

Badri Prasad And Anr. vs Shankar Lal on 10 April, 1950

Equivalent citations: AIR1950ALL713, AIR 1950 ALLAHABAD 713

Author: Ghulam Hasan

Bench: Ghulam Hasan, V. Bhargava

JUDGMENT

Ghulam Hasan, J.

1. The question which the Full Bench is invited to decide in this appeal is as follows :

"Is an order refusing to amend a decree under Section 8, Debt Redemption Act a question relating to execution or discharge of the decree and as such appealable under Section 47, Civil P. C., as held in Mohammad Abdul Razzak v. Mt. Parvati Devi, 1942 O. W. N. Rev. 607: A. I. R. (29) 1942 All. 394 (F. B.) or does not the contrary view in Salik Ram v. Ram Sarup, 1945 O. W. N. 230 : A I. R. (32) 1948 Oudh 251 (F. B.) lay down the correct law ?"

2. The facts may be shortly stated : A preliminary decree for sale on foot of a mortgage was passed in favour of the respondent Shankar Lal against the appellants Badri Prasad and Bishambhar Dayal on 30th October 1935. This decree was made final on 18th May 1940. On 18th May 1943, the decree-holder applied for execution of the decree. On 3rd August, the judgment-debtors applied for amendment of the decree under Section 8, U. P. Debt Redemption Act. On 21st August the decree-holder filed a declaration under Section 4 of the Act whereupon the application for amendment was dismissed. Appeal against that decision was dismissed by the lower appellate Court on 17th November, and the present second appeal was filed on 7th December. There being a conflict between the Full Bench decisions of the Allahabad High Court and the late Avadh Chief Court upon the question, the same has been referred to the Full Bench of seven Judges for decision.

3. The three Full Bench decisions of the Allahabad High Court are : (i) Mt. Ketki Kunwar v. Ram Saroop, A. I. R. (29) 1942 ALL. 390 : (I. L. R (1943) ALL. 35 : 1942 A. L. J. 578 F. B.), (Iqbal Ahmad C. J., Bajpai and Dar JJ.); (2) Abdul Razzak v. Parvati Devi, A. I. R. (29) 1942 ALL. 894 : (1942 C. L. J. 554 : 1942 O. W. N. Rev. 607), (Iqbal Ahmad C. J., Dar and Plowden JJ.) ; (3) Manmohan Lal v. Raj Kumar Lal, A. I. R. (33) 1946 ALL. 89 : (1946 A.L.J. 3 : I. L. R (1946)ALL. 413 F. B.), (Iqbal Ahmad C. J., Allsop, Varma, Yorke and Malik JJ.).

4. The first two decisions were given on the same date, namely 7th September 1942. In the first of these cases the decree-holders had made an application for execution of the mortgage-decree and

the judgment-debtors in opposition to this had made an application under Section 8, U. P. Debt Redemption Act for the reduction of the decretal amount. Dar J., who delivered the judgment of the Full Bench, held that although the determination of every question between the decree-holder and the judgment-debtor relating to the execution, discharge or satisfaction of the decree is not a decree within the meaning of Section 2(2), Civil P. C., yet every determination which conclusively determines the rights of the parties with regard to the execution, discharge or satisfaction of the decree is a decree within the meaning of the Code. He then proceeded to hold that an application under Section 8, raises a question of the execution, discharge or satisfaction of the decree within the meaning of Section 47, Civil P. C., and is consequently appealable as such. In this judgment reliance was placed upon the decision of another Full Bench of the same Court in *Har Narain v. Mathura Prasad*. A. I. R. (27) 1940 ALL. 826 : (I. L. R. (1940) ALL. 517 F. B.), (Thom C. J., Allsoo and Ganga Nath JJ.) in which an order of the Court executing a decree staying execution for costs under Section 3, Temporary Postponement of the Execution of Decrees Act was held to be a decree within Section 47 and as such appealable. That case, however, provides no analogy because in that case the stay of execution undoubtedly related to execution while in the present case what has to be determined is whether an order under Section 8, U. P. Debt Redemption Act amending or refusing to amend a decree relates to the execution, discharge or satisfaction of the decree.

5. In the second case the judgment of the Full Bench was delivered by Iqbal Ahmed C. J. Although two learned Judges of the Bench were parties to the previous Full Bench no reference was made in this judgment to that case. In this case it was also held that an order rejecting the application for amendment of the decree under Section 8 falls within the purview of Section 47 inasmuch as the reduction of the decretal amount sought by the judgment-debtor is a matter relating to the execution, discharge or satisfaction of the decree and therefore is appealable to the High Court. Beyond enunciating this as a proposition of law, there is no discussion in the judgment.

6. In the last case there was a difference of opinion among the members of the Full Bench, three of whom Iqbal Ahmad C. J., Allsop and Yorke JJ. agreed with this view without referring to the previous cases but two of them (Verma and Malik JJ.) disagreed. In this case the order in question was one directing an amendment of the decree under Section 8 and the decree-holder had preferred a revision. It was held that the amended decree was appealable to the District Judge under Section 96, Civil P. C., read with Section 24, Debt Redemption Act. The reasoning of the learned Chief Justice was that, as, under Section 8, Debt Redemption Act, the Courts exercised original jurisdiction in amending the decree and as in consequence of the amendment the original decree is substituted by the amended decree, that decree becomes appealable under Section 96, Civil P. C. It was also held that limitation began from the date of the amended decree, although under Clause (2) of Section 8 the notional date of the amended decree was the date of the original decree. The decision was not based on Section 47, Civil P. C.

7. Yorke J. held that the amended decree was a fresh decree against which an appeal would lie under Section 96, Civil P. C. Again there was no reference to Section 47.

