

(1946) 04 AHC CK 0041

In the Allahabad High Court

Case No : Section 25. Application No. 78 of 1942

Raja Jagdambika Pratap Narain Singh

APPELLANT

Vs

Bhagwan Datt Tewari and others

RESPONDENT

Date of Decision : 12-04-1946

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 25

Uttar Pradesh Temporary Postponement of Execution of Decrees Act, 1937 — Section 5

Citation : (1946) 04 AHC CK 0041

Hon'ble Judges : Dayal, J

Bench : Single Bench

Advocate : Kalbe Mustafa and H. Chandra, for the Appellant; K.N. Tandon, for Opposite-party No. 1, for the Respondent

Final Decision : Allowed

Judgement

Dayal, J.—This revision application u/s 25, Small Cause Courts Act, is directed against the order of the Civil Judge, Fyzabad, dismissing the applicant's suit for recovery of the amount due on the basis of a bond holding it to be time barred.

2. The taqavi loan was advanced on 23rd April, 1933. The loan was to be paid back in four installments of Rs. 50 each, each installment falling due on the 1st of May, 1934, 1935, 1936 and 1937.

3. Payments were made on 31st May, 1935 and 20th September, 1935. These payments are acknowledged in the plaint.

4. The suit was instituted on 8th January, 1942. Apparently the suit was time-barred. It was alleged in para 4 of the plaint that the Defendants had been agriculturists from the date of the loan and that the suit was within limitation in view of Section 5 of the U.P. Temporary Postponement of Execution of Decrees Act (No. 10 of 1937).

5. Bhagwan Dutt, Defendant, filed a written statement and contested the suit on the grounds that the entire amount due had been paid, that interest had been

wrongly calculated, that the suit was time barred and that the Plaintiff was not entitled to interest, he having not furnished annual statement of account. He just denied the allegation in para 4 of the plaint about the Defendants being agriculturists.

6. The learned Civil Judge framed three issues about limitation, Plaintiff's being a creditor and the payment of the debt. He held that the Plaintiff's was a creditor, that the entire debt had not been paid off and that the U.P. Act 10 of 1937 did not help the Plaintiff as it had been repealed and therefore was no longer law.

7. The Learned Counsel for the applicant relies on the case reported in Seth Radhey Lal v. Roop Ram 1942 A.W.R. (HC) 315 : AIR 1942 All. 396 for the view that notwithstanding the expiration of the U.P. Temporary Postponement of Execution if Decrees Act, 10 of 1937, on 31st December 1940, and the repeal of the said Act by the U.P. Debt Redemption Act 13 of 1940, on 1st January 1941, the Plaintiff was entitled to exclude the time from 1st January, 1938 to 31st December 1940 in computing the period of limitation applicable to his claim. The period coincides with the period during which Act 10 of 1937 remained in force.

8. The Learned Counsel for the Respondent has nothing to say against the view taken in this Allahabad case. He could simply urge that Act 10 of 1937 was not retrospective. I agree with the view taken in this Allahabad case. Section 5 of Act 10 of 1937 is as follows:

Computation of the period of limitation"-6 (1) In computing the period of limitation prescribed by the Indian Limitation Act, 1908, or any other law for the time being in force, for (a) the institution of a suit in a Civil Court against an agriculturist for money or for foreclosure or sale in enforcement of a mortgage, and (b) the execution of such decree as is referred to in Section 3, and not covered by Section 6, the period during which this Act, shall remain in force shall be excluded.

(2) In computing the period of twelve years prescribed by Section 48 of the Code of Civil Procedure, 1908, the period during which this Act shall remain in force shall be excluded.

9. This in effect provides that the limitation for the suits and execution of decrees contemplated under this section is increased by the period Act 10 of 1937 would remain in force. It would be unjust if this advantage which is given to would be plaintiffs and in view of which they did not go to Court be lost to them merely on account of the repeal of this Act. This right under the repealed Act is not to be affected in view of Section 6(c) of the U.P. General Clauses Act, 1 of 1904, which provides that the repeal of any enactment shall not affect any right, privilege accrued or incurred under the enactment so repealed. Further the effect of Section 3 of Act 10 of 1937 was that the period of limitation remained under suspension during the period Act 10 of 1937 remained in force. This suspension brought about by this provision of law is not to be affected by the subsequent

repeal of the Act in view of Section 6(b) of the U.P. General Clauses Act.

10. I, therefore, hold that this period of three years from 1st January, 1938 to 31st December, 1940 is not to be computed in determining the limitation for this suit.

11. It is urged for the opposite-parties that para 5 of the plaint mentions that the cause of action arose on 1st May, 1935, and that therefore the suit is clearly time barred even if the period of three years is added to the limitation provided under the ordinary law or limitation. This question had not been gone into by the Court below and it is quite arguable as to whether the suit is within limitation with respect to part of the claim on the basis of installments falling due later on.

12. It has also been urged for the opposite-parties that the Plaintiff has failed to establish that the Defendants were agriculturists as defined under Act 10 of 1937. No issue was framed about the Defendants being agriculturists. It should, therefore, be presumed that the Defendants gave up the plea. The Defendants did not mention in their written statement; as to why they were not agriculturists. They should have stated the facts which took them out of the definition of agriculturists. In the circumstances I am of opinion that the Defendants opposite-parties cannot be given advantage of the absence of any evidence on the record about their being agriculturists.

13. The Learned Counsel for the opposite-parties has referred me to the case reported in *Clarke v. Aziz Khan* 1936 O.W.N. 330 and 332 and *Sampat Shukul v. Sub Karan Tewari* 1941 O.A. 822 : A.W.R. (CC) 319 : O.W.N. 1112, for the view that relief u/s 25, Small Cause Courts Act, is discretionary and should not be granted if the Court below has committed an error of law. These cases are of not great help to the opposite parties as they hold that in those particular cases the orders of the Court sought to be revised were just. In those cases the Court had tried the dispute on merits, treating the suit to be within limitation. In the present case the Court has either not tried the points in dispute on merits or had decided those points in favor of the Plaintiff and has dismissed the suit on its erroneous view of law that the Plaintiff could not take advantage of Section 5, Act 10 of 1937. I, therefore, consider this case to be fit for taking action u/s 25, Small Cause Courts Act.

14. I, therefore, allow this application for revision, set aside the order of the Court below and send back the case for disposal according to law. Costs of the revision will abide the result.