Uman Dat Vs. Lachmi NaraIn and anr.

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Court : Allahabad

Decided On : Feb-07-1907

Reported in : (1907)ILR29All322

Judge : John Stanley, C.J. and ;William Burkitt, J.

Appellant : Uman Dat

Respondent : Lachmi NaraIn and anr.

Judgement :

John Stanley, C.J. and Burkitt, J.

1. The suit out of which this appeal has arisen was a suit for sale of mortgaged property under two bonds. These bonds provided for the payment of interest at the rate of 10 per cent. per annum; with a condition that if the interest was not paid in the second year compound interest should be charged, and that this condition should remain in force until the whole amount was paid off. The learned District Judge, modifying the decree of the Court below as regards interest, allowed compound interest up to the date of realization. He says in the course of his judgment: 'As for the rate of interest to be allowed for the period subsequent to the date fixed for payment in the 'decree, I see no cause to decree any other than the contractual rate. It is true that it is compound interest, but the rate (10 1/2 per cent per annum) is not a high one, but is a little less than the prevalent rate (12 per cent per annum). There was no harsh or unconscionable bargain and no hard case.

The interest will therefore be the contractual rate up to the date of payment.' It is contended on behalf of the defendants appellants that in view of the decision of their Lordships of the Privy Counsel in a recent case, interest should not be allowed over and above the Court rate after the date fixed for payment. In the case of Rameswar Koer v. Mahomed Mehdi Hossein Khan (1896) I.L.R., 26 Calc., 89, Lord Hobhouse in delivering the judgment of their Lordships remarked as follows: 'The High Court founded their order on Sections 86 and 88 of the Transfer of Property Act, which indicate clearly enough that the ordinary decree in a suit of this kind (that is a suit for sale on a mortgage) should direct accounts allowing the rate of interest provided by the mortgage up to the date of realization.' It was understood in this Court from the language of this judgment that the Court in passing a decree upon a mortgage should ordinarily allow interest at the contractual rate up to the date of realization. In the recent case, however, of Sundar Koer v. Rai Sham Krishen (1906) I.L.R., 84 Calc., 150 their Lordships, referring to the language used by Lord Hobhouse in the case of Rameswar Koer v. Mahomed Mehdi Hossein Khan, observe that the Judicial Committee did not intend in that case to lay down that in passing a mortgage decree the Courts should allow interest at the contractual rate beyond the date fixed for payment by the decree. Lord Davey in delivering the judgment of their Lordships quotes the passage from the judgment of Lord Hobhouse, which we have cited, and observes: The expression 'up to the date of realization' may have been used per incuriam, or it may have meant 'the day fixed for realization', as in fact it seems to have been understood by the reporter of the case in the Indian Law Reports as expressed in his marginal note (I.L.R., 26 Calc., 39). Their Lordships cannot have intended to say that Sections 86 and 88 of the Transfer of Property Act indicate that interest at the mortgage rate should be paid up to the time of actual payment of the mortgage money to the mortgagee.' Then later on, after expressing approval of the decree of the High Court in which 6 per cent, per annum interest only, and not the mortgage rate, was allowed after the date fixed for the payment of the mortgage debt, Lord Davey observes: 'In the present case their Lordships have no hesitation in expressing their concurrence with the High Court of Calcutta, not only in allowing interest after the fixed day, but also in allowing interest at the Court rate and not at the mortgage rate. They think that the scheme and intention of the

Transfer of Property Act was that a general account should be taken once for all, and an aggregate amount be stated in the decree for principal, interest and costs due on a fixed day, and that after the expiration of that day, if the property should not be redeemed, the matter should pass from the domain of contract to that of judgment, and the rights of the mortgagee should thenceforth depend not on the contents of his bond but on the directions in the decree.' In view of this statement of the law by their Lordships it is open to the Court in determining the interest which should be payable after the day fixed for payment in the decree to limit the interest to the Court rate if it so think fit. It therefore is open to us in this case to modify the decree of the lower appellate Court in regard to interest. The learned District Judge did not think that the case before him was such as to justify any reduction in the interest payable up to Realization and therefore gave interest at the contractual rate. We think under the circumstances of this case that after the date fixed by the decree for payment simple interest only should be allowed the contractual rate, and not compound interest. To this extent We modify the decree of the lower appellate Court. The appellants have substantially failed in the appeal and must pay the costs.