(1956) 01 KL CK 0006

In the High Court Of Kerala

Case No : A.S. No. 259 of 1953

Alleppey Ananthanarayanapuram Thuravor Thirumala Devaswom	APPELLANT
Vs	
Ponnu Ninar Pillai Kannu Pillai	RESPONDENT

Date of Decision : 24-01-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 22 Rule 8, Order 22 Rule 8(1), Order 22 Rule 8(2)
Insolvency Act, 1848 — Section 12, 2, 28, 28(4), 28(5)

Citation : (1956) 01 KL CK 0006

Hon'ble Judges : K. Sankaran, J;Joseph Vithayathil, J

Bench : Division Bench

Advocate : A. Madhavan Nair, for the Appellant; V.K.K. Menon and G.V. Ramanan, for the Respondent

Judgement

Sankaran, J.—The 5th Defendant in Order Section Order 101/1098 on the file of the Alleppey District Court is the Appellant. He represents the Thuravoor Thirumala Devaswom which owns the suit propertieSection The Devaswom purchased these properties subject to the mortgage debt which gave rise to the decree in this case. During the course of the execution Of the decree, several amounts were deposited in court by the Devaswom towards discharge of the decree debt. Regarding the balance: payable under the decree, disputes arose between the Devaswom and the assignee decree.holder, and such points dispute call for decision in this appeal.

2. For a proper understanding of the nature) the contentions raiseo on behalf of the 5th defen-dant-Appellant it is necessary to refer briefly to the:, nature of the decree and also to certain important-stages in the execution of the decree. The mortgage-which formed the basis of the decree had been executed by Defendants 1 to 3 who were the original owners of the properties, in favour of the father of Plaintiffs 1 and 2. Their claim in the suit was for a decree against Defendants 1 to 3 and against the properties which were subsequently purchased

by the Thuravoor Thirumala Devaswom. The trial'' - court dismissed the suit on 27-6-1102. The Plaintiff Section r" took the matter in appeal to the Travancore High . Court as A. Section Order 6/1103. The High Court allowed ;v the appeal and in reversal of the decree of the trial,-," court passed a decree in favour of the Plaintiffs on 11-4-1105 directing the recovery of a sum of R Section.fjg, 18,337-15-6 together with interest and costs from tin suit properties and Defendants land 3 and alsi from the assets of the 2nd Defendant who had die during the course of the suit. It was also directei that out of the amount thus attaching decree-holders to refund the amounts which they drew from court. The matter appears to have been subsequently compromised between these partieSection Even otherwise the 5th Defendant could not in any way be prejudiced by the disbursements of the amounts which he had deposited in court since such disbursements were made under orders of court. To the extent of the amounts deposited by tho 5th Defendant, the liability under the decree will stand reduced. The conflict of claims as between the Official Receiver and the attaching decree-holders in respect of such amounts, is a matter in which the 5th Defendant Is not interested. Accordingly, on 10-1-1112 the 5th Defendant applied to the execution court to ascertain and fix the balance amount payable under the decree after crediting all the deposits made by him. But since the records of the case had already been sent up to the High Court in connection with the appeal filed by the Official Receiver, no order fixing the amount pould be passed until those records were received back. After the Receiver''s appeal A. Section 85/110 was decided in his favour, he assigned all the rights under the decree in favour '' of the present Respondent on 25-4-1118 and the latter was accordingly impleaded in the suit as the additional 16th Plaintiff and permitted to execute the decree. On 3-4-1119 the 5th Defendant filed C. M. P. 1350 objecting to the amount for the realisation of which the'' 16th Plaintiff was taking step Section Along with that petition a statement was also filed by the 5th Defendant showing the balance due under the decree as R Section 743 ChSection 18 cash 4. The execution court passed an order on 20-4-1119 upholding the 5th Defendant''s objections and also accepting his statement as correct. A. Section Order 634/1119 is the appeal preferred by the 16th Plaintiff against that ordeRule That appeal was allowed and the case was remanded to the execution court for fresh disposal after a detailed consideration of the specific points of dispute between the partieSection On 29-6-1124 the execution court passed an order overruling the objections raised by the 5th Defendant and directing the 16th Plaintiff assignee decree-holder to file a statement in the light of the findings recorded in that order and showing the balance remaining due under the decree. The correctness of that order was challenged by Defendant 5 in the appeal A. Section 513/1124 filed by him before this Court. In the judgment in that appeal it was observed that the order appealed against was only an interim order and that the proper course to be adopted by the Appellant was to prefer an appeal against the final order fixing the amount due under the decree. The right of Defendant 5 to question the correctness of the findings recorded in that interim order, was also expressly reserved in the judgment dismissing A. Section

