

## Narain Singh Vs Banke Behari Lal

**Court:** Allahabad High Court

**Date of Decision:** Aug. 5, 1937

**Hon'ble Judges:** Thom, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

Thom, J.

This is an application in civil revision arising out of an application under Sections 5 and 30, Agriculturists' Relief Act. A decree

was passed against the applicant on 31st August 1935 in a suit brought upon the footing of a mortgage deed. The decree was passed ex parte.

Later the applicant applied under Sections 5 and 30, Agriculturists' Relief Act. u/s 5 of the Act the Court has converted the decree into a decree

for payment by instalments. No question arises in regard to the Court's order under this section. The lower Court refused however to reduce the

rate of interest upon the amount due under the decree. The learned Munsif held that Section 11, Civil P.C., barred the application for the reduction

of interest. Sub-section (2) of Section 30 is in the following terms:

If a decree has already been passed on the basis of a loan and remains unsatisfied in whole or in part, the Court which passed the decree shall, on

the application of the judgment-debtor, amend it by reducing, in accordance with the provisions of Sub-section (1), the amount decreed on

account of interest.

2. Sub-section 1 of Section 30 enjoins that no debtor shall be liable to pay interest except at the rate provided by the Act on a loan taken before

the Act comes into force. The learned Munsif has held that the decree referred to in Sub-section (2) is a decree passed before the Act came into

operation; in other words, that no applicant was en-titled to the benefits of the provisions of Section 30, Agriculturists' Relief Act, if he allow-ed

decree to pass against him after the Act came into operation without applying for the benefits of the section. I am unable to agree with this

interpretation. The question raised was considered by Bennet, J. in Baryar Singh Vs. Ram Dularay, . In that case the learned Judge held that the

words ""already passed"" referred to the date upon which the application u/s 30 was made. With this decision I agree. There is no doubt that Sub-

section (2) might have been less ambiguously drafted. It is clear however, in my judgment, that the policy of the Legislature was to give relief to all

debtors against whom decrees were passed on the basis of loans either before or after the Act came into operation. It was contended that in suits

decided after the Act came into force the defendant was bound to apply for relief thereunder before decree passed, and if he failed to do so, any

future application was barred by Section 11, Civil P.C. This contention in my opinion is unsound. Until decree has passed there is no necessity to

apply for relief. Even after the passing of the decree the defendant may not desire to apply immediately for relief. There is no reason in my

judgment for holding that in these circumstances he is barred in all time from claiming such relief.

3. Upon the whole matter, I am satisfied that the Court below has acted with material irregularity in refusing to give to the applicant the benefits to

which the applicant is entitled u/s 30 of the Act. In the result, the application is allowed, the order of the learned Munsif refusing to reduce the rate

of interest is set aside. The record will be returned with a direction that the learned Munsif will prepare a decree giving effect to the provisions of

Section 30 of the Act. The applicant is entitled to his costs.