# APPELLATE CIVIL

*Before Mr. Justice G. H. Thomas, Chief Judge and Mr. Justice Ziaul Hasan*

DR. B. N. VYAS (DEFENDANT-APPELLANT) *v.* RAJA BARKHANDI MAHESH PRATAP NARAIN SINGH, (PLAINTIFF-RESPONDENT)*

1938 *August*, 16

*United Provinces Agriculturists' Relief Act* (XXVII *of* 1934), *sections* 2(2), 30 *and* 33—*Suit under section* 33—*Debtor paying more than Rs.*1,000 *as land revenue and income-tax not exceeding the local rate payable on the land—Debtor, whether an agriculturist—Local rate payable or local rate paid, whether to be considered—Promissory note renewed—Debt, whether extinguished by renewal—Suit under section* 33 *in respect of renewed promissory note—Former transaction, whether can be re-opened under sections* 30 *and* 33.

According to the second proviso to section 2(2) of the Agriculturists' Relief Act it is not the payment of income-tax absolutely which takes away the effect of the first proviso but, in the case of a person belonging to clause (*a*) only when the income-tax which he pays exceeds the local rate payable on the land which he holds. The proviso clearly shows that it is not the payment of income-tax irrespective of its amount that attracts the operation of that proviso.

Under the provisions of section 33 of the Agriculturists' Relief Act a debtor is an agriculturist though he pays more than Rs.1,000 as land revenue and also pays income-tax if the amount of income-tax paid does not exceed the local rate payable on the land which he holds.

Under proviso 2 to section 2(2) of the United Provinces Agriculturists' Relief Act it is not the actual payment of the local rate but the amount of the local rate payable by a person that has to be considered under that proviso.

Where a promissory note is renewed the original debt is not extinguished by the renewal of the promissory note and it can be taken into account in a suit under section 33, United Provinces Agriculturists' Relief Act.

Mr. *Ram Prasad Varma* (*R. B.*) and Mr. *S. S. Nigam*, for the appellant.

Messrs. *Niamat Ullah* and *Akhlaque Husain*, for the respondent.

*Second Civil Appeal No. 254 of 1937, against the decree of W. Y. Madeley, Esq., I.C.S., District Judge of Lucknow, dated the 22nd of April, 1937.

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THOMAS, C.J. and ZIAUL HASAN, J.:—This is a defendant's second appeal against a decree of the learned District Judge of Lucknow, who modified a decree of the learned Munsif, South, Lucknow, in a suit brought by the plaintiff-respondent under section 33 of the United Provinces Agriculturists' Relief Act.

On the 12th of January, 1932, the respondent borrowed a sum of Rs.15,000 from the defendant-appellant and executed a promissory note for the debt. On the 10th of January, 1935, the promissory note was renewed by the execution of another for a sum of Rs.20,402 which sum included the principal amount and interest, a portion of the interest having been remitted by the creditor. A suit under section 33 of the United Provinces Agriculturists' Relief Act was brought by the plaintiff praying that the defendant be ordered to render an account in respect of both the promissory notes and that the amount due be declared after regulating interest under the United Provinces Agriculturists' Relief Act. The suit was contested by the present appellant who did not admit that the plaintiff was an agriculturist and contended that the debt of 1932 having been paid off by the execution of the second promissory note by the plaintiff, account can only be taken on the second promissory note.

The learned Munsif held that the plaintiff was an agriculturist and was as such entitled to reduction of interest under the provisions of the Agriculturists' Relief Act but he was of opinion that the previous debt of 1932 could not be re-opened. As a result of his findings he gave the plaintiff a decree declaring that the amount due on the promissory note of the 10th of January, 1935, up to the date of suit is Rs.21,711-3-5.

The defendant submitted to this decree but the plaintiff appealed and in appeal the learned District Judge, while upholding the trial court's finding that the plaintiff was an agriculturist, came to the conclusion that the provisions of the Agriculturists' Relief Act

required re-opening of the original debt and accordingly passed a decree fixing the rates of interest according to section 30 of the Agriculturists' Relief Act and modifying the trial court's decree.

The present appeal has been filed by the defendant against the learned District Judge's decree and it is also prayed that whatever sum be held to be due to the appellant, a decree for that amount be passed in his favour under section 33(2) of the Act.

The first contention raised by the learned counsel for the appellant is that the respondent is not an agriculturist as defined in section 2(2) of the Agriculturists' Relief Act. A person who, in the districts not subject to the Benares Permanent Settlement Regulation, 1795, pays land revenue not exceeding Rs.1,000 per annum is an agriculturist under section 2(2) (*a*) and the first proviso to the section lays down that for the purpose of certain sections and chapters of the Act including Chapter V, an agriculturist means also a person who would belong to a class of persons mentioned in parts (*a*) to (*g*) of this sub-section if the limits of land revenue, local rates, rent and area mentioned, in these parts were omitted. Section 33 occurs in Chapter V of the Act and though the plaintiff-respondent pays more than Rs.1,000 as land revenue, he is to be deemed an agriculturist by virtue of this proviso. The argument of the learned counsel for the appellant, however, is that though he is an agriculturist according to the first proviso, yet as he pays income-tax also, he is again taken out of the category of agriculturists by the second proviso to section 2(2). That proviso is as follows:

> "Provided also that no person shall be deemed to be an agriculturist if he is assessed to income-tax, which, if he belongs to any of the classes (*a*) to (*e*) above, exceeds the local rate payable on the land which he holds, or, if he belongs to class (*f*) above, exceeds 5 per cent. of his rent, or, if he belongs to class (*g*) above, exceeds Rs.25."

