FULL BENCH

Before Mr. Justice R. L. Yorke, Mr. Justice A. H. deB. Hamilton and Mr. Justice Radha Krishna Srivastava

SAIYED KAZIM HUSAIN, NAWAB (JUDGMENT-DEBTOR-APPLICANT) *v.* MUSAMMAT MANGALA DEVI (DECREE-HOLDER-OPPOSITE-PARTY)*

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United Provinces Agriculturists' Relief Act (XXVII of 1934), section 30(2)—Words "if a decree has already been passed" in section 30(2) refer only to decree passed before the Act came into force.

The words "if a decree has already been passed" in clause (2) of section 30 of the United Provinces Agriculturists' Relief Act refer only to decrees passed before that Act came into force. *Baryar Singh* v. *Ram Dularey* (1), *Narain Singh* v. *Banke Behari Lal* (2), and *Abdul Noor, Hafiz* v. *Sahu Brijmohan Saran* (3), dissented.

The application was originally heard by Hon, Mr. Justice Radha Krishna Srivastava who referred an important question of law for decision of a Full Bench, under section 14(1) of the Oudh Courts Act. His order of reference is as follows:

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RADHA KRISHNA, J.: The facts which gave rise to this application are that on the 28th May, 1935, Seth Pearey Lal, the predecessor-in-interest of the opposite-party, obtained a decree from the Court of the Munsif of Kheri against the applicant for a sum of Rs.600 with costs and future interest on the basis of a promissory note dated the 30th July, 1929. The applicant had set forth in paragraph 9 of his written statement that he was an agriculturist and claimed reduction in interest on that ground. His claim to be an agriculturist was disputed by the plaintiff opposite-party. Subsequently the applicant's counsel admitted the claim and a decree as stated above was passed.

On the 25th April, 1936, the applicant made an application under section 30 of the United Provinces Agriculturists' Relief Act for the amendment of the said decree by reduction of interest in accordance with the provisions of sub-section (1) of section 30. This application was opposed by the decree-holder on the ground that the prayer in the application was barred

*Section 115 application No. 29 of 1937, for revision of the order of Pundit Brij Nath Zutshi, Munsif, of Kheri, dated the 14th of December, 1936.

(1) (1936) A.L.J., 1309. (2) (1937) I.L.R., All., 943.
(3) (1938) I.L.R., All., 305.

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by the principle of *res judicata* and that sub-section (2) of section 30 applied to the decree passed between the 1st January, 1930, and the date on which the Agriculturists' Relief Act came into force. It may be mentioned here that the said Act came into force on the 30th April, 1935. Certain other objections were also raised by the opposite-party.

The court below framed the following issues with regard to the question of law raised by the opposite-party:

(1) Is the application not maintainable as alleged in paragraph 2 of the written-statement?

(2) Is the application barred by *res judicata* as alleged in paragraph 1 of the written statement?

It decided them against the applicant and dismissed the application. Against the said order the applicant has come up to this Court in revision.

The contention on behalf of the applicant is that the words "If a decree has already been passed" in clause (2) of section 30 refer to any decree passed before the date of the application for amendment and are not confined to decrees before the enactment of the Act. His further contention is that no question of *res judicata* arises on this view.

I have heard the learned counsel for the parties at length. The decision of the case turns upon whether the words "If a decree has already been passed" used in clause (2) of section 30 refer to decrees passed before the Act came into force or include even those decrees which were passed on dates prior to the application for amendment even though subsequent to the passing of the Act.

I am inclined to think that on the clear language of the section the words referred to above apply only to decrees passed before the Act. Clause (1) of section 30 lays down a rule of substantive law enacted by the United Provinces Agriculturists' Relief Act regulating the rate of interest on a loan taken before the Act came into force for the period from the 1st January, 1930. The Act as stated before came into force from the 30th April, 1935, so clause (2) was enacted for the purpose of enabling those debtors against whom decrees had been passed before that date to obtain the benefit of clause (1). In respect of suits to be filed after the 30th April, 1935, the Legislature must naturally have assumed that debtors would be in a position to claim the reduction in interest as allowed by the Act. It has been contended that the Legislature by clause (1)