8. Verma and Malik JJ. doubted whether an appeal lay against an amended decree, for such an adjudication did not give rise to a decree and was not one for which any appeal had been provided

by any statute.

9. The question whether an appeal lay against the amended decree cropped up with a view to deciding whether the revision application under Section 115 could be entertained by the High Court at the instance of the aggrieved decree-holder, who had a right of appeal and for this purpose the expression "in which no appeal lies thereto", used in Section 115 had to be construed.

10. The question, however, directly arose in Avadh and was answered by the Pull Bench in *Salik Ram v. Ram Sarup*, in the negative. (See 1945 O. W. N. 230 : (A. I. R., (32) 1945 Oudh 251 F. B.)) That was a case in which the mortgagor's application for redemption under Section 12 was allowed but the benefit of Section 8, Debt Redemption Act was refused and an appeal to the lower appellate Court had been unsuccessful. Counsel conceded that no miscellaneous appeal under Section 24, Debt Redemption Act, was maintainable by the mortgagor but he contended that the order refusing to amend the decree under Section 8 was appealable under Section 47, Civil P. C., as an order relating to execution, discharge or satisfaction of decree.

11. Three questions were formulated for decision by the Full Bench. Question 2, which is material for our purposes, was whether an order refusing to amend a decree under Section 8, Debt Redemption Act is a matter relating to the execution or discharge of the decree and falls within the purview of Section 47, Civil P. C. The two previous Full Bench decisions of the Allahabad High Court of the year 1942 were dissented from. The Avadh Chief Court held that the Full Bench in *Ketki Kunwar's case* (A. I. R. (29) 1942 ALL. 390 : I. L. R. (1913) ALL. 35 F. B.) took the view which they did upon a strained interpretation of Section 47. According to them, the question whether the judgment-debtor is entitled to reduction in the decretal amount by the application of the provisions of a special Act is not a question which can be considered to relate to the execution, discharge or satisfaction of the decree. They also held that the amended decree was not a fresh decree but the original decree bearing the same date with the only difference that it was reduced in amount. It was also pointed out that the acceptance of the Allahabad view led to the anomaly that while the right of appeal in proceedings under Section 12, Agriculturists' Relief Act was restricted to one appeal as provided by Section 23 a party in order to obtain a second right of appeal had merely to wait until the decree holder started execution proceedings, and apply for amendment of the decree. This result could not, in the opinion of the Full Bench, be attributed to the Legislature. Accordingly, it was held that the order of the execution Court amending or refusing to amend the decree was not an order relating to the execution, discharge or satisfaction of the decree.

12. The judgment of the Full Bench was delivered by me and I can see no reason to alter my opinion but for our present purposes it would not be necessary to go further than say that the order passed by the Court refusing to amend the decree under Section 8, Debt Redemption Act was not an order relating to the execution, discharge or satisfaction of the decree and was not appealable under Section 47. A revision could be entertained under Section 115 provided the conditions laid down by that section were satisfied. Amendment of a decree is not, a function of the Court executing the decree even if that Court is the Court which itself passed the decree. Section 47, Civil P. C., does not, justify any such amendment which is carried out by reason of the express provision of Section 8, U. P. Debt Redemption Act. That section confers a new jurisdiction on the Courts designated by it. The

Courts are (1) the Court which passed the decree and (2) the Court to which a decree has been transferred for execution.

13. It will be noticed that the power is not conferred upon every Court executing the decree. In a case where a decree is being executed by the Court which passed the decree, the power is conferred on it in its capacity of the Court which passed the decree and no mention is made of its capacity of a Court executing the decree. It would, therefore, not be proper to hold that in amending its own decree, it exercises the function of a Court executing a decree and not of a Court of original jurisdiction. No doubt in a case where there has been a transfer of a decree the Court to which execution has been transferred is empowered to amend the decree. This, however, only designates the Court which may amend the decree; it does (not?) indicate that the power is to be exercised by it in its capacity of a Court executing the decree. It is a kind of an anomalous jurisdiction conferred on the Court to amend decrees and is exercised by the Court sitting as a Court of original jurisdiction under a special power conferred. The conferment of this power became necessary because the Legislature was aware that decrees passed by Courts outside the province would also be executed by sale of properties situate within the province. The provincial Legislature had no jurisdiction to direct the Court outside the province to amend its decree in accordance with a provincial law. It accordingly directed the Court within this province to which execution had been transferred to amend the decree and conferred special powers upon it for that purpose. This is clear from the proviso to sub-clause (1) of Section 8.

14. Further it cannot be doubted that if the Court which passed the decree amends it before any application is made for execution and consequently before there is any executing Court seised of the case, it is exercising its original jurisdiction. Section 47, Civil P. C., would therefore not apply and an order of refusal to amend will not become a decree by reason of that section. In such a case, therefore, the only jurisdiction exercisable by a superior Court would be under Section 115, Civil P. C. It would be extremely anomalous to hold that if the judgment-debtor waits for the decree-holder to apply for execution and then, applies for the amendment of the decree, the course of appeal is affected by Section 47, Civil P. C. and a right of first, and perhaps second appeal, accrues.

15. Moreover, had the Legislature intended to confer this jurisdiction upon Courts executing decrees as such, it would have used much simpler language. Instead of saying "may apply to the civil Court which passed the decree or to which execution of the decree has been transferred" it would have used some such words as these "may apply to the Court which passed the decree or which is executing it."

16. Another point which may be noticed in this connection is the use of the word "civil" before 'Court'. This excludes any other authority, for instance, a Collector executing a decree under the powers conferred upon him by a notification of the Government under Section 63, Civil P. C., or Section 10, U. P. Regulation of Credit Act, to amend the decree, although that authority too is executing the decree. This also indicates that the jurisdiction to amend is not conferred upon the Court executing the decree.