We are unable to accept the argument of the learned counsel. It is not to our minds the payment of income-tax

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absolutely which takes away the effect of the first proviso but, in the case of a person belonging to clause (*a*), only when the income-tax which he pays exceeds the local rate payable on the land which he holds. The proviso clearly shows that it is not the payment of income-tax irrespective of its amount that attracts the operation of that proviso. That payment is qualified by the words "which, if he belongs to any of the clauses (*a*) to (*e*) above, exceeds the local rate payable on the land which he holds, etc. etc." Now let us see if the income-tax paid by the plaintiff-respondent does or does not exceed the local rate payable on the zamindari which he holds.

Section 109 of the District Boards Act of 1922 repeals section 3 of the United Provinces Local Rates Act, 1914, and provides:

> "(1) The District Board of any district may, by notification in the *Gazette,* impose in any local area within the district not subject to the Benares Permanent Settlement Regulation, 1795, a rate to be levied in respect of each estate within such local area and to be assessed at a prescribed amount not exceeding 6½ per cent. upon the annual value of the estate."

"Annual Value" is defined in section 2 of the Local Rates Act of 1914 as double the amount of the land revenue for the time being assessed upon an estate where the settlement of the land revenue is liable to periodical revision. Notification no. 250/I—243, dated the 20th January, 1915, contained in the District Board Manual, Volume I, page 159, shows that in Oudh for the district of Lucknow the local rate was fixed at Rs.4-12 per cent. per annum upon the annual value of the estate. So far as the khewats on the record show, the land revenue that the respondent pays comes to about Rs.26,646. The annual value of his estate therefore comes to Rs.53,292 and the local rate at Rs.4-12 per cent. on this value is about Rs.2,531. As the amount of income-tax which the respondent pays is Rs.1,591-8 only, it is clear that the income-tax does not exceed the local rate payable by him, and the second proviso does not prevent his being classed as an agriculturist.

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It was argued that there was no evidence on the record to show the local rate which the respondent pays but proviso 2 quoted above shows that it is not the actual payment of the local rate but the amount of the local rate payable by a person that has to be considered under that proviso. We are therefore of opinion that the courts below were perfectly right in holding that the plaintiff-respondent is an agriculturist.

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The next point urged on behalf of the appellant was that the original debt of 1932 was extinguished by the renewal of the promissory note in 1935 and that therefore it could not be taken into account in the present suit. We are unable to accept this argument also. It was held in *Bansidhar Marwari and others* v. *Secretary of State for India* (1) that where a creditor has not been actually paid but he takes a renewed bill or promissory note for his debt in order to give time to the debtor and receives some consideration by way of increased interest or otherwise for his forbearance, it could hardly be said that the old debt had been paid off by the acceptance of the renewed bill. Moreover, section 30 of the Agriculturists' Relief Act is wide enough to cover the case of an old debt renewed subsequently. Sub-section (1) of that section provides:

> "Notwithstanding anything in any contract to the contrary no debtor shall be liable to pay interest on a loan taken before this Act comes into force at a rate higher than that specified in Schedule III for the period from January 1, 1930, till such date as may be fixed by the Local Government in the *Gazette* in this behalf."

The loan of 1932 in question was taken before the Act came into force and there appears to us no reason why it should not be covered by section 30(1). Further, there is in our opinion much force in the remark of the learned District Judge that when sub-section (2) of section 30 authorises a court to re-open a debt which has culminated in a decree of court, it is only reasonable to

(1)(1927) A.I.R., Cal., 538.

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suppose that sub-section (1) authorises the re-opening of an old debt which comes under that sub-section.

Both the grounds urged before us therefore fail and we dismiss this appeal with costs.

As the learned counsel for the appellant has asked us to pass a decree in the appellant's favour, we order that a decree for the amount due to the appellant be passed in his favour payable by the plaintiff-respondent in four equal six-monthly instalments to be due in November and May beginning from November, 1938. In case of default about any two instalments, the whole will at once be due. A charge over the plaintiff-respondent's immovable property will be declared in favour of the defendant-appellant. The appellant will get costs on the amount decreed in his favour, including the court-fee that he will pay under Act IX of 1937. Defendant will get interest from date of suit up to this day at $6\frac{3}{4}$ per cent. and future interest at $3\frac{1}{4}$ per cent. per annum.

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## REVISIONAL CRIMINAL

1938
*August*, 18

*Before Mr. Justice G. H. Thomas, Chief Judge and Mr. Justice R. L. Yorke*

GUR DAYAL (ACCUSED-APPLICANT) *v.* SHEO DULAREY (COMPLAINANT-OPPOSITE-PARTY)*

*Criminal Procedure Code (Act V of* 1898), *section* 350(1) *proviso, scope and application of—Second Magistrate deciding to re-summon witnesses and re-commence inquiry—Accused, whether has right to demand that re-trial should be commenced.*

The proviso to section 350(1) of the Code of Criminal Procedure has no application in a case in which the second Magistrate decides to re-summon the witnesses and re-commence the inquiry or trial. The proviso gives the accused a right at the time of the commencement of the proceedings before the second Magistrate to demand that the witnesses or any of them be re-summoned and re-heard, and it does not

*Criminal Reference No. 5 of 1938, made by R. B. Pandit Tika Ram, Misra, Sessions Judge of Unao.