513/1124. Thereafter the execution Court passed an order on 21-2-1953 accepting as correct the statement of accounts filed by the assignee-decree-holder, according to which the balance amount due under the decree is shown as R Section 11,336- Chs, 4 cash 8. The present appeal is directed against this order Rule (3) The more ambitious contention urged on behalf of the Appellant may be considered at the outset. That contention is that the decree having been passed in favour of undischarged insolvents and without the Official Receiver being brought on record, must be deemed to be a void decree. As already stated, the suit was dismissed by the trial Court but was decreed by the appellate Court in A. Section Order 6/1103. Even though the Plaintiffs were adjudicated by the order in I. P.N Order 68/1102 on the file of the Anjikaimal District Court, the suit Order Section 101/1098 was continued by them by preferring the seal A. Section 6/1103 which ended in a decree in their favouRule The question is whether this decree can be ignored as a void decree. The contention to that effect does not derive any support from the provisions of the Insolvency Act or from the provisions of the Code of Civil Procedure. The provisions having bearing on this question are those contained in Section 28, Insolvency Act and in Rule 8 of Order 22, Code of Civil Procedure

3. Section 28, Insolvency Act deals with the effect of an order of adjudication. Sub-Section 2 of that section states that "on the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver as hereinafter provided, and shall become divisible among the creditors . . ." The Sub-section further provides that "except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable under this Act, shall, during the pendency of the insolvency proceedings, have any remedy, against the property of the insolvent in respect of the debt, or commence any suit or other legal proceedings, except with the leave of the Court on such terms as the Court may impose." Sub-Section 6 reserves the right of the secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to deal with it if the section had not been passed. What is significant to note is that the prohibition contained in Sub-Section 2 is only in respect of independent legal proceedings being taken by the ordinary creditors of the insolvent against his property after it has become vested in the Court or in the Official Receiver as a result of the order of adjudication, There is no such provision barring the insolvent from commencing or continuing any legal proceeding against his debtorSection On the other hand Sub-Section 4 of Section 28 clearly indicates that no such prohibition is contemplated by the Legislature. What is provided in that Sub-section is that:

All property which is acquired by or devolves on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver, and the provisions of sub. Section 2 shall apply in respect thereof.

4. The acquisition of property by the insolvent after the date of the adjudication order could very well be by instituting or continuing the necessary legal