17. Section 8, however, confers a power on both the Courts to amend the decree at the instance of the judgment-debtor. The mere fact that an amendment is made or refused at a time when execution proceedings have commenced will not render the determination of the question of amendment under the special provisions of Section 8, a matter relating to the execution, discharge or satisfaction of the decree.

18. This view is fortified by a decision of the Calcutta High Court in *Promode Nath v. Sm. Raseshwari Dassi*, A. I. R. (28) 1941 Cal. 630 : (46 C. W. N. 776), where an order made under the provisions of the Bengal Moneylenders Act, 1940, an Act analogous to the U. P. Debt Redemption Act, either granting or refusing a prayer for re-opening a decree was held not to fall under Section 47, Civil P. C., and was not appealable as such.

19. It was, however, held that if the decree was reopened and a new decree made, an appeal would lie under Section 96, Civil P. C., and was open to both the decree-holder and judgment-debtor ; but if the application of the judgment-debtor was refused, there was no provision of law under which an appeal would lie against the order of refusal and the only remedy of the aggrieved party would be to apply under Section 115 of the Code.

20. In that case the decree-holder applied for execution by sale of the mortgaged property and the judgment-debtors, in the course of these proceedings, presented an application under the Bengal Money-lenders Act praying that they might be relieved of the liability to pay interest in excess of what was permissible under the new Act and that a new decree might be passed allowing them to pay the decretal amount in certain instalments. The first prayer was allowed but the second was refused. Against this refusal an appeal was preferred by the judgment-debtors. The question arose whether the appeal was competent under Section 47. No appeal was provided under the Bengal Money-lenders Act in such a case, but it was held that if the Court granted the prayer of the judgment-debtors and passed a new decree under the Act, an appeal would lie from the new decree under the provisions of the Code of Civil Procedure, but if it was refused no appeal would lie and the only remedy of the judgment-debtors was to file a revision. It was also held that under Section 47 the Court executing the decree can decide any question, the order in respect of which furthers, hinders or affects the manner of the carrying out of the execution of the decree. It can decide whether the decree that is going to be executed is capable of execution but it cannot reopen the decree and pass a new decree as it considers proper. The learned Judges observed:

"The Act has not said anywhere that an order made under Section 36(6)(a)(i) would be treated as one under Section 47, Civil P. C., and the mere fact that it is made in execution proceedings is not sufficient to attract the operation of the section when the question for determination is one which cannot by any stretch of reasoning come within its purview. On the other hand, it seems that the whole object of the section is to create a special and anomalous jurisdiction, under which various directions could be given, some of which relate to the execution department while others relate to the re-opening of the decree and to the making of a new decree; and all these powers could be exercised not only in execution proceedings but also in the suit itself on an application for review."

These observations apply with equal force to the present case.

21. My answer therefore to the question referred to us is that an order refusing to amend a decree under Section 8, U. P. Debt Redemption Act is not an order which relates to the execution or discharge of the decree and as such not appealable under Section 47, Civil P. C. Kidwai, J.

22. I have had the advantage of reading the judgment of my learned brother, Ghulam Hasan J., and I concur. I would, however, like to add that I agree fully with the learned Judge of the Calcutta High Court in *Promode Nath Sinha Roy v. Raseshwari Dassi*, A. I. R. (28) 1941 Cal. 530 : (45 C. W. N. 776) in this view with regard to appeals under similar Act of the Bengal Legislature. . If the Court to which application is made for amendment of the decree allows, that application and the decree is amended, then an appeal will lie from that amended decree, not because there is a decision under Section 47, Civil P. C., but because the original decree has been replaced by a new decree and consequently the new decree may be challenged in appeal under Section 96, Civil P. C., if that section is applicable to the original decree. If the application for amendment is refused, then the original decree remains unaltered and there is no new decree in the case. Consequently no appeal lies under Section 96, Civil P. C., and to this extent I do not agree with the view taken in *Salik Ram v. Ram Sarup*, 1945 O. W. N. 230 : (A.I.R. (32) 1945 Oudh 251 F. B.). In such a case, if the requirements of Section 115, Civil P. C., are fulfilled' then an application may be made to the High Court under that section : otherwise the case cannot come to the High Court. I would answer the question referred to the Full Bench accordingly.

Chandiramani, J.

23. I have had the advantage of reading the judgments of my learned brothers Ghulam Hasan and Kidwai JJ. Section 8, Debt Redemption Act specifically relates to amendment of a decree which is quite different from execution, satisfaction or discharge of a decree. Section 8 occurs in chap. II which is headed "suits and decrees on loans" while in the Act there is separately chap. III headed "execution of decrees". The language employed in Section 8 itself for reasons given by my learned brother Ghulam Hasan J., with which I agree, leaves no room for doubt that the application for amendment of a decree is not one relating to execution, discharge or satisfaction of a decree.

24. I, therefore, agree with my learned brothers Ghulam Hasan and Kidwai JJ., that an order refusing to amend the decree under Section 8, Debt Redemption Act, is not appealable under Section 47, Civil P. C. I also agree with them that the order refusing to amend the decree can be revised under Section 115, Civil P. C., if the requirements of that section are fulfilled. I also agree with the decision of the Full Bench in *Salik Ram v. Ram Sarup*, 1945 O. W. N. 230: (A.I.R. (32) 1945 Oudh 251), that if the amendment is made the amended decree is appealable in the same way as the original decree was appealable. I would answer the question now referred to the Full Bench accordingly.

Brij Mohan Lall, J.

25. I have had the advantage of reading the judgments of my learned brothers Ghulam Hasan, Kidwai and Chandiramani JJ. I regret I find myself in the unfortunate position of having to differ from them. In the circumstances it is necessary to state my reasons in detail.

