

Nathi and anr. Vs. Tursi and anr.

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Court : Allahabad

Decided On : May-18-1921

Reported in : AIR1921All192(1); (1921)ILR43All671

Judge : Walsh and ;Wallach, JJ.

Appellant : Nathi and anr.

Respondent : Tursi and anr.

Judgement :

Walsh and Wallach, JJ.

1. On this point the law is settled in this Court and ought not to be disturbed. Independently of any decided cases the law seems as clear as it can be. The terms of the bond may be compendiously stated as providing that if the borrower makes default in the payment of any instalment of interest, the lender can sue for the whole amount, although a fixed period is provided for repayment if the borrower repays regularly according to the terms of the bond. It is impassible to hold, whether you call it an option or not, that a creditor has a right to sue and yet that the money is not due. It is merely a question of contract. The borrower has agreed that the creditor shall have the right to sue for the whole of the principal and interest 'become due.' Turning to Article 132 of the Limitation Act, which is the only provision which applies, it is provided that the statute shall run from the date when 'the money becomes due.' The statute, therefore, must run from the date of

the first default. The liability to pay, or in other words, the test whether money becomes due or not, is the obligation which the borrower has taken upon himself by his signature to the written document. It cannot depend on the volition of the creditor. The volition of the creditor merely decides the remedy which he chooses to seek. In this case, the money became due when default was made and the decision of the Court below was clearly right. We are unable to follow *Mata Tahal v. Bhagwan Singh* (1921) 19 A.L.J. 406. No mortgagee or creditor is 'bound to sue.' This case is quite indistinguishable from the decision of this Court in *Gaya Din v. Jhumman Lal* (1915) I.L.R. 37 All. 400, and we are bound to follow that authority. No doubt there are cases where by the terms of the special bond the creditor is asserting a claim different from that which is time barred. That is not this case.

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