

# **The Unao Commercial Bank Ltd. vs Hari Saran Das on 20 April, 1951**

**Equivalent citations: AIR1951ALL641, AIR 1951 ALLAHABAD 641**

**Author: V Bhargava**

**Bench: V Bhargava**

## **JUDGMENT**

Kidwai, J.

1. On 6-3-1935, the Unnao Commercial Bank, Ltd., obtained a decree for Rs. 11,150-9-6 & Rs. 748-8 costs against Bhaya Hari Saran Das. The decretal amount was to carry interest at 6%.
2. The U. P. Agriculturists' Relief Act (XXVII [27] of 1934) came into force on 30-4-1935, & on 17-5-1935, the J. D. applied for the benefit of Sections 4 & 5 of the Act by having instalments fixed & future interest reduced. This appln. was opposed by the D. H. but it was allowed by the learned Civil Judge who converted the decree into an instalment decree. Since the J. D. paid more than Rs. 1,000 as land revenue, fifteen instalments were fixed & future interest was reduced to 3%.
3. The D. H. has come up in revn. against this order. His learned Advocate has contended that too large a number of instalments have been granted & that, Section 4 not being applicable to decrees passed before the Agriculturists' Relief Act came into force, the Civil Judge had no jurisdiction to reduce interest.
4. When the appln. came up for hearing it was found that there was a difference of opinion between a F. B. decision of the Avadh Chief Ct. & a F. B. & other decisions of Allahabad H. C. as to the applicability of Section 4, Agriculturists' Relief Act, to decree passed before that Act came into force & the case has been refd. to a F. B. for disposal.
5. The first point is not one which can legitimately be raised in revn. The J. D. is admittedly an agriculturist who pays more than Rs. 1,000 per annum as Land Revenue. Section 5, Agriculturists' Relief Act, read with Section 3, gives the Ct discretion to allow as many as is instalments in the case of such an agriculturist. The learned Civil Judge has exercised his discretion & allowed 15 instalments. That exercise of discretion cannot be interfered with in revn, since the Ct. has not exceeded its powers.
6. Before considering the conflicting decisions on the question whether Section 4, Agriculturists' Relief Act, empowers a Ct. to reduce future interest in decrees passed before that Act came into force

it will be advisable to consider the section itself. The section reads :

"Notwithstanding anything contained in Civil P. C., 1908, the rate at which future interest may be allowed in any decree for payment of money or for sale in default of payment of money or for foreclosure or in any order for grant of instalments passed against an agriculturist shall not exceed the rate notified by the (State Govt. in the (official Gazette) under Sub-section (2) as in force at the time when the decree or order as the case may be, is passed.

(2) As soon as possible after the rate of interest at which the (Central Govt.) will lend money to the (State Govt. is announced, the (State Govt.) shall notify that rate in the (Official Gazette), & publish it in such other manner as it thinks proper, & that rate shall be the rate in force for future interest from such date as may be notified by the (State Govt.) until such date as it is superseded by a new rate."

7. The words "any order for the grant of instalments passed against an agriculturist" are wide enough to cover the case of an order Under section 5 for the grant of instalments. Thus, on a literal construction of the language used in Section 4, the Ct. would be justified in reducing future interest to the rate prescribed by it.

8. General words used in an enactment may, however, be given a restricted meaning if the context in which they occur justifies this being done, or if it is necessary to do so in order to avoid absurdities or anomalies or to give some meaning to provisions which would otherwise be devoid of meaning. It has therefore, to be ascertained whether there is anything of the nature mentioned above which would justify the restriction of the operation of Section 4, Agriculturists' Relief Act, to the case of orders passed Under section, 3 of the Act only.

9. Learned Judges of the Chief Ct. in the two cases to which reference was made in the course of arguments although they recognised the fact that the words of Section 4 were of general application, held that it was necessary to give them a restricted meaning in order to avoid anomalies & absurdities. I will, therefore, proceed to examine these cases.

10. The first decision upon which reliance was placed by the appct. was the case of Kailash Kuar v. Amar Nath, A. I. R. (23) 1936 Oudh, 334 : (12 Luck. 175). In that case Srivastava & Nanavutty, JJ., held that Section 4, Agriculturists' Relief Act, did not permit the reduction of future interest in respect of decrees which had already been passed before that Act came into force. The reasons which they give are, (1) That, on the language used in Section 4, if an order for the grant of instalments is not passed Under section 5, interest could not be reduced under section 4, while if instalments were granted future interest would also be reduced. This creates an anomaly : (2) That the position in which Section 4 is placed by the legislature indicated that it is co-related to Section 3 and Section 5 is really misplaced in this Chapter which relates to "Suits against agriculturists" & (3) That Section 30 (2) regulates future interest in all those cases in which decrees have been passed. The same question came up again for consideration before another D. B. of the chief Ct. consisting of Zia-ul-Hasan & Smith, JJ., in Jhamnan Lal v. Surat Singh, 1937 O. W. N. 550 : 13 Luck. 287 : (A. I.