26. A final decree for sale of certain house property was passed under Order 34, Rule 5, Civil P. C., on 18th May 1940. An application for execution of that decree was presented on 18th May 1943. On 3rd August 1943, the debtors made an application under Section 8, U. P. Debt Redemption Act (XIII [13] of 1940) for amendment of the said decree. On 21st August 1943 the decree-holder filed a declaration under Section 4 of the Act to the effect that he would not execute the decree against the land, agricultural produce or person of the debtors. As a result of this declaration, the Court rejected, on the same day, the application for amendment of the decree which had been presented by the debtors under Section 8, U. P. Debt Redemption Act. Against this order an appeal was preferred by the debtors. It was dismissed by the lower appellate Court on 7th November 1943. Against this decision the present second appeal has been preferred.

27. The U. P. Debt Redemption Act makes no provision for appeals against any order passed under the Act. But Section 24 says that "the provisions of the Code of Civil Procedure, 1908, save in so far as they are inconsistent with the provisions of this Act, shall apply to all proceedings under this Act."

On the basis of this provision it is contended by the learned counsel for the appellants that the decision of his amendment application by the trial Court was a decision under Section 47, Civil P. C., inasmuch as it related to the question of execution or discharge of the decree, that the decision amounted to a decree and as such it could be appealed against. On the same ground a second appeal has been preferred.

28. The question referred to the Full Bench is as follows :

"Is an order refusing to amend a decree under Section 8, Debt Redemption Act a question relating to execution or discharge of the decree and as such appealable under Section 47, Civil P. C. as held in *Mohammad Abdul Razzak v. Mt. Parvati Devi*, 1942 O. W. N. Rev. 607: (A. I. R. (29) 1942 All. 394 F. B.), or does the contrary view in *Salik Ram v. Ram Swarup*, 1945 O. W. N. 230 : (A. I. R. (32) 1945 Oudh 251 F. B.), lay down the correct law ?"

29. At the time of arguments a fresh question arose, namely, whether a Court which passed a decree could, while executing it, entertain an application for amendment of the decree under Section 8, U. P. Debt Redemption Act, or whether its power of amendment could be exercised on the regular side (as distinct from the execution side) only ?

30. If it is held that the Court which passed the decree cannot entertain such an application as an execution Court, the question referred to the Full Bench will not arise. On the other hand if the decision is that the application can be entertained on the execution side also, the question will certainly arise for decision. It is, therefore, necessary first to determine whether the Court which passed the decree can while executing it, entertain an application under Section 8, U. P. Debt

Redemption Act, as an execution Court.

31. Section 8, Debt Redemption Act says that an application for amendment of the decree can be presented to the civil Court which passed the decree or to which the execution of the decree has been transferred." Since the provisions of the Code of Civil Procedure have, by virtue of Section 24, Debt Redemption Act, been made applicable to the proceedings under the said Act, it is permissible to refer to the provisions of the said Code. Section 38, Civil P. C., says that "a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution." It is, therefore, obvious that a Court while executing its own decree, does not cease to be a Court "which passed the decree." A debtor who presents his application for amendment to the execution Court can legitimately contend that he has presented a petition to the Court "which passed the decree." It will be impossible to throw out his application on the ground that the execution Court cannot entertain it.

32. It is contended on the other side that had it been the intention of the Legislature to confer jurisdiction upon the Court executing decrees as such the relevant clause under Section 8 would have run as follows : "May apply to the Court which passed the decree or which is executing it." With all respect I am unable to agree with this view. The intention of the Legislature was to confer the power of amendment: (1) on the civil Court which passed the decree, (2) on the Court executing its own decree and (3) on the Court to which the decree was transferred. The first two Courts were covered by the clause "the Court which passed the decree " Therefore, the Legislature used the clause "Court which passed the decree" to denote the first two classes of Courts and the third class of Courts was specifically mentioned. Had the Legislature conferred the power of amending the decree on "the Court which passed the decree or which is executing it," a Court executing its own decree would have fallen under both heads. It was perhaps to avoid this overlapping that the Legislature used the language which it has.

33. Moreover, it is not the intention of the Legislature to confer jurisdiction to amend the decree on every Court which executes it. A Collector executing a decree transferred to him under Section 63, Civil P. C., has no power to amend the decree. The power has been reserved for "civil Courts" because the decrees sought to be amended are always the decrees of civil Courts. Had the Legislature used the phrase. "Court, which passed the decree of which is executing, it," a Collector executing the decree transferred to him under Section 63, Civil P. C. would have also acquired jurisdiction to amend it.

34. Another argument to be considered is that Section 17 does not empower a judgment debtor to seek amendment of the decree and therefore an application for amendment cannot be entertained in an execution Court. In my opinion there is no force in this argument as well. The power to amend the decree is conferred by Section 8, U. P. Debt Redemption Act and not by Section 47, civil P. C. Section 8 not only confers the power but also declares the Court which shall exercise that power. Since that power is conferred on the Court "which passed the decree," the said Court can certainly entertain an application for amendment of the decree on the execution side also.

35. In view of the above answer to the first question, there arises the next question, whether an order refusing to amend the decree under Section 8, U. P. Debt Redemption Act is an order relating to the execution or discharge of the decree within the meaning of Section 47, Civil P. C. When a decree-holder puts in an applications claiming a certain amount of money from the judgment-debtor and the latter prays that the decree be amended, an a smaller amount may be declared payable by him, he really contends that the decree has been discharged, partially or wholly, as the case may be. The Court has to determine whether a decree can be executed for the amount claimed by the decree-holder. In the circumstances the question that arises is certainly one of discharge or execution of the decree.

