ALLAHABAD HIGH COURT

Chaudhari Rukun Uddin

Vs

Lachmi Narain

(Verma,J.)

15.02.1945

JUDGMENT

Verma, J.

1. The material facts, about which there is no controversy, are as follows: On 26th May 1931, a simple mortgage was executed by one Habib Baksh in favor of respondent 2, Ram Charan Lal. Zamindari shares in two villages were hypothecated. The principal mortgage money was Rs. 3000 and the interest agreed upon was 12 per cent, per annum, compoundable yearly. Sometime later, the appellant, Chaudhri Ruknuddin, purchased from Habib Baksh the hypothecated zamindari shares in one of the two villages and he undertook to pay off the entire amount due to the mortgagee under the deed of 26th May 1931. He, however, made no payments to the mortgagee. On 19th May 1936, Bukn-uddin instituted a suit (No. 41 of 1936) against Ram Charan Lal in the Court of the Subordinate Judge of Budaun under Section 33, U.P. Agriculturists' Relief Act (27 of 1934) for an account of the money advanced by Ram Charan Lal raider the mortgage deed of 26th May 1931, and asked for a declaration of the amount which was still payable by him to Ram Charan Lal under that deed. This suit terminated on 19th August 1936, when a declaration was made that the amount payable by Ruknuddin to the mortgagee up to that date was Rs. 4146. The mortgagee was allowed his costs, the amount being Rs. 20-12-0. Thus, the total amount which the Court found to be payable by Ruknuddin to the mortgagee on 19th August 1936, was Rs. 4166-12-0. A certified copy of the document which was prepared in that suit as a decree has been filed in the present proceedings and it shows that all that the Court did in that suit was to declare the amount which, according to its findings, was payable by Ruknuddin to the mortgagee on 19th August 1936. There is nothing to show that the mortgagee-defendant in that suit availed himself of the option which he had under Section 33 and made an application to the Court praying that a decree be passed in his favor for the amount found due to him or that any such decree was passed. It has also not been contended before us that any such decree was, as a matter of fact, passed in his favor. Two months later, on 19th October 1936, Ruknuddin made an application to the Collector under Section 4, U.P. Encumbered Estates Act (25 of 1934). In this application he stated that the applicant was subject to a private debt and

requested that the provisions of the Act be applied to him. The only debt which he mentioned in the application was described in these words: Decree of the Court of the Sub-Judge of Budaun...No. 41 of 1936 for Rs. 4166-12-0.... Name of the creditor.... Ram Charan Lal.

It will be noticed that the mortgage-deed of 26th May 1931, was ignored. The Collector forthwith passed the order prescribed in Section 6 of the Act, and directed the application to be forwarded to the Special Judge. On 5th April 1937, Ruknuddin filed in the Court of the Special Judge the written statement required by Section 8 of the Act, and in this written statement also he stated that he was subject to only one debt and gave the same description of the debt and the creditor as he had given in his application under Section 4. The notices, prescribed by Section 9 of the Act, calling upon all persons having claims in respect of private debts, both decreed and undecreed, against the person or the property of the landlord-applicant to file written statements of their claims within the prescribed period, were issued. On 9th July 1939, such a written statement of claim was filed by two persons, Lachhmi Narain, respondent 1, and Ram Charan Lal, respondent 2, to this appeal. In this written statement they pleaded that a sum of Rs. 3000 on account of principal and a sum of Rs. 3000 on account of interest was due under the mortgage-deed dated 26th May 1931. The declaration made on 19th August 1936, in the suit under Section 33, Agriculturists' Relief Act, was not mentioned. It was also stated in this written statement that the sum of money advanced under the mortgage-deed of 26th May 1931, had come out of the funds of a joint family of which Lachhmi Narain and Ram Charan Lal had been members and that, upon a partition of the properties belonging to that joint family, that mortgage-deed had been included in the share allotted to Lachhmi Narain and that thus Lachhmi Narain alone was now entitled to the mortgagee rights under that deed. It was claimed that a decree under Section 14, Encumbered Estates Act, should be passed in favor of Lachhmi Narain.