R. (24) 1937 Oudh 312 F. B.). The learned Judges did not see their way to accept the earlier decision & reld. the question for a decision to a F. B. Zia-ul-Hasan, J., consd. the earlier judgment at length & stated the grounds upon which he did not see his way to agree with it. He was opinion of: (1) That Section 30 regulates contractual interest & not post diem interest provided by a decree : (2) That if Section 30 (2) is held to apply to future interest to a decree passed before the Agriculturists' Relief act came into force Sub-section (1) of Section 30, would with equal force be applicable to future interest in the case of decrees passed after the act came into force which deprives Section 4 of all effect. (3) That the words used in Section 4 are very wide in their scope & there is no reason to restrict their meaning. When the matter came up before the F. B. Srivastava, J., delivered the principal judgment. He commenced his judgment by saying :

"I may say at the outset that due to the loose & inartistic language used in the relevant provisions of the Agriculturists' Relief Act a difference of opinion is easily possible."

11. He then consd. the provisions of chap. IV, & particularly Section 30, & came to the conclusion that it is Section 30 (2) that controls future interest if decrees have already been passed before the Agriculturists' Relief Act came into force. He then consd. the language of Section 4 & came to the conclusion that the words "any decree" are not wide enough to cover the case of decrees passed before the Agriculturists' Relief Act came into force. The other Judges except Zia-ul-Hasan, J., simply agreed with the view of Srivastava J. & Zia-ul-Hasan J., satisfied himself by saying that he disagreed for the reasons which he had already given in his referring order.

12. With all due respect to the learned Judges composing the F. B., it must be pointed out that they have ignored the most relevant words of Section 4 in coming to the decision at which they have arrived. Section 4 provides the rate of future interest not only in the case of decrees but also "in any order for the grant of instalments passed against an agriculturist."

13. Section 3 of the Act provides only for the passing of a decree against an agriculturist, which decree is to direct that the total amount found due is to be paid in instalments. Throughout Section 3 decrees are reld. to & there is no mention of an "order for the grant of instalments". Indeed there could be no such mention because the language of the section clearly shows that it applies to those cases in which the original decree is about to be passed & it contemplates the fixing of instalments by that decree itself. In order, therefore, to find the "order for the grant of instalments" to which reference is made in Section 4 we must look to some other provisions of the Act & that provision is to be found only in Section 5 of the Act.

14. Section 5 reads as follows :

"(1) Notwithstanding anything contained in the Civil P. C.. 1908, the Ct shall, unless for reasons to be recorded it directs otherwise, at any time, on the appln. of the ,J. D. & after notice to the D. H., direct that any decree for money or preliminary decree, for sale or foreclosure passed by it or by any Ct. whose business has been transferred to it against an agriculturist, whether before or after this Act comes into force, shall be

converted into a decree for payment by instalments drawn up in such terms as it thinks fit in accordance with the provisions of Section 3 :

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 Civil P. C., 1908, be reviaable in the same manner & to the same extent as the preliminary decree for sale or foreclosure passed against an agriculturist.

(2) If, on the appln. of the J. D., the Ct. refuses to grant instalments or grants a number or period of instalments which the J. D. considers inadequate, its order shall be appealable to the Ct. to which the Ct passing the order is immediately subordinate, & the decision of the appellate Ct. shall be final."

15. Thus this section deals with those cases in which the decree was passed "whether before or after this Act comes into force" & it provides that such decrees too shall on the appln. of the debtor, be converted into decrees for payment of instalments. The order made by the Ct. is an "order"" --& not a decree--for the grant of instalments, as is made clear by the language employed by Sub-section (2) of the section.

16. Section 5 (l) places decrees passed before the Act came into force on the same footing as decree which are passed after that date. It will. be seen that even in the case of the last mentioned category of decrees such a provision was necessary because unless the debtor applied, was lefts by Section 3 of the Act, purely to the discretion of the Ct. to pass an instalment decree or not. The legislature was anxious that the failure of the J. D. to claim instalments at the time of the passing of the decree should not stand in the way of his claiming that relief later. It, therefore, empowered him to apply even later for the grant of instalments & it made it clear that it was immaterial whether the decree had been passed before or after the enforcement of the Act.