36. It is true that the decision of every question under Section 47 is not necessarily a decree within the meaning of that term as defined under Section 2(2), Civil P. C. To be a decree there must be adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy. This test is satisfied by a decision of the nature stated above. If the Court finds that the decretal amount is to be reduced by a certain sum, or if it decides that the decree has been satisfied in full and is no longer executable, the decision certainly conclusively determines the rights of the parties so far as the Court expressing it is concerned. It will, therefore, amount to a decree. This view was taken in the Full Bench case of Mt. Ketki Kunwar v. Ram Saroop, 1942 A.L.J. 578: (A.I.R. (29) 1942 ALL. 390 F. B.). It is not necessary for me to repeat all that was said in the judgment of Dar J. in that case. The same view was taken in another Full Bench case reported in Mohammad Abdul Razzaq v. Mt. Parvati Devi, 1942 A.L.J 554 : (A.I.R. (29) 1942 ALL. 394) in the penultimate paragraph of the judgment at p. 556. The discussion is not so elaborate as in the preceding case, but the view taken is the same.

37. Reference was also made during arguments to the Full Bench case reported in Manmohan Lal v. Raj Kumar Lal, 1946 A. L. J. 3 : (A.I.R. (33) 1946 ALL. 89) but that was not a case of execution of decrees. In the circumstances it does not really afford any help in the determination of the question that now arises for decision.

38. A contrary view was taken by a Full Bench of the late Chief Court in the case of Salik Ram v. Ram sarup, 1945 O. W. N. 230: (A.I.R. (32) 1945 Oudh 251 F. B.) The learned Judges were of the opinion that an anomaly would result by accepting the Allahabad view. They thought that if the rejection of au application under Section 8, U. P. Debt Redemption Act was held to be a decree within the meaning of Section 47, Civil P C., the judgment debtor would secure the right of two appeals in every case. They pointed out that if the decree was one under Section 12. Agriculturists' Relief Act which by virtue of the provisions of Section 23 of the said Act is subject to one appeal only, there would be an anomaly inasmuch as the parent decree would be appealable once whereas the order passed in execution proceedings would be appealable twice. With all respect I am unable to agree with this contention. It is a well established rule of law that an order passed in execution proceedings, which amounts to a decree within the meaning of Section 2(2), Civil P. C., is in the matter of appeal, subject to the same limitations as the parent decree. If the parent decree is not appealable, the order in execution proceedings, although it may amount to a decree, is not appealable at all. If the parent decree is appealable once and not twice, the order in execution proceedings will also partake of the same limitations This principle is supported by numerous authorities. A decree passed under

Section 9, Specific Relief Act is not appealable at all. Orders passed in execution of that decree have also been held by different High Courts to be unappealable : vide (1) Tota Ram v. Shibban Lal, A.I.R. (19) 1932 Lah. 416 : (13 Lah. 798), (2) Zakirali v. Israr Husain, I.L.R. (1946) Nag. 610: (A.I.R. (34) 1947 Nag. 53), (3) Kanai Lal v. Jatindra Nath, 46 Cal. 519 : (A.I.R. (5) 1918 Cal. 925) and (4) Thomas Souza, v. Ghulam Moidin, 26 Mad. 438. '

39. In the case of suits of a Small Cause Court nature of the valuation of not more than Rs. 500 tried by a Munsif on the regular side, only one appeal is permitted by Section 102, Civil P. C. In such cases also it has been held that although orders passed in execution proceedings do amount to decrees, they are not appealable more than once. This view was taken in the cases of (1) Din Dayal v. Patrakhan 18 ALL. 481 : (1896 A. W. N. 160 F. B.), (21 Ram Raj v. Mt. Umraji, A.I.R. (13) 1926 ALL. 345 : (93 I.C. 292) and (3) Sita Ram v. Babu Badri Dass, A.I.R. (28) 1941 Oudh 101 : (191 I. C. 227).

40. It will, therefore, follow that the supposed anomaly will not result if the parent decree is not appealable more than once. The order in execution proceedings will also be appealable once and not twice. With all respect I find myself unable to agree with the view expressed in the aforesaid Avadh case.

41. Reference was also made to a Calcutta, case reported in Promode Nath Sinha Roy v Sm. Raseshwari Dassi, A.I.R (28) 1941 Cal. 530: 45 C. W. N. 776), In that case the judgment-debtor made an application under the provisions of the Bengal Money-Lenders Act (X 10) of 1940 for (a) reduction of interest and (b) for instalments. The Court reduced the interest and thereby amended the decree, but refused to grant instalments The judgment-debtor preferred an appeal and the only relief sought by him was that instalments should be granted The Calcutta High Court held that since the lower Court had amended the decree and passed a new decree, the decree was appealable under Section 96, Civil P C. It went on to hold that the appellant could appeal under Section 96 and in that appeal could press for instalments. The appeal was converted into an appeal under Section 96. In the course of the judgment their Lordships remarked that in their view "either granting or refusing a prayer for reopening a decree does not come under Section 47, Civil P. C., and is not appealable as such."

With utmost respect I am unable to subscribe to this last mentioned view.

42. There is yet one more aspect of the case. The preamble to the U. P. Debt Redemption: Act says that the object of the Act is to "provide for further relief from indebtedness to agriculturists and workmen." In matters where the statute is clear the preamble may be ignored. But where the language of the statute is not clear, it is permissible to refer to the preamble and to take a view which is consistent with the object of the legislation. On p. 46 Maxwell on the Interpretation of Statutes, Edn. 9, one finds the following paragraph, namely :

"The preamble of a statute (even after repeal) has been said to be a good means of finding out its meaning, and, as it were a key to the understanding of it; and, as it usually states, or professes to state, the general object and intention of the Legislature in passing the enactment, it may legitimately be consulted to solve any ambiguity, or

to fix the meaning of words which may have more than one, or to keep the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt."

