

Mackintosh Vs. Hunt

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Court : Kolkata

Decided On : Jan-18-1877

Reported in : (1877)ILR2Cal202

Judge : R. Garth, C.J. and ;Macpherson, J.

Appellant : Mackintosh

Respondent : Hunt

Judgement :

Richard Garth, C.J.

1. We are of opinion that the contract to pay interest at 10 per cent, per mensem, if the principal sum of Rs. 400 were not paid on September 6th, the duo date of the promissory note, is not in the nature of a penalty. It is true that this rate of interest is in the note called a 'defaulting rate;' but, notwithstanding this expression being used, the contract is in fact merely that if the sum of Rs. 400 he not paid on a certain day, it shall from that day bear interest at 10 per cent, per mensem, or, in other words, at 120 per cent, per annum. In such a provision there is nothing in the nature of a penalty more than there is in a provision, that the promissory note shall bear interest from the day of its date. The case seems to us to differ wholly from that class of cases in which a certain sum is agreed to be paid on a breach of contract, and therefore Section 74 of the Contract Act (IX of 1872) does not apply.

2. But, taking the facts as found by the Judge, the effect of the transaction between the parties is not what the learned Judge supposes it to have been. He is not correct when he says that the plaintiff took interest at the rate of $6\frac{1}{2}$ per cent, per mensem only for the five months up to September 6th. What happened (as found by the Judge himself) was this: on the making of the promissory note the plaintiff, the money-lender, paid or gave value to one of the makers to the extent of Rs. 275; and adding to that sum Rs. 125 as discount or interest on Rs. 275 for the five months up to the 6th of September, the note, dated the 6th of April, was given for Rs. 400 payable on September 6th.

3. It may be true that Rs. 125 as interest for five months on Rs. 400 is interest at the rate of $6\frac{1}{4}$ per cent, per mensem; but the sum actually advanced, or for which value was given, was not Rs. 400, but only Rs. 275. And Rs. 125 as interest for five months on Rs. 275 is interest at the rate of nearly 10 per cent, per mensem, and is considerably more than 100 per cent per. annum.

4. The plaintiff having thus paid or given value for Rs. 275 only, took a promissory note, payable at the end of five months for that sum, plus Rs. 125 as interest, i.e., for Rs. 400; which last-mentioned sum was from the due date of the note to bear interest at 1.20 per cent, per annum. And this being the true nature of the transaction, the promissory note contains a false statement of the consideration, for in it the maker's promise to pay 'Rs. 400 for value received in cash in hand paid on signing and delivering this bond.'

5. Considering that the promissory note does not state truly the transaction between the parties; that beyond the fact that he signed the note, there is nothing to show that the defendant understood the real nature of the transaction; that the rate of interest is exorbitant, and the considerations grossly inadequate, we think the transaction is not one which ought to be enforced by a Court of Equity. The Calcutta Court of Small Causes is empowered to entertain equitable defences, and ought, as it appears to us, on the facts found, to have given the defendant relief.

6. The judgment for Rs. 800 is set aside, and judgment will be entered for the plaintiff for Rs. 400 with interest at 12 per cent, per annum from September 6th,

1875, to the date of suit, without costs.

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