proceedings in that direction. His liberty to commence or continue such legal proceedings cannot cause any prejudice to the insolvency proceedings against him, because any property acquired by him as a result of the proceedings commenced or continued by him will forthwith vest in the Insolvency Court or the Official ReceiveRule The only exception to such vesting is in respect of the property mentioned in Sub-section (5) of Section 28 i.e., property which is exempted by the CPC or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree. All other properties acquired by or devolving on the insolvent before the date of his discharge will forthwith vest in the Court or the receiver so that such properties will also be available for satisfying the claims of the creditorSection Since all the properties of the insolvent inclusive of those acquired by him or devolving on him before the date of his discharge should be made available for satisfying the claims of his creditors, the proper person to collect the whole of such assets will undoubtedly be the Official ReceiveRule This is made clear by Section 59 of the Insolvency Act which states that the receiver shall with all convenient speed realise the property of the debtor and distribute dividends among the creditors entitled theretOrder Clause (d) of that section states that he may institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent. It may not be possible for the receiver all on a sudden to exercise his right In respect of the matters specified in this section, and that appears to be the decreed, a sum of Ra 7500/- together with interest at 12% from the dab of Ex. XI should be paid to the 7th Defendant; During the pendency of the suit, proceedings ha" been instituted in I. P.N Order 68/1102 of the Anjikaimal District Court for adjudicating these two Plaintiff as insolventSection That petition was allowed and thea Plaintiffs were adjudicated insolvents even befon the suit was finally decreed in favour of the PlaintiffSection All the. same, the Official Receiver, in who] the assets of the insolvent Plaintiffs became vested, as per the adjudication order in I. P. 68/1102, have not figured as an Appellant in A. Section Order 6/1103 withS:" the result that the decree happened to be passed lq?& favour of the Appellants-Plaintiffs themselveSection Beforeif| the Official Receiver came forward to collect the amount due under this decree, this decree was, attached by the decree-holders in three other caseSection Viz., Order Section No Section 88/1103, 27/1100 and 114/1100 of the Anjikaimal District Court. These decrees were&; against the Plaintiffs in Order SectionN Order 101/1098 on tbieM file of the Alleppey District Court. The attaching decree-holders filed execution petitions in this case"] on 11-3-1106 and on 25-10-1106. All the deposits madi by the 5th Defendant in court were subsequent these dateSection A sum of R Section 10,178 ChSection 16 waj deposited and the challan receipt produced in cou: on 13-9-1107. The receipt for another deposit R Section 3664 ChSection 8 was produced on 14-11-1107. Start larly receipts were produced in court on 10-11-1108.- 3-6-1109, 23-6-1110 and 21-12-1112 regarding deposit of R Section 3664 ChSection 8, R Section 1730 ChSection 10, R Section 2544 Ch 18 and R Section 7125/- respectively. In the meanwhile the Official Receiver of the Anjikaimal District flleas% an executionl''petition on 8-2-1108 on the strength o?? the adjudication order in I. P.N Order 68/1102 of the & Anjikaimal District Court. That execution petition, was dismissed for default on 23-3-1108. Another execution petition was filed by the Official Beccivtt,. on 30-11-1108. The execution court dismissed tha% petition on 3-8-1109 on the ground that the Offlclftfe Receiver could not maintain such an execution petition. Against that order the Official Receivr filed an appeal as A. SectionN Order 85 of 1110 before thjg Travancore High Court. That appeal was allowi and the execution court was directed to impli the Official Receiver as the additional decree-hold and to permit him to carry on the execution of, decree. The decision in that appeal is reported In. Trav. L.Rule 116 (A). By this time the amounts that" come to court had been rateably distributed amoi the attaching decree-holderSection The Official Receivi therefore, moved the execution Court to compel to reason why the section states that the steps contemplated by the section should be taken by the receiver with all convenient speed. It is, therefore, obvious that even if any suit or a legal proceeding is commenced or continued by the debtor even after the date of his adjudication, it would be open to the receiver to step in at any stage of such proceeding and to continue the same for realising the assets of the insolvent. Since the properties that may be acquired by the insolvent from the date of the adjudication to the date of the discharge are also to vest in the Official Receiver, the insolvent must be deemed to be acting for and on behalf of the receiver in respect of the proceedings which may be commenced or continued by him for acquiring such propertieSection The Receiver has to be vigilant to see that the insolvent does not commit any fraud by appropriating such property to himself .or by making it unavailable for being dealt with by the receiver at the time of the distribution of his assets among his creditorSection Those who may sutler on account of the perpetration of such fraud by the Insolvent are primarily the persons against whom the insolvent xnay start proceedings for enforcement of his claims against them. But they can protect their own interests by invoking the provisions of Rule 8 of Order 22 of the Code of Civil Procedure. Sub-rule (1) of Rule 8 makes It clear that merely on account of the insolvency of a Plaintiff the suit will not abate. The sub-rule states that the insolvency of a Plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct." The question of the assignee or receiver giving security for costs or of declining to do so, will arise only when notice of the suit by the insolvent Plaintiff is given to such assignee or receiveRule It is for the Defendant Interested in that matter to give such notice. Sub-rule (2) of Rule 8 states that where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the Defendant may apply for the dismissal of the suit on the ground of the Plaintiff''s insolvency and the Court may make an order dismissing the suit and awarding to the Defendant the costs which he has incurred In defending the same, to be proved as a debt against the Plaintiff''s estate. It is thus clear from the provisions of Rule 8 of Order 22 that unless the suit by the insolvent Plaintiff is caused to be dismissed in the manner prescribed by the rule, it will not abate and come to an end; in other words, the suit will proceed on the basis that the insolvent Plaintiff Is competent to continue the suit. If it ends in a decree in his favour, it will be a valid decree capable of enforcement and cannot be ignored as a void decree. The provisions of S Section 28 and 59 of the Insolvency Act also lead to the same inference. Even though the insolvent Plaintiff may be the decree-holder, the property covered by the decree will vest in the Official Receiver by virtue of the provisions contained in Sub-Section 4 of Section 28 of the Insolvency Act unless such property happens to fall under the category exempted by Sub-Section 5 of the same section. The same conclusion was reached by a Pull Bench of the Allahabad High Court in ''Abdul Rahaman v. Nihal Chand,'' AIR 1935 All 615(A) where also a similar question had come up for decision. In the present case the Official Receiver intervened in the course of the execution and claimed that he was entitled to realise the decree amount as part of the assets of the decree-holders who had been adjudged insolventSection The receiver''s right to come in was contested by the Defendants on the ground that the decree in the case being a mortgage decree, was immovable property and that the order passed by a foreign Court adjudicating the Plaintiffs as Insolvents could not have the effect ot legally vestal ing such immovable property in the Official Receiver of the said foreign Court. The dispute was finally set at rest by the decision of the Travancore Hlgt Court in A. SectionN Order 85 of 1110 (14 Trav. L. Rule 116 (A)1| where it was held that the decree In this case vesteo'' in the Official Receiver and that he was entitled to! execute the decree and realise the decree amount.%f Since the Defendants are concluded by that decision the question of the vesting of the decree in the Receiver cannot be allowed to be agitated once again. Thus the contention urged on behalf of the! Appellant that the decree In this case is a void! decree and that the OfficTal Receiver or his assignee! cannot be allowed to execute the decree, is unter '' able and it is accordingly negatived.