Similarly, one finds on p. 185 of Craies on Statute Law, Edn. 4, the following passage, namely:

"While express provisions in the body of an Act cannot be controlled or restrained by the title or preamble, the latter may be referred to when ascertaining the meaning of a Statute which is susceptible of different constructions."

The result of denying a right of appeal in a case like the present will be to defeat the object of the U. P. Debt Redemption Act and an anomaly will result. If the Court amends the decree, reduces the amount and thereby does an act favourable to the debtor and unfavourable to the creditor, the latter will have a right of appeal under Section 96, Civil P. C. But if the Court refuses to reduce the interest and thereby declines to amend the decree it will be doing an act prejudicial to the debtor and favourable to the creditor. If no right of appeal is conceded in such a case, the very object of the Legislature will be defeated. From this consideration also one comes to the conclusion that out of the two possible views that should be adopted which confers a right of appeal on judgment debtors.

43. For the reasons stated above I have come to the following conclusions, namely, (1) an application for amendment of decree can be entertained on the execution side also by a Court which is executing its own decree, and (2) an order refusing to amend a decree, if passed in execution proceedings by the Court which is executing its own decree, is an order relating to execution or discharge of the decree and amounts to a decree within the meaning of Section 2(2), Civil P. C., and is open to appeal and second appeal, provided the parent decree was open to such appeals.

Harish Chandra, J.

44. A point that arises in this case is whether the application made on behalf of the appellants, judgment-debtors on 3rd August 1943, under Sections 8, 9 and 10, U. P. Debt Redemption Act, 1940, was an application made to the Court executing the decree or not. The application for execution had been made on 18th May 1943, and it was during the course of the execution proceedings that the application dated 3rd August 1943, was made on behalf of the appellants. It may be mentioned that we are concerned with only Section 8, U. P. Debt Redemption Act; for the decree had been passed before the commencement of the Act and the provision for the amendment of such a decree is contained in that section. The point that arises for consideration is whether this application will, in view of the language used in Section 8, be deemed to be an application made to the Court which passed the decree and not to the execution Court. The words used in Sub-section (1) of Section 8 are:

"Notwithstanding the provisions of any decree or of any law for the time being in force, an agriculturist or a workman liable to pay the amount due under a decree to which this Act applies passed before the commencement of this Act may apply to the civil Court which passed the decree or to which the execution of the decree has been

transferred, for the amendment of the decree by redaction."

45. There is nothing to indicate that the execution Court cannot entertain an application under that section. The specific reference to the Court to which the execution of the decree has been transferred, in case the decree is not being executed by the Court which had passed it, would seem to show that it could not have been the intention that the execution Court shall not have the power to entertain an application under that section. The status of the civil Court which passed the decree remains unaltered after the making of an application for the execution of that decree and the term "the civil Court which passed the decree" should include the execution Court when the decree is being executed by the same Court. Reference may be made to Section 38, Civil P. C., which is reproduced below :

"A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution."

It is clear, therefore, that a Court which passes a decree does not change its character while executing that decree. The execution of the decree is merely a procedure which follows the passing of such decree by the Court. The language used in Section 8 is very similar to that used in Section 38, Civil P. C. and it would not be reasonable to hold that an application under that section cannot be entertained by a Court while executing its own decree. An application under that section may, as mentioned above, also be made to the civil Court to which the execution of the decree has been transferred and the Legislature could not have intended that when a decree is being executed by the Court which passed it, an application under that section cannot be entertained by it although it could be entertained by the execution Court in a case in which the execution of the decree has been transferred to another Court. The application in the present case must, therefore, be deemed to be, as in fact it was, an application made to the Court executing the decree.

46. The next point that arises is whether the question whether a decree could or could not be amended under Section 8, U. P. Debt Redemption Act, 1940, is a question covered by Section 47, Civil P. C. No doubt, it is a question which arises between the parties to the suit in which the decree was passed or their representatives and what we have to consider is whether it is a question relating to the execution, discharge or satisfaction of the decree.

47. A Full Bench of the Allahabad High Court in Muhammad Abdul Razzak v. Parvati Devi, A. I. R. (29) 1942 ALL. 394: 1942 O. W. N. Rev. 607 had occasion to consider this question. An application for the amendment of a decree under Section 8 was rejected by the Court executing a simple money decree that had been obtained by the decree-holder against the judgment-debtor before the commencement of the U. P. Debt Redemption Act. It was held that the case fell within the purview of Section 47, Civil P. C. Their Lordships observe:

"The judgment-debtor by his application for amendment wanted reduction of the decretal amount and the reduction sought by him was clearly a matter relating to execution or discharge of the decree. The order of the Court below was, therefore, appealable to this Court."

48. The same matter was considered by another Full Bench of this Court in the case of Ketki Kunwar v. Ram Saroop, 1942 A. L. J. 578: (A. I. R. (29) 1942 ALL. 390) and the following is reproduced from that judgment:

"It is also settled law that though determination of every question between the decree-holder and judgment-debtor relating to the execution, discharge or satisfaction of the decree is not a decree within the meaning of Section 2(2), Civil P. C., yet every determination which conclusively determines the rights of the parties with regard to the execution, discharge or satisfaction of a decree is a decree within the meaning of the Code. In the case before us, Ram Sarup and Ram Bharose Lal, decree-holders, had made an application for execution of the mortgage-decree in which they claimed a sum of Rs. 8386 by sale of the mortgaged property. The judgment-debtors in opposition to this execution made an application praying that under the U. P. Debt Redemption Act the amount due under the decree was only Rs. 3,216 and the decree could not be executed for the amount which the decree-holders claimed and the decree should be amended and reduced to Rs. 3,216. In our opinion, a clear controversy arose between the decree holders and the judgment-debtors relating to execution, partial discharge or partial satisfaction of the decree and this controversy was finally determined by the execution Court and this determination was clearly a decree within the meaning of the Code and is open to appeal. We are further of opinion that generally speaking an application by an agriculturist-debtor under Section 8, U. P. Debt Redemption Act names a question relating to execution, discharge or satisfaction of a decree, and if the controversy raised by the applicants is determined by the execution Court the judgment of the Court in the proceedings is a decree and is open to appeal."