laid down that no loan shall carry interest at a higher rate than specified therein and the absolute privilege granted by this sub-section would be defeated if the debtor was debarred from making an application for reduction as provided in clause (2) in cases where the decree was passed after the Act came into force. It is true that there is nothing in the Act which prohibits the judgment-debtor in express terms from making an application for reduction of interest in case where a decree has been passed after the Act at any time till it remains unsatisfied in whole or in part, but the Legislature must have been fully aware of the general principles of *res judicata* applicable to all suits and proceedings, and I am not prepared to accept in the absence of such an express provision that the Legislature intended to abrogate the principle of *res judicata* so far as applications for reduction of interest were concerned. It is further true that the Act was specifically enacted to give relief to agriculturist debtors but I find it difficult to agree with the contention that that intention would be frustrated if the interpretation urged by the opposite-party is accepted. The Act made an adequate provision for reduction of interest in cases in which decrees had already been passed before the Act came into force by means of clause (2); and in cases of suits filed after the Act came into force it would be most reasonable to suppose that the debtors would take advantage of the provisions contained in clause (1). We cannot impute an intention to the Legislature to force the advantages of the Act upon a sleeping or negligent debtor. In the absence of any express provision to the contrary the principle of *res judicata* would in my opinion be applicable to the proceedings of an application for reduction of interest under clause (2).

It has been further argued that the words "If a decree has already been passed" necessarily refer to a point of time and that it would be most logical and reasonable to discover that point of time in clause (2) itself. The only point of time contemplated in clause (2) is the date of the application for amendment and, therefore, the words "If a decree has already been passed" refer to the date of the application and not to the date when the Act came into force. In my opinion in interpreting the said words clauses (1) and (2) should be read together. Clause (2) is really a part of clause (1) and was enacted to give effect to the rule of law laid down in clause (1) in cases where the decrees had already been passed, and the opportunity for claiming reduction of interest was not otherwise available.

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The anomaly created by accepting the interpretation put forward by the learned counsel for the appellant is most clearly brought out in the present case. In contesting the suit the applicant judgment-debtor claimed in his written statement to be an agriculturist and entitled to reduction of interest as provided by clause (1). He could not substantiate his claim to be an agriculturist and admitted the claim of the plaintiff-opposite-party with the result that a decree for the full amount was passed. In the present application for reduction of interest can the judgment-debtor be allowed to raise the same question which must be taken to have been impliedly decided against him in the suit? If the contention of the learned counsel for the appellant is accepted, it would be open to the judgment-debtor to reagitate the question of his being an agriculturist although that question may have been decided on merits in the suit, which would in my opinion be a wholly untenable position.

The contention of the learned counsel for the applicant is amply supported by the following decisions of the Allahabad High Court:

Baryar Singh v. *Ram Dularay* (1),
Narain Singh v. *Banke Behari Lal* (2),
Hafiz Abdul Noor v. *Sahu Brij Mohan Saran* (3).

With great respect to the learned Judges who decided the above cases, I find great difficulty in accepting their view. The question involved for decision is of considerable importance. There is no decision of this Court on the point that I know of. I, therefore, refer the following question for decision of a Full Bench of this Court under section 14(1) of the Oudh Courts Act:

> "Do the words 'If a decree has already been passed' in clause (2) of section 30 of the United Provinces Agriculturists' Relief Act (XXVII of 1934) refer only to decrees passed before that Act came into force or even to decrees passed before the date on which an application for reduction of interest is made under clause (2) of section 30 by the judgment-debtor?"

Messrs. *Ghulam Hasan* and *Iftikhar Husain*, for Applicant.

Messrs *Ram Bharosey Lal* and *Murli Manohar Lal*, for Opposite-party.

(1) (1936) A.L.J., 1309. (2) (1937) I.L.R., All., 943.
(3) (1938) I.L.R., All., 305.

YORKE, J.:—The question which has been referred to this Full Bench is as follows—

> "Do the words 'If a decree has already been passed' in clause (2) of section 30 of the United Provinces Agriculturists' Relief Act (XXVII of 1934) refer only to decrees passed before that Act came into force or even to decrees passed before the date on which an application for reduction of interest is made under clause (2) of section 30 by judgment-debtor."