5. The next point in controversy between tly parties is about the dates on which the differef amounts deposited by the 5th Defendant-appella: should be credited in partial satisfaction of t decree debt. According to the Appellant the amou; should be credited on the respective dates oft deposit and that interest thereafter should be calcl lated only on the balance amount due under tfij decree. In the statement filed by the asslgnee-decrei holder, he has credited these amounts only on t respective dates when the amounts .were withdraw; from Court. The position taken up by him is thatf he was not bound to accept piece-meal payments anjit that therefore the Defendant could not claim that"' interest on such amounts should cease to run froiji.7 the dates of deposit. It is also stated that when amounts are drawn from Court by the decree-holdej he could be deemed to have accepted such payments'' so that Interest thereafter will run only on the,, balance amount due. The execution Court has ugk held these contentions on the strength of the ruUngf in ''Perumal Pillai v. Velayudhan Pillai,'' 1946 Ker LR 155(B). In support of the Appellant''s contentt'' that the

amounts deposited on different dates shouj. be credited on the respective dates so that interegtb thereafter should accumulate only on the balance; remaining due, reliance Is placed on the rulingstj, ''Phanuel v. Ismail'', 21 Ker LJ 111(C) and In''Vasud van Elayathu v. Vlnjera, 22 Ker LJ 1252(D). Rule'' i Order 21 of the CPC prescribe the different modes of payment of money due, under a decree. One such mode is that prescribed Sub-rule (1) (a) where it is stated that all money able under a decree shall be paid into Court whpge duty it is to execute the decree. In order that |he decree-holder may accept such a payment itjjis obvious that he must get notice about the same.jjt is also expressly provided for in Sub-rule (2) of that where any payment is made under cl. Sub-rule (1), notice of such payment shall be glvenfto the decree-holdeRule In spite of the existence of such a statutory provision, it was ruled in 21 Trav J&j 111 (C) and 22 Ker L J 1252 (D)

