

Bejoy Kumar Addya and ors. Vs. Satish Chandra Ghose and anr.

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SooperKanoon Citation : sooperkanoon.com/886255

Court : Kolkata

Decided On : Aug-26-1919

Reported in : 56Ind.Cas.1007

Judge : Asutosh Chaudhuri and ;Cuming, JJ.

Appellant : Bejoy Kumar Addya and ors.

Respondent : Satish Chandra Ghose and anr.

Judgement :

Asutosh Chaudhuri, J.

1. The only question raised in this appeal is that of interest.
2. The learned Subordinate Judge, relying on the authority of Abdul Majid v. Ksherode Chaadra Pal 29 Ind. Cas. 843 : 19 C.W.N. 809 : 42 C. 690 and Challaphroo v. Behary 3 Ind. Cas. 394 : 20 C.W.N 408 : C.L.J. 311 has reduced the rate from 15 per cent. cent. with quarterly rests to 12 per cent. simple interest upto the date of suit. He disallowed interest after that date' Ha says: The security seems to be quite sufficient. Regard being had to the cases above mentioned and other rulings the circumstances above noted, namely, that the suit had been delayed and interest had accumulated would go to show that the stipulation as to interest is hard and unconscionable.

3. So far as those two oases are concerned, they have not always been accepted by this Court as correct. The recent Privy Council decision in *Aziz Khan v. Duni Chand* 48 Ind. Cas. 933 : 23 C.W.N. 130 : 101 P.R. 1918 : 165 P.W.R. 1918 (P.C.) lays down that unless it can be shown that undue advantage had been taken, the Court ought not to come to the conclusion that the transaction is hard and unconscionable.

4. These matters are matters of contract between the parties. The learned Vakil appearing for the respondent urged that there was undue influence and that the onus was upon the mortgagee to show that there was none. But one of the requisites for that contention is that the person in whose favour the document stands was in a position to dominate the will of the executant. There is nothing to show that the money-lender dominated the will of the debtor in this case. No issue was raised on that point-no evidence was given; there is no evidence on the record that any advantage was taken of the lady, or that she did not borrow at the ordinary rate of interest prevailing at that time. In fact, there is evidence that the executor of her husband's Will borrowed at the same rate of interest on his personal account. He was a man of business and he had to pay the same rate of interest.

5. Then we have the evidence of Girish Chandra Ghose, witness No. 2, for the defendant, that at that time the usual rate of interest was Re. 1 or Re. 140 per cent. per month, that rarely it was Be. 1 annas 8 and that it was usual to enter compound interest with quarterly rests.

6. It must not be overlooked that this was a transaction with a Mitakshara lady and that the security, which the learned Subordinate Judge thought was sufficient, may not have been so considered when the money was advanced. However that may be, there is nothing to show that undue advantage was taken of this lady, that her will was dominated or that the terms were extorted from her in any way.

7. It has also been urged that in respect of mortgages executed by Hindu widows, where the Court has found that there was no necessity to borrow at a high rate of interest, such rate has been reduced. The cases in *Kameswar Pershad v. Bun Bahadur Singh* 6 C. 843 : 8 C.L.R. 361 : 8 I.A. 8 : 4 Shome L.R. 81 : 4 Sar.P.C.J.

210 : 5 Ind. Jur. 157 : 3 Ind. Dec. (N.S.) 545, Hurro Nath Rai Chowdhri v. Randhir Singh 18 C. 311 : 18 I.A. 1 : 15 Ind. Jur. 34 : 5 Sar. P.C.J. 642 : 9 Ind. Dec. (N.S.) 207 and Nawab Nazir Begam v. Rao Raghunath Singh 50 Ind. Cas. 484 : 46 I.A. 145 : 36 M.L.J. 521 : 17 A.L.J. 594 : 23 C.W.N. 700 : 21 Bom.L.R 484 : 26 M.L.T. 40 : 30 C.L.J. 86 : (1919) M.W.N. 498 : 1 U.P.L.R. (P.C.) 49 : 41 A. 571 : 11 L.W. 188 (P.C.) have been re* lied upon. But in this case, the title of this lady is the title of an owner and, therefore, those oases do not appear to have anything to do with the matter.

8. The learned Subordinate Judge has relied upon the delay. It appears, how-ever, from the Kabala of defendant No. 2 that at the time when 'that Kabala was executed, the debt which was due by this lady to the plaintiff was calculated at Rs. 2,800. This sum the defendant undertook to pay bat he kept the money with him and did not pay. He waited for 9 years and kept the money in hand. Ha is responsible for the delay; he knew the rate of interest which was charged when he took the Kabala and kept the money with him, and yet be took no steps to pay the debt. For him to say that since he has purchased both the widow's interest and the interest of the reversioners, he ought to be relieved from paying at such a high rate of interest, seems to us to be absurd, It is not correct that he has purchased from the reversioners.

9. The appeal is, therefore, allowed with costs in both Courts. We assess the hearing fee at five gold mohurs. The plaintiff would be entitled to interest at the contract rate up to the date fixed for payment, namely, three months from this date. After that there will be interest at 6 per cent. If there is no contest as regards the amount, the decree may be drawn up here.

Cuming, J.

10. I agree.