49. Our attention was also drawn to the Full Bench case of Sita Ram v. Raj Kumar Lal (I. L. R. (1946) ALL. 413) : A. I. R. (33) 1946 ALL. 89 F. B.), but the point considered in that case was different inasmuch as the application under Section 8 was not made to the Court executing the decree.

50. In the Full Bench case of Har Narain v. Mathura Prasad A. I. R. (27) 1940 ALL. 326: (I. L. R. (1940) ALL. 517 F. B.) the question was whether an order staying execution of a decree under a special Act, namely, the U. P. Temporary Postponement of Execution of Decree Act was a decree under Section 47, Civil P. C. It was held that there was a conclusive determination of a question arising between the parties and which related to the execution, discharge or satisfaction of a decree and that the order being an order under Section 47, Civil P. C. was appealable.

51. The one case in which a different view seems to have been taken is a Full Bench of the Oudh Chief Court, Salik Ram v. Ram Sarup, 20 Luck. 404 : (A. I. R. (32) 1945 Oudh 251 F. B.). That Court held that this was not a matter relating to the execution, discharge or satisfaction of the decree. The question, however, that arose in that case was a different one, Salik Ram had filed an application under Section 12, U. P. Agriculturists' Relief Act read with Sections 8 and 9, U. P. Debt Redemption Act, claiming redemption without payment of any money, as upon the allegations made by him the

mortgage money had been satisfied out of the usufruct of the property. The object apparently was to obtain a reduction of interest in accordance with the provisions of the Debt Redemption Act. The trial Court allowed redemption on payment of a certain sum of money and disallowed the claim to reduction of interest under the Debt Redemption Act. The lower Appellate Court dismissed the appeal. Thereafter, Salik Ram filed an appeal and it was contended on his behalf that an order refusing to amend the decree under Section 8, Debt Redemption Act, was appealable as a decree under Section 47, Civil P. C., as the order related to the execution or discharge of the decree. Thereafter a series of questions was framed by the Judge hearing the appeal and referred to a Full Bench for decision. In that case, there was no decree in execution and the question whether Section 47, Civil P. C., applied or not did not in fact, arise. But their Lordships went over the whole grounds and also considered the question whether is a case of this nature the order passed by that execution Court could be treated as one passed under Section 47, Civil P. C., or not. Question No. 2 to which they gave an answer was framed in the following terms:

"In an order refusing to amend a decree under Section 8, Debt Redemption Act a matter relating to the execution or discharge of the decree and falls within the purview of Section 47, Civil P. C.?"

After discussing all the case-law on the subject their Lordships say:

"With all respect to the learned Judges we are unable to find ourselves in concurrence with that view. The judgment-debtors, in Mt. Ketki Kunwar's case, (1942 A. L. J 578 : A. I. R. (29) 1942 All. 390) had objected to the execution of the decree for Rs. 8,386 on the ground that the amount due under the decree was only Rs. 3,216 and the decree could not be executed for the amount which the decree-holders claimed and that it should be amended and reduced to Rs. 3216. In the view of the Judges a clear controversy arose between the decree-holders and the judgment-debtors relating to execution, partial discharge or partial satisfaction of the decree. They further observed that this controversy was finally determined by the execution Court and the determination was clearly a decree within the meaning of Section 47 and was open to appeal. In our judgment, this would be a strained interpretation of Section 47. The question whether the judgment-debtor is entitled to a reduction of the decretal amount by the application of the provisions of a special Act is scarcely a question which can be considered to relate to the execution of the decree, its discharge or satisfaction. It is agreed that all questions arising between the parties to the decree in the execution proceedings do not necessarily relate to execution, discharge or satisfaction of the decree, and such of them as do, can alone fall within the purview of Section 47. If the decree is amended, for instance, on the ground of some clerical or accidental error, nobody has ever contended that the order becomes appealable under Section 47, as it relates to the execution, discharge or satisfaction of the decree. Under Sub-section (2) of Section 8, the amended decree is not to be regarded as a fresh decree passed as it were under the Debt Redemption Act but the original decree bearing the same date with the only difference that it is reduced in amount. Whether the execution Court reopens the decree and reduces the amount under Section 8 or

refuses to reopen the decree, would scarcely justify the view that the question is one relating to the execution, discharge or satisfaction of the decree. The acceptance of the Allahabad view leads to the further anomaly that whereas the right of appeal in proceedings under Section 12, United Provinces Agriculturists' Relief Act is restricted to one appeal as provided by Section 23, this right is automatically enlarged, conferring a right of first and second appeal only if the party seeking relief under the Debt Redemption Act prefers not to raise the question until the decree-holder takes out execution proceedings. That in the case above mentioned party should have only one statutory right of appeal before the execution and two after the proceedings are started would lead to *reductio ad absurdum* and manifest miscarriage of justice. We are unable to attribute such an intention to the legislature which must be deemed to have had the provision of Chap. III, Agriculturists' Relief Act in view at the time when Debt Redemption Act was passed. Accordingly we hold that an order of the execution Court amending or refusing to amend the decree is not an order which can strictly be regarded as one relating to execution, discharge or satisfaction of the decree. We therefore, answer question No. 2 in the negative."