2. The contentions of the landlord-applicant the present appellant-before the Special Judge were that the declaration made by the Court of the Subordinate Judge on 19th August 1936, in the suit under Section 33, Agriculturists' Relief Act, was a decree, that it was binding on the Special Judge in the sense that he had to accept the amount so declared as the amount to which the creditor was entitled under the deed of mortgage up to 19th August 1936, and that the Special Judge could not refer to the mortgage deed and the terms as to interest laid down therein for finding out the indebtedness up to 19th August 1936. The creditor, on the other hand, argued that, in proceedings under the Encumbered Estates Act, the Special Judge was bound by the provisions of that Act and that, in view of what was laid down in Sections 14 and 15 of that Act, the Special Judge could not accept the findings of the Subordinate Judge recorded in the suit under Section 33, Agriculturists' Relief Act, on the question of the interest that had accrued up to 19th August 1936. It may be mentioned here that the Agriculturists' Relief Act, laid down certain rates of interest and enjoined upon Courts to allow interest only in accordance with those rates in cases to which the provisions of that Act were applicable. Where decrees had already been passed before the coming into force of that Act, the judgment-debtors were given the right to

apply for the amendment of the decrees and the Courts were required to amend those decree by calculating interest in accordance with the rates laid down in that Act. In the case of suits instituted after the coming into force of that Act, the Courts had to allow interest only at the rates fixed by the Act, whatever the contractual rate might have been. No such rates of interest are laid down in the Encumbered Estates Act.

3. The Special Judge did not agree with the contention Of the landlord-applicant, Ruknuddin, and, holding that, in view of the provisions of Section 15, Encumbered Estates Act, he was bound not to accept the findings recorded in the suit under Section 33, Agriculturists' Relief Act, calculated interest in accordance with the terms laid down in the mortgage deed and found that the" total amount to which Lachhmi Narain was entitled was Rs. 5539. This amount did not exceed the limit laid down in Section 14 (i) (a), Encumbered Estates Act. He also held that there was no ground for interfering with the contractual rate of interest under the Usurious Loans Act, 1918. He thus came to the conclusion that a decree for Rs. 5539 could be passed in accordance with the provisions of Section 14, Encumbered Estates Act. He accordingly passed a decree for that amount under Sub-section (7) of that section in favor of Lachhmi Narain. He also allowed costs and future interest. This appeal is directed against that decree. Mr. Mushtaq Ahmad, for the appellant, has addressed to us the same arguments which were put forward on his behalf in the Court of the Special Judge, and has relied on the decision in *Ayub Ali Shah v. Kali Charan* [1]The Bench before which this appeal originally came up for hearing felt that that ruling might require reconsideration and so the appeal was referred to a larger Bench.

4. One of the questions that arose in the course [of the discussion before us was whether the declaration made in the suit under Section 33, Agriculturists' Relief Act, had the force of a decree. The language used in Sub-section (2) of Section 33, Agriculturists' Relief Act, appeared to give rise to a doubt as to whether the framers of the Act intended the declaration to have the force of a decree. In the first half of the second sentence of that sub-section the relevant words are: "Shall...declare the amount," and in the second half it is laid down: "Shall...pass a decree in favor of the defendant." The difference in the language is clear. I have come to the conclusion, however, that it is not necessary for our present purpose to express any opinion on this point. The question that arises for decision in the case before us is not one of res judicata. Section 11, Civil P.C. is not in terms applicable. The general doctrine of res judicata cannot also be applied. The decision of the present case depends upon a consideration of the provisions laid down in the Encumbered Estates Act. I shall, therefore, proceed on the assumption that the declaration made in the suit under Section 33, Agriculturists' Relief Act does amount to a decree. By Sub-section (1) of Section 14, Encumbered Estates Act, the Special Judge is required to fix a date for enquiring into the claims made in pursuance of the notice published in accordance with Section 9. Subsection (2) lays down that the Special Judge shall examine each claim and, after hearing such parties as desire to be heard and considering the evidence, if any, produced by them, shall determine the amount, if any, due from the landlord to the claimant on the date of the application under Section 4. Sub-section (3) authorizes the Special Judge to take all evidence recorded in any

