

**Megh Raj and ors. Vs. Hargayan and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/450778](http://sooperkanoon.com/450778)

**Court :** Allahabad

**Decided On :** May-16-1910

**Reported in :** 7Ind.Cas.261a

**Judge :** Richards and ;Tudball, JJ.

**Appellant :** Megh Raj and ors.

**Respondent :** Hargayan and ors.

**Judgement :**

**Richards, J.**

1. This appeal arises out of a suit to enforce a mortgage. The only question which has been argued in the appeal is that the Court below was not justified in reducing the interest from the contractual rate of 15 per cent per annum compound interest to 15 per cent simple interest all through. There appears to be no reason for setting aside the contract of the parties save the fact that the rate of interest was 15 percent compound interest with half-yearly rest, coupled with the fact that security was considered by the Court below to be good security. The learned Judge in reducing the interest said: This is, in my opinion, an unconscionable rate on what was apparently a perfect security. The Court has absolute discretion to reduce the interest in such a case even when the point is not raised.' He then refers to the case of *Balkishen Das v. Madan Lal A.W.N. (1907) 55 : 29 A. 303 : 4 A.L.J. 222*. The facts of that case were very different from the facts of the present

case as will appear on a reference to the report. At the time of the execution of the bond the borrower was heavily indebted to the lender. He was an extravagant and dissipated man and the terms of the contract were undoubtedly hard and unconscionable. Not only was the rate of interest extremely high, its 37-8 per cent per annum with six-monthly rest, but the bond contained other onerous terms. As I was party to the decision in *Balkishen Das v. Madan Lal A.W.N.* (1907) 55 : 29 A. 303 : 4 A.L.J. 222 and I think (the case has been a little misunderstood, I desire to say a few words on what I conceive to be the law on this question. In my opinion the Court's power to interfere with contracts in cases like the present is limited to the provisions of the Indian Contract Act. 19 A of that Act provides that 'when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or if the party who was entitled to avoid it has received any benefit there under upon such terms and conditions as to the Court may seem just.' In order to see what is meant by the expression 'undue influence' we have to look to the provisions of 16, Clauses (1) and (2). Then comes Clause (3) which is the only clause that could possibly apply to a case like the present. This clause provides that 'where a person who is in a position to dominate the Will of another enters into a contract with him and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by influence shall lie upon the person in a position to dominate the Will of the other.' Now, assuming for the purposes of argument that the Court is entitled to hold a bargain to be unconscionable merely on the ground that the rate of interest is excessive having regard to the security, it is necessary to find also that the lender was in a position to dominate the Will of the borrower when the contract was entered into before any presumption arises that the contract was induced by any influence. There is nothing in the present case to suggest that the lender was in a position to dominate the Will of the borrower. See also *Dhanipal Das v. Maneshar Bakhsh Singh* 28 A. 570 at p. 583 : 4 C.L.J. 1 : 1 M.L.T. 205 3 A.L.J. 495 : 9 O.C. 183 : 8 Bom. L.R. 491 : 10 C W.N. 849 : 16 M.L.J. 292. I think the appeal should be allowed.

**Tudball, J.**

2. I fully agree. In all cases of this kind the Court must look to the facts and circumstances of the case and unless in a case there is unfair dealing the Court must enforce the contract made by the parties. In the present case, there is absolutely nothing to suggest that there was undue influence of any sort or any unfair dealing on the part of the lender, and I can see no just reason why any relief should be given to the debtor under these circumstances. I would also admit the appeal.

3. Order of the Court is that we allow the appeal, modify the decrees of both the Courts below and decree the plaintiffs' claim for Rs. 903-3-0 plus simple interest from the date of suit at 6 per cent per annum as the plaintiffs waited for a long time. We direct that the parties abide their own costs in all Courts. We extend the time for payment to the 16th of November, 1910.

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