

1934.

KEDARNATH  
HIMAT-  
SINGHKA

v.

TEJPAL  
MARWARI.AGARWALA,  
J.

to be incompetent. Mr. Bose does not contend that the circumstances of the case justify any interference in revision. The appeal is, therefore, dismissed. The respondents are entitled to their costs throughout.

We understand that the witnesses for the plaintiffs have now all been examined and the plaintiffs' case has been closed. There has already been inordinate delay in the disposal of the suit and it is desirable that it should be brought to a conclusion as soon as possible.

SAUNDERS, J.—I agree.

*Appeal dismissed.*

### FULL BENCH.

*Before Khaja Mohamad Noor, James and Varma, JJ.*

THAKAN CHAUDHURI.

v.

LACHMI NARAIN.\*

1934.

August, 7,  
16.

*Court-fees Act, 1870 (Act VLI of 1870), section 11—holder of mortgage decree paying court-fee on the amount due at the date of institution of suit, whether can execute the decree without paying additional court-fee on higher amount on account of interest pendente lite.*

The holder of a mortgage decree who has paid court-fee on the amount due at the date of the institution of the suit can execute his decree for a higher amount on account of interest *pendente lite* without being liable to pay additional court-fee calculated on the higher sum.

*Rai Sahib Raghunath Prasad Sahu v. Rai Bahadur Harihar Prasad Singh*(1), *Ram Bhujawan Prasad Singh v. Natho Ram*(2) and *Debi Lal Sahu v. Gossain Koleshwar Gir*(3), followed.

\* Appeal from Original Order no. 47 of 1933, from an order of Babu Manindra Nath Mitra, Subordinate Judge of Muzaffarpur, dated the 17th November, 1932.

(1) (1926) F. A. 28 of 1924 (unreported).

(2) (1922) 3 Pat. L. T. 146.

(3) (1926) 8 Pat. L. T. 331.

*Jamuna Rai v. Ramtahal Raut*(1) and *Kali Prasad v. Mathura*(2), overruled.

*Percival v. The Collector of Chittagong*(3), distinguished.

*Per* KHAJA MOHAMAD NOOR, J.—There is no provision in the Court-fees Act under which a plaintiff can be called upon to pay court-fees on the amount of interest which accrues after the institution of the suit.

*Per* JAMES, J.—The special provisions of the Land Acquisition Act should not be extended by analogy to vary the precise provisions of the Court-fees Act, a fiscal enactment which must be strictly construed.

### Appeal by the objector.

The appeal was in the first instance heard by Khaja Mohamad Noor and Luby, JJ., who referred it to a Special Bench by the following Order of Reference :—

The question involved in this appeal is whether court-fee is leviable on interest which accrues after the date of the institution of the suit or after the decree is passed. There seems to be a conflict of decisions in this court. On the one hand, there is a decision of Jwala Prasad, A.C.J. and Ross, J. [*Jamuna Rai v. Ramtahal Raut*(1)] to the effect that court-fee is leviable on interest which accrues *pendente lite* and also which accrues after the date of the decree. On the other hand, there are several decisions in which a contrary view has been taken.

They are—

- (1) *Debi Lal Sahu v. Gosain Koleshar Gir*(4), a decision to which Ross, J. was a party;
- (2) *Sadhu Saran Rai v. Lala Barhamdeo Lal*(5), decided by Mullick and Kulwant Sabay, JJ.
- (3) *Bhagwati Prasad Singh v. Bishun Pragrash Narain*(6), decided by Adami and Bucknill, JJ. and
- (4) an unreported decision of Das and Adami, JJ. in *Rai Sahab Raghunath Prasad Sahu v. Rai Bahadur Harihar Prasad Singh*(7). The order is dated 16th December, 1926.

(1) (1921) I. L. R. 1 Pat. 19.

(2) (1922) 3 Pat. L. T. 813.

(3) (1900) I. L. R. 30 Cal. 516.

(4) (1926) 8 Pat. L. T. 331.

(5) (1926) 8 Pat. L. T. 355.

(6) (1921) 6 Pat. L. J. 676.

(7) (1926) F. A. 28 of 1924 (unreported).

1934.

THAKAN  
CHAUDHURI  
v.  
LACHHMI  
NARAIN.