suit or proceeding which has been stayed under Sub-section (1) of Section 7 as evidence recorded before himself. Sub-section (4) provides that in examining each claim the Special Judge shall have and exercise all the powers of the Court in which a suit for the recovery of the money due would lie and shall decide the questions in issue on the same principles as those on which such Court would decide them, subject to certain provisions which are laid down in Clauses (a), (b) and (c) of that sub-section. In Clause (a) the rule is laid down that the amount of interest held to be due on the date of the application shall not exceed that portion of the principal which may still be found to be due on the date of the application. For the sake of convenience, this may be described as the rule of Damdupat. Clause (b) prescribes that the provisions of the Usurious Loans Act, 1918, will be applicable to proceedings under this Act. Clause (c) runs thus : "The provisions of the United Provinces Agriculturists' Relief Act, 1934, shall not be applicable to proceedings under this Act." These provisions of Section 14 deal with cases where the Special Judge has to determine the amount due on the basis of a loan which has not already been the subject of a decree: We then come to Section 15. The relevant portion of that section is as follows: In determining the amount due on the basis of a loan which has been the subject "of a decree the Special Judge shall accept the findings of the Court which passed the decree except in so far as they are inconsistent with the provisions of Section 14. Here, again, a question arose whether the loan could be said to have been "the subject of a decree," within the meaning of this section, where all that had happened was that, in a suit under Section 33, Agriculturists' Relief Act, the Court had declared the amount which was payable on the date of such declaration by the debtor to the creditor. Did not the framers of the Act, when they said "which has been the subject of a decree," contemplate a decree passed in favor of the creditor for the recovery of the loan in a suit brought by the creditor for its recovery? It appears to me, however, that it is not necessary in the present case to decide this question also. I shall assume that the appellant is right in contending that, in consequence of the suit under Section 33, Agriculturists' Belief Act, and the declaration made therein, the loan in question has been "the subject of a decree." But, what does the section require the Special Judge to do in such a ease? It directs him to accept the findings of the Court which passed the decree, but lays down the important exception that he shall not accept those findings, or those parts of the findings, which are inconsistent with the provisions of Section 14. The question thus resolves itself into this: Would not the Special Judge, if he had accepted the amount declared in the suit under Section 33, Agriculturists' Belief Act, have accepted a finding which was inconsistent with the provisions of Section 14, Encumbered Estates Act? If the answer to this question is in the affirmative, then the Special Judge was right in holding that he was bound not to accept that amount.

5. The amount declared in the suit under Section 33, Agriculturists' Relief Act, consisted of the principal-it was not contended that anything had ever been paid on account of the principal-and of a certain sum on account of interest arrived at by calculating it in accordance with the rates laid down in the Agriculturists' Relief Act, in disregard of the contractual rate of interest laid down in the deed. Thus one of the findings, or one part of the finding, arrived at by the Court which made the declaration in the suit under Section 33, Agriculturists' Relief Act, was that the

creditor was not entitled to interest at the contractual rate but only at the rates laid down in the Agriculturists' Relief Act. The provisions laid down in Clauses (a), (b) and (c) of Sub-section (i) of Section 14, Encumbered Estates Act, however, are wholly different. According to those provisions, the interest has to be allowed at the contractual rate subject to the provisos that the rule of Damdupat is to be applied for fixing the maximum and that, if the facts of the particular case attract the provisions of the Usurious Loans Act, 1918, they are to be applied. That being so, I am of opinion that the finding, or the part of the finding, by which the Court making the declaration in the suit under Section 33, Agriculturists' Relief Act, held that the creditor was entitled to interest only at the rates specified in the Agriculturists' Relief Act, was inconsistent with the provisions of Section 14, Encumbered Estates Act. The Special Judge, in the present ease, was therefore bound not to accept that finding, or that part of the finding. The result is that in my judgment the decision to which the Special Judge came was correct.

6. On a careful consideration of the facts of the case in *Ayub Ali Shah v. Kali Charan ('41) 28 A.I.R. 1941 All. 400(supra),* it appears to me that it is distinguishable and that it is not necessary for us to say in the present case whether we agree with the decision in that case or not. The important fact which distinguishes that case from the one before us is that there the creditor had exercised the option and had made an application in the suit under Section 33, Agriculturists' Relief Act, and a decree for the amount declared to be still payable had been passed in his favor in that suit. As has already been stated, no such application is alleged to have been made and no such decree is alleged to have been passed in the case before us. Furthermore, in *Ayub Ali Shah v. Kali Charan ('41) 28 A.I.R. 1941 All. 400(supra)* the Special Judge had based his decision upon an interpretation of the Usurious Loans Act, 1918, as amended by the U.P. Usurious Loans Act, which was not quite intelligible and which the counsel for the creditor in this Court did not seriously seek to support. Although, with profound respect to the learned Judges who decided the case in *Ayub Ali Shah v. Kali Charan ('41) 28 A.I.R. 1941 All. 400(supra)* find it difficult to appreciate and agree with the reasons given, by them in their judgment, I do not consider it necessary to express any opinion as to the correctness or otherwise of the ultimate decision arrived at on the particular facts of that case.

