

Bohra Kishori Lal vs Bohra Misri Lal And Ors. on 31 January, 1950

Equivalent citations: AIR1950ALL403, AIR 1950 ALLAHABAD 403

JUDGMENT

Kidwai, J.

1. On 29th February 1932, Bohra Misri Lal, acting for himself and as guardian of his minor sons, Kishen Gopal, Brij Gopal and Phul Chand, executed a mortgage deed in favour of Bohra Kishori Lal, to secure a loan of Rs. 5000, Interest was to run at 9 annas per cent. per mensem (i. e. 61/2 per cent.) compoundable with yearly rests.
2. On 16th July 1940, Kishori Lal sued to recover a sum of Rs. 8,655-6 6 said by him to be due under the mortgage. Misri Lal and his sons were impleaded as defendants and so were Pearey Lal, Naonit Lal and Gajanand, who are subsequent transferees of the property mortgaged.
3. The principal defence was a denial of the execution and validity of the mortgage deed. It was also pleaded that the mortgagors were agriculturists, that the plaintiff was a creditor within the meaning of the U. P. Agriculturists' Relief Act, that the plaintiff had not complied with the provisions of Chap. V, Agriculturists' Relief Act and that, consequently, he was not entitled to get costs or interest.
4. The learned Additional Civil Judge of Mathura found that the mortgage was properly executed and was valid since the consideration for it was justified by legal necessity. He farther held that the accounts had not been kept in accordance with the Rules framed by the Local Government under the powers conferred upon it by Section 41, U. P. Agriculturists' Relief Act for two reasons : (1) that in 1936 and 1937 the accounts were made up according to the sambat year and not in accordance with any of the periods mentioned in Rule 8, and (2) that interest had, for the same two years, been calculated at a rate in excess of that allowed by the Agriculturists' Relief Act.
5. He held that this was accidental and was the result of a bona fide mistake. In the circumstances he did not think that the imposition of the penalty of disallowing interest was called for. He found, however, that the accounts had not been supplied to the debtor for the period between 1st Hay 1935, and 31st March 1936. Consequently he disallowed interest for this period of 11 months and he also disallowed the costs of the suit but he passed a decree for the rest of the claim.
6. The defendants are content with the decree but the plaintiff has appealed and, although his grounds of appeal raised a large number of points, his learned Advocate confined his arguments to two points only : (1) That the learned Civil Judge erred in disallowing interest for any period and (2) that costs of the suit should not have been disallowed.

7. Interest for the period mentioned was disallowed because, according to the finding of the learned Civil Judge, there was no evidence to show that the statement of account required by Section 32 (1) (b), Agriculturists Relief Act to be supplied to the debtor, had been supplied for that period by post nor was there any proof of an agreement for delivery of accounts otherwise than by post.

8. It was contended before us that this decision is wrong because the Act does not compel a creditor to supply accounts by post and, in the present case, the plaintiff stated on oath that he had in fact delivered the accounts personally to the debtor.

9. It is true that the Act itself does not say anything about sending the accounts by post, it simply states that "it shall be supplied in such manner as the Local Government may prescribe." Section 41 of the Act empowers the Local Government to make rules for the purpose of carrying out the provisions of the Act and, among the rules, are Rr. 10 and 11, which provide that the statement of accounts shall be sent to the debtor by registered post, unless the debtor agrees in writing to accept it by personal delivery. Thus, in the absence of proof of an agreement in writing to accept personal delivery, it was incumbent on the creditor to send the statement by registered post. Since he has failed to do so, the Court was bound under Section 34 (c) of the Act to disallow interest for this period and the correctness of its decision in doing so cannot be challenged.

10. On the question of costs also the decision of the lower Court must be upheld. Costs must be disallowed if the creditor fails to record and maintain correct accounts in the manner prescribed by the Local Government: vide Section 32 (1) (a) and Section 34 (b).

11. As pointed out by the learned Civil Judge, the accounts for the years 1936 and 1937 suffered from two defects and can, therefore, not be said to have been maintained in "such manner as the Local Government may prescribe." The appellants learned advocate, however, contended that he is entitled to rely upon the explanation to Section 34, which reads as follows:

"Explanation--A. person who has kept his account and submitted his yearly statement of account in the form and manner prescribed in clause. (a) and (b) of Sub-Section (1) of Section 32 shall be held to have complied with the provisions of these clauses, in spite of any errors and omission, if the Court finds that the errors and omissions were accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of these clauses."

12. It was contended by the appellant that, having regard to this explanation, the errors in the accounts should be condoned.