Though it seems to us that majority of the decisions are in favour of the view that court-fee is not leviable, but unfortunately none of them refers to the earlier decision of *Jyoti Prasad, A.C.J.*, and *Ross, J.*

We think the matter is of some importance, and the question must be set at rest. Let the record of this case be placed before the Hon'ble the Chief Justice, who may be pleased to form a Special Bench for the hearing of this case. The Government Pleader may be requested to appear in the case.

On this reference

*Ram Prasad* and *D. C. Verma*, for the appellants.

*Baldeva Sahay* and *Phulan Prasad Verma*, for the respondents.

*Government Pleader*, for the Crown.

JAMES, J.—The respondent instituted a suit on a mortgage bond claiming interest up to the date of suit valuing the suit at the amount, principal and interest, calculated as due at the date of institution, and paying court-fee on this amount. The suit was decreed for this amount with further interest which accrued *pendente lite*. The decretal amount was in due course realised from the judgment-debtors in execution proceedings, after which the execution case was struck off with a note of full satisfaction. When the decree-holder desired to withdraw the amount which had been realized, he was required by the Subordinate Judge to pay an additional sum of Rs. 210, as court-fee on the amount of interest which had accrued from the date of suit to the date of the decree. The decree-holder paid the court-fee, and then instituted further execution proceedings against the judgment-debtors to recover from them these additional costs incurred in the suit. The judgment-debtors protested. The Subordinate Judge before whom the objection came was of opinion that the order calling upon the decree-holder to pay additional court-fee was bad in law; but as an order had been made by his predecessor, by which the decree-holder was entitled to realize the value of this court-fee from the judgment-debtors, he considered that execution must

proceed, and that the order must be enforced. The judgment-debtors appealed to this court. The appeal came before a Division Bench but as there was some conflict of decisions in this court on the question which had to be determined, the appeal has been referred to a larger Bench.

1934.

THAKAN  
CHAUDHURI  
2.  
LACHMI  
NARAIN.

JAMES, J.

It appears that in Muzaffarpur there is a standing order of the District Judge that additional court-fee must be exacted for interest accruing *pendente lite* decreed in mortgage suits before execution is taken out, or before the decree-holder is permitted to withdraw the amount realized in execution. This procedure is apparently based on the decision in *Jamuna Rai v. Ramtahal Sarit*(<sup>1</sup>) wherein the late Sir Jwala Prasad remarked that a plaintiff-decree-holder seeking to enforce a decree directing payment of future interest is bound to pay the court-fee upon the interest claimed by him in execution for which no court-fee was paid in the suit. Sir Jwala Prasad remarked: "There can hardly be any doubt that a mortgagee seeking to enforce the mortgage and praying to recover the amount due thereunder has to pay court-fee not only upon the sum decreed but also upon the interest that becomes due to him subsequent to the decree and which he claims in the execution." This was the ground upon which the decision was based, though the Judges in that case were dealing with the question of the court-fee payable on a memorandum of appeal. As authority for this proposition Sir Jwala Prasad relied upon the decision in *Percival v. The Collector of Chittagong*(<sup>2</sup>). That was an appeal in a land acquisition case, wherein the appellant is required to state definitely the amount which he claims in excess of the award and to pay court-fees on that amount. In that case the Judges found themselves unable to award to the appellant an amount in excess of that claimed by him in his memorandum of appeal, though

(1) (1921) I. L. R. 1 Pat. 19.

(2) (1900) I. L. R. 30 Cal. 516.

1934.

THAKAN  
CHAUDHURI  
v.  
LACHEMI  
NARAIN.

JAMES, J.

they remarked that it might have been open to him at an earlier stage to amend his memorandum of appeal and to pay court-fee on the higher amount claimed. But appeals under the Land Acquisition Act are governed by the provisions of that Act and it does not appear to us that the special provisions of that Act should be extended by analogy to vary the precise provisions of the Court-fees Act, a fiscal enactment which must be strictly construed.

The question which is now before the court, of whether the holder of a mortgage decree who had paid court-fee on the amount due at the date of the institution of the suit could execute a decree for a higher amount on account of interest *pendente lite* without being liable to pay additional court-fee calculated on the higher sum came before a Division Bench (Coutts and Ross, JJ.) in January, 1922, in the case of *Ram Bhujawan Prasad Singh v. Natho Ram*(<sup>1</sup>). The Bench held that no additional court-fee was leviable.