7. Mr. Mushtaq Ahmad has also relied on three decisions of the Chief Court at Lucknow, *Syed Mohammad Husain v. Nageshwar Pershad*[2] Mohammad *Muqeem Khan v. Ram Dass*[3] and *Kailash Narain Bakhshi v. Ajodhia Bank, Ltd*[4]. The last two eases followed the first one. Having carefully considered the judgments in these three cases, I am, with great respect to the learned Judges who decided them, unable to agree with these decisions. In the judgment in *Syed Mohammad Husain v. Nageshwar Pershad ('41) 28 A.I.R. 1941 Oudh 193(Supra)* the learned Judges referred to an earlier case of their own Court, namely, *Ramsagar Prasad v. Mt. Shayama*[5] and quoted the following passage from the judgment in that case: When, however, there has been a decree, the Special Judge must under Section 15 accept the findings of the Court which passed the decree except in so far as they are inconsistent with the provisions of Section 14. This, in our view, means that he has to see whether the civil Court that passed the decree could have passed

the decree which it did pass if that Court had to comply with the provisions of Section 14, or, to put it in other words, the Special Judge has to say to himself: 'If I under Section 14 had then to give a decree, would the decree that I could have given under Section 14 correspond with the decree which the civil Court has in fact given. It is not clearly stated in the judgment in Syed Mohammad Husain v. Nageshwar Pershad ('41) 28 A.I.R. 1941 Oudh 193 whether the learned Judges who decided that case agreed or disagreed with the observations quoted by them from the judgment in Ramsagar Prasad v. Mt. Shayama ('39) 26 A.I.R. 1939 Oudh 75 nor are any reasons given for their disagreeing with those observations, if they did disagree. It appears to me that the law was -if I may say so with respect - correctly laid down in the passage quoted above from the judgment in Ramsagar Prasad v. Mt. Shayama ('39) 26 A.I.R. 1939 Oudh 75. It is sufficient to say that the decision of the Special Judge in the present case is in consonance with the law laid down there. For the reasons given above, I have come to the conclusion that this appeal should be dismissed with costs.

Braund, J.

8. I agree. If the declaration of 19th August 1936 of the Subordinate Judge in the suit under Section 33, Agriculturists' Belief Act, should be held to amount to a " decree " then it appears to me to be impossible to ignore the words "except in so far as they are inconsistent with the provisions of Section 14," contained in Section 15, U.P. Encumbered Estates Act, since it is difficult not to regard a declaration of the amount due as a "finding." These words mean that it becomes the duty of the Special Judge, where he finds a decree, to 'accept it, as far he can consistently with Section 14, Encumbered Estates Act. But, to any extent that he cannot do so, he must himself apply the provisions of Section 14 in variation of it. In my view, the express enactment in Section 14 that the provisions of the Agriculturists' Relief Act, are not to be applied in proceedings under the Encumbered Estates Act, makes this conclusion irresistible, since any other would, in effect, make the provisions of the former Act applicable in a proceeding under the latter Act. If, on the other hand, the declaration of I9th August 1936, should not amount to a "decree," then no difficulty whatsoever remains in giving full effect to the provisions of the Encumbered Estates Act. Thus, in either view, the appeal must fail. I have nothing further to add.

Hamilton, J.

9. I agree with my learned brothers and have nothing to add.

10. The appeal is dismissed with costs.

Cases Referred.

1('41) 28 A.I.R. 1941 All. 400
2('41) 28 A.I.R. 1941 Oudh 193
3('42) 29 A.I.R. 1942 Oudh 492

4('43) 30 A.I.R. 1943 Oudh 439
5('39) 26 A.I.R. 1939 Oudh 75