
(1907) 10 BOM CK 0006
In the Bombay High Court
Case No : Second Appeal No. 381 of 1907

Gokaldas Kala

APPELLANT

Vs

Govind Vishwanath

RESPONDENT

Date of Decision : 17-10-1907

Acts Referred:

Dekkhan Agriculturists Relief Act, 1879 — Section 15(b)

Citation : (1907) 9 BOMLR 1334

Hon'ble Judges : K.C.I.E., C.J;Lawrence Jenkins, J;Heaton, J

Bench : Full Bench

Judgement

Lawrence Jenkins, C.J.—This appeal arises out of the proceedings in execution of a decree passed u/s 522 of the CPC in accordance with an award filed u/s 526.

2. After the decree was passed the Dekkhan Agriculturists' Relief Act became applicable in the district and it is argued that the Court executing that decree can, not only prescribe instalments but also modify the provision as to payment of interest contained in the decree by directing that interest should cease to run.

3. The decree, though passed under the chapter of the Code which relates to reference to arbitration, is in effect for sale. Therefore it is contended it comes within Section 15(b) of the Dekkhan Agriculturists' Relief Act, But the decree for sale to which that section applies must have been passed in a suit of the description mentioned in Section 3 Clause (y) or Clause (z) and it certainly is a question whether an application u/s 525 of the CPC is a suit of that description.

4. That however is a point on which it is unnecessary now to express a decided opinion, because there is another ground on which the appellant must fail.

5. In the first place the Court undoubtedly has exercised a discretion in this matter and we can see no reason for interfering with that discretion in second appeal. And in the next place we are unable to come to the conclusion that Section 15 (b) allows the Court to cancel a direction for payment of interest contained in the decree.

6. It is to be noticed that what that section says is that the Court in the course of any proceedings under a decree for sale may direct that any amount payable by the mortgagor under that decree shall be payable in such instalments on such dates and on such terms as to the payment of interest as it thinks fit. But the interest is as much payable under the decree as the principal and the section does not say that the Court may direct that any amount payable under the decree shall not be payable; it merely empowers the Court to modify, in the particular manner there described, the terms of the payment.

It is suggested that the decision in Nathu Lakshman Vs. Vazir Bhau, shows that the Court has power to cancel a direction for payment of interest contained in the decree, but that clearly is not so.

7. The case was not argued on that footing and the only point considered by the Court was as to whether, as had been argued, it was compulsory on the Court to award interest by reason of the words "on such terms as to the payment of interest as it thinks fit". That is a different question from the one with which we are now dealing.

8. The result is that the decree must be confirmed with costs.