 per cent. per annum simple instead of $3\frac{1}{2}$ per cent. per annum.

As regards the question whether the loan was to be regarded as an unsecured loan throughout, or whether it was originally an unsecured loan, but became a secured loan on the 15th of February, 1932, when the compromise was entered into, and property was given in security, the learned counsel for the applicant contended that the loan ought to be regarded throughout as an unsecured loan, since no security was given originally. He

made reference to the definitions of "secured loan" and "unsecured loan", given in section 2(10)(b) and (c) of the United Provinces Agriculturists' Relief Act, and contended that after the 15th of February, 1932, there was strictly speaking no longer any "loan", but there was a decree based on a compromise.

The learned counsel for the opposite-party maintained that the loan became "secured", on the 15th of February, 1932, and that the rates of interest after that date ought to be calculated accordingly. As to the question whether interest ought to be allowed on the entire amount due on the 1st of January, 1930, or on the principal amount only, he referred us to a ruling of the Allahabad High Court reported in *Ramman Lal v. Hakim Kamla Dat* (1).

As to whether the loan for the purpose of applying Schedule III of the Act should be regarded throughout as an unsecured loan, we are of opinion, that it should be. It was undoubtedly originally an unsecured loan, as defined in section 2(10)(c) of the Act, and that is what we consider has to be looked at for the purpose of calculating the rates of interest allowable under Schedule III of the Act. In support of his contention on this point the learned counsel for the applicant referred us to a Bench decision of the Allahabad High Court reported in *Kunj Behari Lal v. Kethi Kunwar* (2). The facts there were the reverse of those in the present case, since in that case there was originally a secured loan, but the creditor afterwards gave up his security and obtained a simple money decree. The principle, however, is the same. The learned Judges of the Allahabad High Court who decided that case said that it appeared to them that the correct date to take for the division of loans into two classes is the date on which the loan is taken. Following that view, we hold that for the purpose of Schedule III of the Act the present loan must be regarded as an unsecured loan.

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As to the question of the amounts to which the various rates of interest should be applied, the Allahabad decision relied on by the learned counsel for the opposite party supports his contention. It was, however, held in the Bench decision of our own Court referred to above *Kailash Kuer v. Amar Nath* (1) that the word "loan" used in section 30(1) of the Act means not only the principal amount, but the whole amount due under the terms of a contract or decree up to the 31st of December, 1929. We must follow that view, and accept the contention of the learned counsel for the applicant as regards the period from 1st January, 1930 till 15th February, 1932. We also agree with him that interest should run from 15th February, 1932, the date of the decree, till 7th May, 1936, on the total amount due on 15th February, 1932.

As to what the rates of interest ought to be at the different times, the only controversy is as regards the periods 15th February, 1932 to 7th May, 1935; 8th May, 1935 to 23rd December, 1935; and from 23rd December, 1935 till the date of payment. As regards the first of these periods, the rate provided in the decree is simple interest at 6 per cent. per annum. According to the fourth column of Schedule III it would come to 9 per cent. As the decree gives a rate of interest which is lower than the rate ascertained from the Schedule, 6 per cent. per annum simple interest, the rate provided by the decree, will run during that period.

For the period 8th May, 1935 to 23rd December, 1935, the rate according to Schedule III will be 8 per cent. which also is more than the rate provided in the decree. Simple interest at 6 per cent. per annum will therefore run during that period also.

After 23rd December, 1935 down to 14th January, 1936, the rate given by Schedule III is still 8 per cent. Thereafter the rate according to the Schedule is $7\frac{3}{4}$ per cent. Both those rates, that is to say, are in excess of

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

the 6 per cent. per annum provided by the decree. That rate of 6 per cent. per annum could not be further reduced under the provisions of section 4 of the Act, having regard to the view taken by a Full Bench of this Court in a decision reported in *Jhamman Lal and others v. Surat Singh and others* (1).

The result is that the rates of interest directed in the order of the learned court below for the periods from 15th February, 1932, onwards are set aside, and in place of them simple interest at the rate of 6 per cent. per annum is substituted for the whole period from 15th February, 1932, onwards.

The rate of interest prescribed for the period from the 1st of January, 1930 till the 15th of February, 1932, will be applied to the whole amount due for principal and interest on the 1st of January, 1930, and the rate of interest (6 per cent. per annum simple) from 15th February, 1932, onwards will be applied to the total amount due on the 15th of February, 1932.

The applicant is allowed his costs of this application.

Application allowed.

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*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice W. Y. Madeley*

S. TAUQIR HUSAIN (DEFENDANT-APPLICANT) *v.* S. MOHAMMAD AKHTAR AND ANOTHER (PLAINTIFFS-OPPOSITE PARTY)*

*Civil Procedure Code (Act V of 1908), order XXI, rule 16—
“Transferee of decree by operation of law” under order
XXI, rule 16—Person obtaining declaration against decree-
holder entitling him to a share in the decretal amount, whe-
ther “transferee of decree by operation of law”.*

Order XXI, rule 16 of the Code of Civil Procedure deals with applications for execution made by a transferee of the decree. One of the conditions requisite for the application of the section is that the decree “is transferred by assignment in

*Section 115 Application no. 140 of 1936, against the order of Pandit Krishna Nand Pande, Civil Judge of Partabgarh, dated the 7th of April, 1936.

(1) (1937) I.L.R., 13 Luck., 287.

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