17. Section 4 of the Act cannot have reference to an order for the grant of instalments in respect of a decree passed after the enforcement of the Act because, in such a case the interest would have been fixed at the rate given in Section 4 at the time of passing of the decree even though no instalments had been fixed by the decree. This being so the only order for the grant of instalments to which Section 4 can refer is an order passed under section 5 in respect of decrees passed before the enforcement of the Agriculturists' Relief Act.

18. It is true that Section 4 does not find a place in chap. IV. It cannot, however, be doubted that it relates to the fixation of interest, whether that interest relates to decrees passed before the Act or after it. If it, or Section 5, are misplaced they are misplaced both irregard to decrees passed after the Act as to decrees passed before the Act. With deference to the learned Judges who decided the two Oudh cases, the two sections are not misplaced for the object which the legislature had in view.

19. As pointed out by Zia-ul-Hasan J., Section 30 applies to the contractual rate of interest & its reduction. Sub-section (l) of Section 30 deals with these cases in which decrees had not been passed before the Act came into force & Sub-section (2) deals with those cases in which decrees had already

been passed before the Act came into force. The object of both sub-sections is exactly the same, namely to reduce the contractual rate. Indeed the manner in which the two have been framed makes it impossible to read Sub-section (2) as altogether a separate provision from Sub-section (1). Admittedly Sub-section (1) does not deal with post diem interest. On the same construction Sub-section (2) does not deal with post diem interest. Section 4 deals solely with post diem interest i. e it contains a direction by the legislature as to the manner in which it is to exercise its discretion in dealing with interest after the matter has passed from the realm of contract into the realm of res judicata. It was, therefore, but proper that it should be placed in the chapter dealing with suits. Further Section 5, which deals with the amendments of decrees could also not be placed in any other chapter of the Act, unless it were placed among miscellaneous provision, where it would have been entirely out of places, since it does deal with suits to this extent that it provides for the modification of decrees passed in suit & the orders passed under it have the effect of replacing--or converting--one decree by another.

20. Further, even if Section 5 is misplaced that is no ground for not giving the admittedly general words used in Section 4 their full scope. It is for the legislature to determine where it shall place a particular provision & it is wholly immaterial for the purposes of construction where it is placed because all the provisions of an enactment must be read together to derive their meaning no matter in which chapter or part they are placed.

21. It is true that, on the language used in it, Section 4 would not, apply to cases in which there is no "order, for the grant of instalment." Thus a person who is refused instalments will also be refused a reduction of interest Under section 4. Because this hardship results to some persons from the language used, it does not follow that even those persons who can get the benefit of Section 4 should be deprived of that benefit.

22. Further the hardship is not so serious as may at first sight appear. It is only for good reasons, which can be checked by a Ct. of appeal, that the grant of instalments may be refused. If the circumstances, are such that the J. D. cannot be allowed the facility of making payment by instalments it would mean that the agriculturist does not deserve the facilities provided by the Agriculturists' Relief Act & there is no reason why the interest should be reduced in such a case.

23. The first Oudh decision was consd. by a Bench of the Allahabad H. O. in Man Mohan Das v. Izhar Husain, A.I.R. (24) 1937 ALL. 449: (I.L.R. (1937) ALL 536) & the learned Judges fully met the points made in the Oudh decision I respectfully agree with the reasoning in this decision. The same view has been taken by a F. B of the same Ct. in Shri Nath v. Puran Mal, A. I. R. (29) 1942 ALL. 19 : (I. L. R. (1942) ALL. 45 F. B.) in which also there is an elaborate discussion. In this case the F. B. decision of the Oudh Chief Ct. was also Consd. & the principles applicable to the construction of statutes are fully discussed. I respectfully agree with the principles adopted in preference to those to which the learned Judges of the Oudh Chief Ct. had recourse.

24. I have, therefore, come to the conclusion that the F. B. case of Jhamman Lal v. Surat Singh, 1937 O. W. N 550 : (A. I. R. (24) 1937 Oudh 812: 13 Luck. 287 F. B.) was not rightly decided. Even in a case in which the decree has been passed before the enactment of the U. P. Agriculturists' Relief Act

but an order for the grant of instalments is passed Under section 5 of the Act, the Ct. is bound to reduce future interest to the rate allowed by Section 4 of the Act.

24a. I would, therefore, uphold the decision of the trial Ct, and dismiss the appln. with costs.

Malik C. J.

25. I agree.

Misra J.

26. I agree.

Agarwala J.

27. I agree.

V. Bhargava J.

28. I agree.