On October the 30th, 1922, Sir Jwala Prasad as Taxing Judge reasserted the view which he had expressed in *Jamuna Rai v. Ramtahal Raut*(<sup>2</sup>) that a successful plaintiff should not be allowed to execute his decree unless he paid additional court-fee on the interest which had accrued *pendente lite*: *Kali Prasad v. Mathura*(<sup>3</sup>). On July the 26th, 1926, in *Debi Lal Sahu v. Gossain Koleshar Gir*(<sup>4</sup>) the view that additional court-fee was payable on interest *pendente lite* was not accepted by Ross and Kulwant Sahay, JJ. In that case the plaintiff had appealed to the High Court where he obtained a decree for a larger sum than that on which court-fee had been paid at the time of presentation of the plaint. The Stamp

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(1) (1922) 3 Pat. L. T. 146.

(2) (1921) I. L. R. 1 Pat. 19.

(3) (1922) 3 Pat. L. T. 813.

(4) (1926)-8 Pat. L. T. 331.

Reporter recommended that the court-fee on the excess should be realized from the successful appellant; but the Judges remarked that they found no provision in the Court-fees Act under which the appellant could be called upon to pay additional court-fee in these circumstances. The next case to which our attention is drawn is *Sadhu Saran Rai v. Lala Barhamdeo Lal*(1). The Stamp Reporter had reported that the memorandum of appeal of the plaintiff-mortgagee in the court of the District Judge had been insufficiently stamped, and that additional court-fee was due on account of the accrual of interest upon the principal amount since the filing of the plaint. The late Sir B. K. Mullick observed in that case: "We cannot find any provision of law authorising the assessment of additional court-fee by reason of the accrual of interest *pendente lite*. Here the appeal was by the plaintiff and the subject-matter in dispute was the amount claimed in the plaint, and no question arose under section 11 of the Court-fees Act."

1934.

THAKAN  
CHAUDHURI  
v.  
LACHMI  
NARAIN.  
JAMES, J.

A month later in First Appeal 28 of 1924, the Taxing Officer in drawing the attention of another Division Bench to a report of the Stamp Reporter also drew their attention to this recent decision of Mullick and Kulwant Sahay, JJ. The amount claimed as due at the date of the suit had been Rs. 33,659 but interest *pendente lite* brought the amount of the decree to Rs. 42,196. The defendant appealed, properly valuing his appeal at the whole amount decreed; but the Stamp Reporter remarked that the plaintiff-respondents were liable under section 12 of the Court-fees Act to pay an additional court-fee of Rs. 100 on their plaint. The learned Judges remarked: "No question of additional court-fee arises in this case. The decision of Mullick and Kulwant Sahay, JJ., is directly in point with which we entirely agree."

The standing order of the District Judge of Muzaffarpur appears to have been issued in accordance

(1) (1926) 8 Pat L. T. 355.

1934.

THAKAN  
CHAUDHURI  
v.  
LACHEMI  
NARAIN.

JAMES, J.

with the practice followed in the High Court for a few years up to the end of 1926; but the rule laid down in *Jamuna Rai v. Ramtahal Raut*(1) has long ceased to be followed in the High Court and we consider that the decisions of the Division Benches in the cases of 1926 must be accepted. The Subordinate Judge of Muzaffarpur erred in requiring the decree-holders to pay additional court-fee, and this amount cannot properly be regarded as costs in the case to be recovered from the judgment-debtors.

I would, therefore, allow this appeal with costs and set aside the order by which the Subordinate Judge directed that execution for the sum of Rs. 210 should proceed.

KHAJA MOHAMAD NOOR, J.—I entirely agree. In my opinion *Jamuna Rai v. Ramtahal Raut*(1) was not correctly decided. There is no provision in the Court-fees Act under which a plaintiff can be called upon to pay court-fee on the amount of interest which accrues after the institution of the suit.

VARMA, J.—I agree.

*Appeal allowed.*

### FULL BENCH.

*Before Khaja Mohamad Noor, James and Varma, JJ.*

KEDAR NATH LAL, PLEADER,

*v.*

THE KING-EMPEROR.\*

*Legal Practitioner, duties of—charge of dishonesty or criminality, etc., in petition or pleadings—pleader, responsibility of—professional misconduct, when is pleader guilty of.*

\* Civil Reference nos. 1 and 2 of 1934. made by Rai Bahadur Ram Chandra Chaudhri, District Judge of Shahabad, in his letter, dated the 22nd January, 1934, forwarding the report of Maulvi Kabiruddin Ahmad, Munsif, Second Court, Buxar.

(1) (1921) I. L. R. 1 Pat. 19.

1934.

August, 7,  
8, 16.