I am unable to agree with the above view expressed by the Oudh Chief Court in *Salik Ram's case*, 20 Luck. 404: (A. I. R. (32) 1945 Oudh 251 F.B.). As pointed out in *Ketki Kunwar's case*, (1942 A. L. J. 578: A. I. R. (29) 1942 ALL. 390) the determination of every question between the decree-holder and the judgment-debtor relating to the execution, discharge or satisfaction of the decree is not a decree within the meaning of Section 2(2), Civil P. C. The determination must be one which conclusively determines the rights of the parties with regard to the execution, discharge or satisfaction of the decree as provided in Sub-section (2) of Section 2, Civil P. C. In the present case there can be no doubt that the determination does conclusively determine the rights of the parties. It is, however, argued that the question whether the decree ought or ought not to be amended cannot be regarded as a matter relating to the execution, discharge or satisfaction of the decree. But the amendment of the decree was sought in connection with its execution and the prayer that before a decree was executed it should be amended in accordance with certain provisions is, in my opinion, a matter relating to its execution. Ordinarily, the execution Court cannot go behind the decree and must execute it as it stands. But if a decree has been passed by a Court which had no jurisdiction to pass it, the contention that the decree is invalid and without force and cannot be executed would in my view be a matter relating to the execution, discharge or satisfaction of the decree. On the same reasoning, the contention that the decree cannot be executed for the entire amount and must be amended and reduced in accordance with certain provisions before it is executed will also be a matter relating to the execution, discharge or satisfaction of the decree.

52. Their Lordships in *Salik Ram's case*, (20 Luck. 404: A. I. R. (32) 1945 Oudh 251 F. B.) were oppressed by one consideration, namely, that although there may be only one statutory right of appeal from the decree itself before execution, two appeals would be possible from an order of this nature passed after the execution proceedings had been started. This they say "would lead to *reductio ad absurdum* and manifest miscarriage of justice". In my view these are not relevant considerations for the determination of the question whether a matter of this nature falls within the purview of Section 47, Civil P. C., or not. The fact, however, that such an order falls within the

purview of Section 47, Civil P. C., does not necessarily lead to the conclusion that two appeals would be permissible. Section 23, U. P. Agriculturists' Relief Act deals with appeals and runs as follows :

"23. (1) An appeal shall lie to the District Judge from an order of a Collector or Assistant Collector passed under this chapter. An appeal shall lie from the order of a civil Court passed under this chapter to the Court to which original decrees passed by such Courts are ordinarily appealable and where such, decrees are appealable to more Courts than one, to the Court of lowest jurisdiction (2) No appeal shall lie from an appellate order passed under this section."

A perusal of Sections 16 and 18 which occur in the same Chapter would show that they also provide for the execution of a decree passed in a case under Section 12 and an appeal from an order passed by the Court while executing a decree passed under Section 12 would be an order under Chap. III, U. P. Agriculturists' Relief Act. An appeal from such order would be governed by Section 23 and, as provided in Sub-section (2), no second appeal, would lie from an appellate order passed under that section.

53. Our attention was also drawn to the case of *Promode Nath v. Rasheshwari Dasi*, I. L. R. (1941) 2 Cal. 402: (A. I. R. (28) 1941 Cal. 530) in which a case under Section 36, Bengal Money-lenders Act was considered. Sub-sections (1) and (2) of that section empowered the Court which passed the decree, in a case to which the Act applied either in a proceeding for execution of such decree or on an application for review of such decree made within one year from the date of the commencement of the Act, to amend the decree in regard to certain matters. It was held that Section 47, Civil P. C., did not apply inasmuch as the order passed by the Court under Section 36, Bengal Money-Lenders Act could not be said to decide a question relating to the execution, discharge or satisfaction of the decree. Their Lordships say :

"Under Section 47, Civil P. C., the executing Court can decide any question, the order in respect of which furthers, hinders or affects the manner of the carrying out of execution of the decree. It can decide also whether the decree, that is going to be executed, is a subsisting and operative decree, capable of execution. But it cannot reopen the decree and pass a new decree as it considers proper."

54. It will, however, be observed that an application under Section 8, U. P. Debt Redemption Act, does in fact relate to a matter which hinders or affects the manner of the carrying out of the execution of the decree and I do not agree with, the view expressed in that case.

55. To hold that a case of this nature does not fall within the purview of Section 47, Civil P. C. would result in great hardship to the parties concerned and the aggrieved party should not be deprived of the right to appeal without clear, and strong reasons. It will also lead to a somewhat anomalous position. For although the aggrieved party will have the right to challenge in appeal an order of the Court reducing the amount of the decree or refusing to reduce it when passed before the passing of the decree, such an order will not be appealable when passed in the course of execution proceedings.

56. In my view, therefore, the answer to the question referred to this Full Bench should be that an order of the execution Court refusing to amend a decree under Section 8, Debt Redemption Act, is appealable as laid down in Abdul Razzaq v. Parvati Devi, A. I. R. (29) 1943 ALL. 394 : 1942 A. L. J. 554).

Wanchoo, J.

57. I agree with my brother Ghulam Hasan and, for reasons given by him, would answer the question referred to us in the manner proposed by him.

V. Bhargava, J.

58. I agree with my brother Ghulam Hasan and concur in the answer to the question proposed by him for the reasons stated by him.

59. According to the view of the majority of the Full Bench, the answer to the question referred to the Full Bench is that an order refusing to amend a decree under Section 8, U. P Debt Redemption Act, is not an order which, relates to the execution discharge or satisfaction of the decree and as such not appealable as are orders under Section 47, Civil P. C.