

(1939) 01 AHC CK 0008**Allahabad High Court****Case No:** None

Ram Nath

APPELLANT

Vs

Shyam Lal

RESPONDENT

Date of Decision: Jan. 26, 1939**Citation:** AIR 1939 All 502 : (1939) 9 AWR 340**Hon'ble Judges:** Iqbal Ahmad, J**Bench:** Division Bench**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

Iqbal Ahmad, J.

This appeal is directed against the appellate decision of the Additional Civil Judge of Farrukhabad in a case under the Agriculturists' Relief Act. The facts are not in dispute and are as follows : Shyam Lal, respondent, obtained a preliminary decree for sale against Ram Nath, appellant, on 14th April 1932. A final decree for sale was passed in favour of Shyam Lal on 9th August 1932 for a sum of Rs. 2778-1-0. A portion of the mortgaged property was put to sale and purchased by Shyam Lal for Rs. 1305 on 3rd January 1934 and this sale was confirmed on 10th September 1936. During the period intervening between the date of the sale and of the confirmation of the same, viz. on 5th July 1936, Ram Nath, judgment-debtor, made an application under Sections 5 and 30, U.P. Agriculturists' Relief Act, praying that instalments be granted with respect to the entire decree and the rate of interest be reduced. Both the Courts below fixed interest at a certain rate and revised the entire decree in accordance with that rate and there is no controversy as regards interest fixed by the Courts below in the present appeal.

2. On the question of instalments the Court of first instance held that it had no jurisdiction to fix instalments with respect to that portion of the decree that had been satisfied and, accordingly, that Court granted the instalments only with respect

to the balance of the decretal amount. This decision of the trial Court was on appeal affirmed by the lower Appellate Court. A preliminary objection has been raised to the hearing of this appeal on the ground that no second appeal lies against the appellate decision of the Court below. This objection is supported by a Division Bench ruling of this Court in Babu Kailash Chandra Vs. Lala Radhey Shiam and Another, . It was held in that case that, in view of the provisions of Section 5(2) of the Act, only one appeal is allowed and a second appeal cannot be entertained. I therefore give effect to the preliminary objection. But at the request of the learned Counsel for Ram Nath, I have treated the appeal as an application in revision and proceed to decide the same. It is contended by the learned Counsel that, in view of the Proviso to Section 5(1) of the Act, the Courts below had jurisdiction to fix instalments not only with respect to the unsatisfied portion of the decree but also with respect to the amount that had been realized by the decree-holder by sale of a portion of the mortgaged property. In my judgment there is no force in this contention. The Proviso runs as follows:

Provided that any final decree for sale which has not been fully satisfied, passed before this Act comes into force, shall, notwithstanding anything contained in the CPC 1908, be revisable in the same manner and to the same extent as the preliminary decree for sale or foreclosure passed against an agriculturist.

3. The Act came into force on 30th April 1935, and as the final decree in the present case was passed in 1932 the Proviso no doubt applies to that decree. But in my judgment the Proviso is confined in its operation only to such portion of a final decree as has not been satisfied and has no application to decretal amounts already realized by the decree, holder. Instalments can be fixed only with respect to amount that remains payable by a debtor to a creditor and not with respect to amounts that have already been realized by a creditor. To give effect to the contention of the learned Counsel for the appellant would be to hold that the decree-holder is liable to refund the amount realized by him to the judgment-debtor and after the amount has been so refunded then instalments are to be fixed with respect to the entire decree. Such a procedure about refund of amounts already realized by the decree-holder is nowhere prescribed by the Act. The reasonable interpretation of the Proviso therefore is that instalments in cases of such final decrees, which have been partially satisfied are to be fixed with respect to the unrealized portion of the decretal amount. For the reasons given above, I hold that the decisions of the Courts below are correct and I dismiss this application with costs.