
Sham Narain Rai Vs Nagesar Ram

First Appeal No. 332 of 1945

Court: Allahabad High Court

Date of Decision: Dec. 6, 1949

Acts Referred:

Uttar Pradesh Debt Redemption Act, 1940 " Section 8, 9#Uttar Pradesh Temporary Postponement of Execution of Decrees Act, 1937 " Section 5

Citation: AIR 1952 All 360

Hon'ble Judges: Wali Ullah, J; Bind Basni Prasad, J

Bench: Division Bench

Advocate: Gopalji Mehrotra, for the Appellant; Shambhu Prasad and Shripati Narain Singh, for the Respondent

Final Decision: Dismissed

Judgement

Wali Ullah, J.

This is an appeal by the Judgment-debtor against an order passed by the court below by which his objections were partly allowed and partly dismissed.

2. It appears that a simple money decree was passed against the Appellant on the 27th October, 1930. An application for execution of this decree

was made on the 16th of March, 1933 and eventually it was struck off, after part satisfaction of the decree, on the 30th of August, 1933. Later,

the judgment-debtor appears to have made an application u/s 5 of the U.P. Agriculturists' Relief (Act 27 of 1934) with the result that the decree

was converted into one payable by four instalments. The first instalment was payable on the 5th of September, 1937, the second on the 5th of

September, 1938, the third on the 5th of September, 1939, and the fourth on the 5th of September, 1940. It was provided that on default of

payment of any two instalments, the whole amount due under the decree was to become payable. It appears that no instalments were paid till the

16th of December 1941 when the second application for execution was made. This second application for execution was transferred to the

Collector for execution and eventually on the 11th of July, 1942. after the grant of a self-liquidating mortgage of some property in part satisfaction

of the decree, it was struck off. Later, it appears, the judgment-debtor claimed a reduction of interest in accordance with the provisions of Sections

8 and 9 of the U.P. Debt Redemption Act (Act XIII of 1940). This was allowed. On the 7th of November, 1944, the third application for

execution was made. In execution proceedings besides other properties, some agricultural produce of the judgment-debtor was attached. Against

the attachment of the agricultural produce, the judgment-debtor filed objections. In the main, the objections centered round the bar of limitation

pleaded by the judgment-debtor. It was pleaded that Section 15 of the Debt Redemption Act, read with Section 6 of the Agriculturists' Relief Act,

made the application for execution barred by time.

3. The court below, after considering the relevant provisions of law, came to the conclusion, that the execution application in regard to only the first

instalment of the decree, which fell due on the 5th of September 1937, was barred, while the remaining amount due under the decree, under the

remaining three instalments, was recoverable. Against this order, partly dismissing the objections, the Appellant has come up in appeal to this

Court.

4. It has been contended by the learned Counsel for the Appellant that the application for execution in respect of all the instalments provided for in

the decree was barred by time. Learned Counsel has referred us to Section 6, particularly proviso (2) of the Agriculturists' Relief Act, and has

contended that the limitation provided by the first paragraph of the section i.e. a period of four years calculated from the date of the filing of the first

application for execution, would govern this case and that the second proviso, which refers to the grant of instalments for payment of a decree u/s

3 or Section 5 of the Act, would apply only in a case when a previous application for execution has been made.

5. We find no warrant for this contention of the learned Counsel in the provisions of Section 6 of the Act. It is clear that the period of four years"

limitation calculated from the date of the filing of the first application for execution is provided in the case of an ordinary decree where there is no

question of instalments. By reason of proviso (2) to this section, however, the legislature seems to have intended that the period of four years"

limitation prescribed in the earlier part of the section should be counted in respect of each instalment from the date on which such instalment falls

due. It is clear, therefore, that the application for execution would be within time if made within four years of the date of default of a particular

instalment. There is, therefore, no force in this contention of the learned Counsel.

6. The next question which arises for consideration is whether the decree-holder is entitled to the benefit of Section 5 of the Temporary

Postponement of Execution of Decrees Act (U.P. Act X of 1937). The decree-holder has been given the benefit of Section 5 of this Act. Learned

Counsel for the Appellant, however, has contended that benefit of the provisions of Section 5 of the Act is available only in the case of ""such

decree as is referred to in Section 3"" as provided in Section 5(1) itself. The contention of the learned Counsel is that before giving the benefit of

Section 5 to a decree-holder the court has to see if the conditions prescribed by Section 3 of the Act are satisfied in the case of a particular decree

which is sought to be executed. It has, however, been held by this Court in several cases, viz. Mustafa Khan v. Bam Bharosey, 1944 A.W.R.

(H.C.) 282, and Pohkar Singh v. Mulaim Singh, 1945 A.W.R. (H.C.) 50, which are single Judge cases, and a Full Bench case of this Court,

Behari Lal v. Ganga Prasad, 1945 A.W.B. (H.C.) 86, in which both the earlier single Judge decision have been approved, that ""Section 5 is

independent of and is not subject to the provisions of Section 3 and it is controlled by that Section (Section 3) only to this extent that its application

is restricted to the decrees referred to in Section 3 and not covered by Section 6 of the Act. In other words for construing Section 5, one has to

turn to Section 3 only for the limited purpose of ascertaining the nature of the decree in order to see whether it is one to which Section 5 is

applicable once it is found that the decree is of the character contemplated by Section 3 and not covered by Section 6 it will attract the

application of Section 5, irrespective of the fact whether an application for stay has or has not been filed ... Or whether the agriculturist judgment-

debtor comes within Section 3(1) or not.

7. It must be noted that Section 5 of the Temporary postponement of Execution of Decrees Act which governs the computation of the period of

limitation affects not only limitation as prescribed by the Indian limitation Act, but also limitation which may be prescribed by ""any other law for the

time being in force"". There is no question here of the applicability of Section 6. It seems, therefore, clear that benefit of Section 5 of this Act was

available to the decree-holder.

8. The result, therefore, is that from the first of January, 1938, to 31st of December, 1940, execution of this decree could not be carried out. It

follows that the time available by reason of Section 6, proviso 2, of the Agriculturists' Relief Act, read with Section 15 of the Debt Redemption

Act, has to be considered in this case and the exclusion of time prescribed by Section 5 of the Temporary Postponement of Execution of Decrees

Act would be applicable. Applying the principles deducible from the above, only the first instalment of the decree which fell due on the 5th of

September, 1937, was barred by time on the date of the present application for execution i.e. the 7th of November, 1944. The application for

execution in regard to the other instalments would be within time as time would begin to run in respect of them only on the 1st of January 1941.

9. The decision of the court below is thus quite correct. The result is that the appeal is dismissed with costs.