The matter has arisen in this way. The late plaintiff Seth Pearey Lal now represented by Mst. Mangala Devi instituted in 1935 a suit to recover the balance due on a pronote for Rs.4,000 dated the 30th July, 1929. After the institution of the suit on the 30th April, 1935, the Agriculturists Relief Act came into force. On the 14th May, 1935, the present judgment-debtor applicant Nawab Syed Kazim Husain filed a written statement, in paragraph 9 of which he claimed a reduction of interest under what he called the new Act, evidently referring to section 30(1) of the Agriculturists' Relief Act. On the 28th May, 1935, certain statements were made by counsel. The defendants' counsel admitted that the amount of Rs.600 was due and also agreed to future interest at 6 per cent. per annum, and the suit was decreed for Rs.600 with costs and future interest. In effect the defendant consented to a decree, and thereby gave up his claim to be an agriculturists and entitled to reduced interest.

On the 25th April, 1936, the defendant made an application, to the same court which had passed the decree, under section 30(2) of the Agriculturists' Relief Act asking for amendment of the decree and reduction of interest. Two defences were taken, namely that in view of the consent decree of the 28th May, 1935, the application was barred by the rule of *res judicata*, and secondly that section 30(2) had no application to cases in which the decree was passed after the Act came into

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force. The learned Munsif upheld both the contentions of the decree-holder and rejected the application as not maintainable at all.

On the matter coming up before one of the members of this Bench, the question of the proper interpretation of section 30(2) of the Act was strenuously argued before him, and he accordingly made a reference in the terms stated above.

Learned counsel for the judgment-debtor applicant has rested his case in the main on three decisions of the High Court at Allahabad, two of them single Judge cases and the third a decision of a Bench. In *Baryar Singh* v. *Ram Dularey* (1), it was held by BENNETT, J., that a judgment-debtor can in the case of a decree passed after the coming into force of the United Provinces Agriculturists' Relief Act apply for relief under section 30(2) of the Act. His view was based on two consideration, first, that if the intention of the legislature had been to limit the application of the section to cases in which a decree had been passed before the Act came into force, section 30(2) would not have been worded in the form in which we find it, namely "if a decree has already been passed" but the wording should have been "if a decree has already been passed before this Act comes into force." Secondly, he thought that a defendant should not be deprived of relief under this Act merely because his legal advisers were not aware of the law on the point during the pendency of the suit. He considered that it was more natural in dealing with agriculturists to give them relief both during the suit and also after the decree, and legislation of this nature should be construed liberally to give the intention of the Act as much force as possible. It would thus appear that he interpreted clauses 30(1) and 30(2) as giving an agriculturist debtor liable under loans taken before this Act came into force two opportunities to claim the relief set forth in section 30(1) of the Act, one

(1) (1936) A.L.J., 1309.

opportunity at the time of the suit and one opportunity by application for amendment of the decree after a decree had been passed, and evidently he would not, on his construction of the section, have held that a debtor who had pleaded section 30(1) unsuccessfully in a suit to be thereby debarred from getting amendment under section 30(2).

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In *Narain Singh* v. *Banke Behari Lal* (1) it was held that the words "already been passed" had reference to the date upon which the application under section 30 was made. It was conceded that section 30(2) was rather ambiguously drafted: but it was said that "having regard to the policy of the legislature in the matter of giving relief to all debtors against whom decrees on loans were passed whether before or after the passing of the Act, the sub-section cannot be interpreted to mean that in suits decided after the Act came into force the defendant is bound to apply for relief under section 30 before the decree is passed and that if he fails to do so any future application after the decree has been passed would be barred by section 11 of the Civil Procedure Code." The learned Judge remarked that until decree has been passed there is no necessity to apply for relief, and that even after the passing of the decree the defendant may not desire to apply immediately for relief, and that in his view there was no reason for holding that in these circumstances the defendant was barred for all time from claiming such relief.

The matter was considered again by a Bench of two Judges in *Abdul Noor, Hafiz* v. *Sahu Brijmohan Saran* (2), where the view taken in these two previous cases was upheld. The learned Judges who decided this case examined the provisions of the four sections making up this chapter, and they apparently based their view in regard to the provisions of section 30 of the view taken

(1) (1937) I.L.R., All., 943. (2) (1938) I.L.R., All., 305.