6. The next aspect to be considered is whether even after receipt of such notice the decree-holder can refuse to give credit for such payments and can claim interest on the full amount inclusive of the amount in deposit In Court. In 194G Trav L. Rule 155 (B) the answer to this question is given In the affirmative, and in doing so the ruling in Kunhya Singh v. Tooydum Singh, 7 Suth W. Rule 20 (2) (E), was cited with approval. Here again we have to respectfully differ from the view taken in these caseSection The reasoning adopted in these cases is to the effect that the decree-holder is not bound to accept a, sum tendered to him in part satisfaction ot a decree, that he is entitled to require payment of the amount in full and that the deposit contemplated by Rule 1 of Order 21 is a deposit of the entire amount due under the decree. It is also pointed out that before decree a creditor is not bound to receive part payment .and there is no reason. to suppose that the obtaining of a decree puts him In a worse position. No doubt the right of the decree-holder is there to realise the full amount due to him from the debtoRule But that does not mean that he can refuse to accept any payment made to him and to saddle the debtor with interest on such amount alsOrder That the creditor has no such unrestricted right, is clear from Order 24 -which provides for part payment ot the amount made through Court by the Defendant to the creditor Plaintiff. Clause 3 ot Order 24 expressly provides that no interest shall be allowed to the Plaintiff on any such deposit made by the Defendant subsequent to the receipt of notice of such deposit even if the sum deposited falls short of the amount claimed by the Plaintiff. There is no reason why such an equitable rule should not govern deposits made subsequent to the date of the decree. We see no justification to put a narrow construction upon sub-rule''(l) (a) of Rule l of Ordgr 21 by holding that the deposit contemplated is only of the entire amount due under the decree. The expression "where any payment is made under Clause (a) of Sub-rule 1" as used in Sub-rule 2, indicates that the rule contemplates different paymentSection No doubt these partial payments may not stand in the way of the decree-holder proceeding with the execution of the decree for realising the full amount due to him. Even in the course ot such execution proceeding it may happen the partial amounts are realised in Court.

The decree-holder cannot allow such amounts to lie idle in Court until the full amount due to him is available and thus continue to charge the judgments debtor with the interest accumulating under the decree. The reasonable and equitable course to be adopted is to draw the amounts as and when avalla ble and to credit the same towards the liability under tile decree without prejudice to his rights to take the necessary steps to realise the balance amount due to him. The. same rulf must apply to the amounts deposited in Court by the judgment-debtor with notice to the decree-holdeRule Accordingly we hold that the amounts deposited by the Defendants in ,this case should be credited on the respective dates on which proper notices of such deposits have been given to the decree-holder or to his representative in interest.

7. Then there is the question whether proper notice has been given about the different deposits made in this case. When the first two deposits were made on 13-9-1107 and on 14-11-1107 respectively, execution was being carried on by the attaching decree-holder Section The position of an attaching decree-holder is that of a representative, of the holder of a decree and an execution petition tiled by the attaching decree-holder has to be treated as an execution application by the decree-holder himself. Vide Ciopalan v. Muhammed Abdul Kadlr, 1955 Ker L. T. 502: ((S) A. I. Rule 11)56 Ker 13) (FB) (F)). Thus the attaching decree-holders who were executing the decree were competent to accept notice ot the two deposits mentioned above. On 20-10-1107 notice ot the first deposit is seen to have been accepted by the attaching decree-holder''s advocate. Similarly, notice ot the second deposit is seen to have been accepted on 16-11-1107. The two amounts have to be credited on the respective dates of acceptance of the notice and thereafter interest could be calculated only on the balance after such crediting. All the other deposits'' were made only after the Official Receiver had intervened in execution and had asserted that the decree having become vested in him the only person competent to execute''the decree was himself. Necessarily it follows that the Official Receiver was the real decree-holder entitled to get notice of the deposits made by the judgment-debtoRule But it is seenthat he was not given any notice regarding the deposits made after he had intervened in the execution. It follows therefore that these amounts can go in reduction of the liability under the decree only on the dates when they were drawn from court, by the person entitled to the same. Thereafter interest will be calculated only on the balance remaining due under the decree.

8. Lastly, there is the dispute as to the rate at which interest'' can be calculated on the decree amount subsequent to the dates ot the Travancore Agriculturists Relief Act (Act 3 of 1112) and of the Travancore Debt Relief Act (Act 2 ot 1116 as amended by Act 3 of 1116.) The decree was passed on 7-6-1105 and it allows future interest at 9% per annum. The position taken up by the Defendant Appellant is tlw,t such interest has to be limited to 6% per annum and to 4% per annum under the Agriculturists'' Relief Act and the Debt Relief Act respectively. Section 34 of the Agriculturists'' Relief Act states that ."notwithstanding anything in any law, contract, decree or order of court, no interest shall accrue or be

permitted to be recovered as accruing, for a period of 3 years from the date of the commencement of this Act, in respect of any debt (not due in , paddy or grain) in existence on such date, at any rate exceeding 6% per annum.