13. With regard to the error regarding the calculation of interest at the contractual rate rather than at the rate prescribed by the Agriculturists' Relief Act, it was contended that the learned Civil Judge has himself held that it was accidental and bona fide since the creditor corrected it in the year 1938 under legal advice. Farther it was immaterial since the debtor did not actually have, by reason of this error, to pay any larger sum as interest, nor was his right to redeem in any way affected. Thus, inspite of this error, the provisions of Clause (a) of Section 32 (1) should be deemed to have been

complied with.

14. The other error, namely that relating to the date on which the period of accounting is to terminate is, it is contended, equally accidental and immaterial. It appears that the accounts were kept by the creditor according to the sambat year ending with chait Badi 15 each year i. e. some time in the end of March or the first half of April. He continued to maintain his accounts for the Sambat year during 1936 and 1937 also, although the form which he adopted was Form A prescribed by Rule 4 of the Rules framed by the Government. The creditor realised this mistake at the same time as he realised the mistake he had made in the calculation of interest. He could not rewrite his I did accounts but his accounts for 1938, and subsequent years, closed with 31st March of each year. This caused no detriment to the debtor and, although the creditor was acquainted with the rules, since he maintained the accounts in one of the forms prescribed by these rules, the error was purely accidental. Further, the accounts were drawn up in the regular prescribed form and thus there was a clear indication that they were kept with the intention of complying with the provisions of the law on the subject. In these circumstances by force of the explanation to Section 34 the provisions of Section 32 (1) (a) should be deemed to have been complied with inspite even of this error in the account.

15. The respondents' learned advocate, on the other hand, contended that before reliance can be placed upon the explanation to Section 34, it must be shown, not only that the error or omission in the accounts was accidental and immaterial, but it must also be shown that a statement of account had actually been sent in the manner prescribed. In support of this proposition, he relied upon Mohammad Ashfaq Husain v. Munshi Lal, 1943 R. D. 108, and that case fully supports his contention. Having regard to this decision, with which I respectfully agree, the respondents' contention must be upheld and it must be held that the explanation to Section 34 has no application and that the provisions of Section 33 (1) (a) have not been complied with. The Court was, therefore, bound to disallow the costs as directed by Section 34 (b) and this appeal must fail.

Bind Basni Prasad J.

16. I agree with my learned brother Kidwai J. in the conclusion reached by him, but I desire to add a few words.

17. Section 32, U. P. Agriculturists' Relief Act (Act XXVII [27] of 1934) casts two liabilities upon creditors: (a) That he shall maintain account of loans in the prescribed form, and (b) that he shall annually supply the agriculturist with a full and correct statement of account of all his transactions in the prescribed manner.

18. Clauses (b) and (c) of Section 34 prescribe against the creditors penalties for the non-compliance of Section 32. For not keeping the accounts, the penalty is forfeiture of whole or part of interest and disallowance of costs. The first one is discretionary with the Court but the second one is mandatory. For not supplying the annual account to the agriculturist debtor the penalty is disallowance of interest for the period for which the account was not supplied. This is mandatory. The rigor of Section 32 is softened by the explanation to Section 34. It runs as follows:

"A person who has kept his account and submitted his yearly statement of account in the form and manner prescribed in Clause (a) and (b) of Section 32 shall be held to have complied with the provisions of these clauses in spite of any errors and omissions If the Court finds that the errors and omissions were accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of these clauses."

19. To entitle a creditor to earn the benefits of the explanation the following three conditions are prerequisite: (1) He must have kept accounts in the prescribed form; (2) He must have submitted his yearly statement of account in the prescribed manner, and (3) Errors and omissions in the accounts must have been accidental and not material and the accounts were kept by him in good faith with the intention of complying, with the provisions of Section 32.

20. It is on the basis of this explanation that the plaintiff claims that the costs should have been allowed to him and interest should not have been refused to him for the period during which he did not submit the account in the prescribed manner. The finding in the present case is that he did not submit the account for a part of the period in accordance with Rules 10 and 11 of the Rules framed by the Provincial Government under Section 41 of the Act. That being so, the explanation to Section 34 is not applicable to him. From Section 32 it will be seen that it requires the maintenance and submission of full and correct account. It may be that a creditor wife the best of intentions may have committed some arithmetical or accidental mistakes in the maintenance of account. It was to save him from penalties in such cases that the explanation was enacted. In Mohammad Ashfaq Husain v. Munshi Lal, 1943 R. D. 108, Verma J., took the game view. I respectfully agree with him.

The appeal is dismissed. In the circumstances of the case parties will bear their own costs.