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by them in regard to the provisions of section 28. In this connection they remarked:

> "It is important to bear in mind that in the Act itself there are no provisions as to when a debtor has to make an application asking for a reduction of interest. In respect of loans contracted after the Act came into force it is open to the debtor to make his application for reducing interest either when a decree is going to be passed or any time after the decree whenever it is sought to be enforced against him. There is nothing in the Act which prohibits a debtor from making such an application after the decree has been passed and this applies to both kinds of cases, that is to cases in which the loan was taken after the Act came into force and also to the loan taken before."

Sections 28, 29 and 31 of this Act all deal with interest on loans taken after the passing of the Act. Section 28 provides for the rate of interest on loans taken after the passing of this Act above which the debtor is not liable to pay: Section 29 provides for benefit for prompt payment of loans taken after the passing of this Act, and section 31 provides for the rate of interest on loans taken after the Act comes into force after the aggregate of interest has reached Rs.100 per cent. of the sum borrowed. In none of these three sections is there any provision corresponding to section 30(2), and the reason of this obviously is that there is no necessity for any such provision inasmuch as a plea based on these three sections of the Act can be taken in the written statement when a suit is filed.

With great respect I am unable to agree with the view that in respect of loans contracted after the Act comes into force it is open to the debtor to make his application for reducing interest either when a decree is going to be passed or at any time after the decree whenever it is sought to be enforced against him. That question did not really arise for decision, but I should myself be much inclined to doubt whether a defendant who has not taken a plea under sections 28, 29 and 31 of the Act could be allowed at the time of execution of

the decree to apply for amendment of the decree, there being no provision for any such application in the Agriculturists' Relief Act while neither section 152 nor section 47 of the Code of Civil Procedure would cover such an application.

Section 30 was evidently framed to meet the case of loans taken before the passing of the Act and such loans would necessarily be of two kinds, that is loans as yet undecreed and loans decreed already. For the case of loans as yet undecreed at that date section 30(1) was, I think, inserted to enable the defendant to get the benefit of the reduced rates of interest prescribed in Schedule III for the period from the 1st January, 1930. Similarly section 30(2) appears to me to have been framed to meet the case of loans in respect of which a decree had already been passed at, that is before, the same date.

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As learned counsel for the decree-holder opposite-party has contended, the word "already" must be treated at having some real significance, and I am unable to take the view that there is anything contrary to the spirit of this Act in accepting the view that the point of time referred to by the use of the word "already" is the date at which the Act came into force. This interpretation appears to me to be consistent with the view I take that clauses (1) and (2) of section 30 are intended to cover the whole field of loans taken before the Act came into force, that is those in which a decree has already been passed and those in which a decree has not already been passed. I am further impressed with the view that it could not have been the intention of the legislature by enacting section 30(2) to override the ordinary provisions of the law of *res judicata*. The proper time for a debtor to plead that he is entitled to the advantage of the Agriculturists' Relief Act and specifically to a reduction of interest is when a suit is instituted against him and when the question whether he was or was not an agriculturist at the date of the

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loan can be properly gone into, and I do not in any case think that he should be allowed a second opportunity of litigating a matter which should have been litigated by him at the first opportunity.

In my opinion, while I am reluctant to put a different interpretation on any clauses of the Agriculturists' Relief Act from that which has found favour with the High Court at Allahabad, the answer to the question referred to us for decision is that the words "if a decree has already been passed", in clause (2) of section 30 of the United Provinces Agriculturists' Relief Act refer only to decrees passed before that Act came into force.

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RADHA KRISHNA, J.:—I had already expressed my own view on the question in the order of reference. After hearing the arguments before the Full Bench I still adhere to that view. I agree with the answer proposed to be given by my learned brother Mr. Justice YORKE.

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HAMILTON, J.:—I agree.

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HAMILTON, YORKE, and RADHA KRISHNA, JJ.:—The answer to the reference is that the words "if a decree has already been passed" in clause (2) of section 30 of the United Provinces Agriculturists' Relief Act refer only to decrees passed before that Act came into force.