9. This provision continued to be in force till the date of the passing of the Debt Relief Act. By Section 12 of the Debt Relief Act a further reduction was made in the rate of interest due in respect of debt coming within the ambit of that Act. By that section it was enacted that "no future interest exceeding simple interest at the rate of 4% per annum in the case of money debts and 6% per annum in the case of paddy debts shall be chargeable from the date of the commencement of this Act on any debt to which this Act applieSection"

There can be no doubt that these statutory limitations on interest have to be given effect to if it is found that the debt in question is one to which the relevant provisions of the Act apply. The execution court overruled the 5th Defendant''s contention regarding the limitation of interest, by holding that the debt Is outside the scope of these two ActSection That Court has assumed that the 5th Defendant Deva-swom is the debtor in this case. The Agriculturists'' Relief Act was intended to give relief to debts due from an agriculturist. In Section 2 (e) of that Act ''debt'' is defined as follows:

Debt means any liability of an agriculturist . due In cash or in kind secured or unsecured, payable under a decree or order of a civil Court or otherwise and whether matured or not, but shall not include ....

(Pour categories of debts excluded from the definition of debt are enumerated here.) Section 2 CI. (a) gives the definition of an agriculturist in the following terms:

Agriculturist'' means a person (1) who earns his livelihood mainly by agriculture and also is either an ov.ssr or a tenant of agricultural land in Travan-corcoi servant of such owner or tenant, or (2) who earns his livelihood as a village menial paid in cash or in kind for work connected with agriculture.

The exception to this definition states that "juristic persons such as e. g., joint stock companies, and Devaswoms, holding land shall not be deemed to be agriculturists for the purpose pf this Act."

The mere fact that .the 5th Defendant, Devaswom has purchased the decree properties subject to the debt in question will not make the Devaswom liable for that debt. It is clear from the decree that the debt Is one payable by Defendants 1 to 3 who are made liable to pay that debt. The decree properties which belonged to them are also made liable for the debt. Thus it is clear that they are the real debtors In this case.

10. The only other question to be considered is whether they are agriculturists entitled to the benefits of the Agriculturists'' Relief Act. It is clear'' from the decree itself that they were earning their livelihood mainly from the income of their agricultural land and that they had no other independent profession. There

can, therefore, be no doubt that these Defendants are agriculturists as defined In Section 2 (a) of the Act. The decree debt in this case being a debt payable by these Defendants, interest .payable as per the decree has to be limited to 6% per annum from the date of the Act as enjoined by Section 34. Coming to the Debt Relief Act the debt to which that act applies, has been defined in Section 2 (iv) as follows:

Debt'' means any liability in cash or kind whether secured or unsecured due from any. person whether payable under a decree or order of a civil Court or revenue Court or otherwise.

Clause (vii) of the same section defines the word ''person'' in the following terms:

Person'' includes an undivided Hindu family, a Marumakkathayam tarwad or thavazhi but does not include a religious or charitable institution.

Considered in the light of these definitions, it is obvious that the decree debt in thiSectioncase payable by Defendants 1 to 3 is a debt to which the Debt Relief ActapplieSection It follows, therefore, the limitation of interest as provided in Section 12 of that Act must be given effect tOrder Accordingly we hold that in calculating the balance of the amount payable under this decree, interest from the date of the Travan-core Agriculturists'' Relief Act (Act III of 1112) has to be limited to 6% per annum up to the date of the v. Debt Relief Act and thereafter such Interest has to \\ be limited to 4% per annum.

11. In the result this appeal is allowed in the"J manner and to the extent indicated above. The order of the lower Court Is set aside and the case is sent back to that Court for fixing the balance of -the amount still payable under the decree, by making a fresh calculation in the manner explained above. Both sides will be directed to file fresh statements consistent with the directions made above. The lower Court will consider those statements and finally fix the balance amount recoverable under the decree. In the circumstances of this case we direct the parties to bear their own costSection