

APPELLATE CIVIL.

Before Mookerjee and Newbolud JJ.

1915

Aug. 17.

GOPESHWAR SAHA

v.

JADAV CHANDRA CHANDA.

*Interest—Power of Court to grant relief, where interest unconscionable—
Creditor, when his improper act or omission delays payment of debt.*

Where delay in the payment of the principal debt is caused by some improper act or omission of the creditor, the accrual of interest will be suspended during such period as the debtor is so prevented.

Edwards v. Warden (1), *Merry v. Ryves* (2), *Marlborough v. Strong* (3), *Cameron v. Smith* (4), *Bann v. Dalzel* (5), *Auderton v. Arrowsmith* (6), *Laing v. Stone* (7), *London, Chatham and Dover Railway Company v. South-Eastern Railway* (8) and *Webster v. British Empire Mutual Life Assurance Co.* (9) referred to.

A Court is competent to grant relief where the rate of interest appears to the Court to be of a penal character, that is, so unconscionable and extravagant that no Court should allow it.

Khagaram Das v. Ramsankar Das (10), *Abdul Majeed v. Khirode Chandra Pal* (11), *Bowang v. Banga Behari Sen* (12) referred to.

SECOND APPEAL by Gopeshwar Saha, the plaintiff.

These appeals arise out of a suit to enforce two simple mortgage bonds. The defendant No. 1, Jadab

* Appeal from Appellate Decrees, Nos. 2971 and 3479 of 1913, against the decree of M. C. Ghose, Additional District Judge of Mymensingh, dated June 16, 1913, confirming the decree of Sarat Kishore Bose, Subordinate Judge of Mymensingh, dated Feb. 17, 1913.

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| (1) (1876) 1 App. Cas. 281. | (7) (1828) 2 Man. & Ry. 561 ; |
| (2) (1857) 1 Elen 1. | Moo. & M. 229. |
| (3) (1723) 4 Brown P. C. 539. | (8) [1891] 1 Ch. 120. |
| (4) (1819) 2 B. & Ald. 305. | (9) (1880) 15 Ch. D. 169. |
| (5) (1828) Moo. & M. 228. | (10) (1914) I. L. R. 42 Calc. 652. |
| (6) (1839) 2 P. & D. 408. | (11) (1914) I. L. R. 42 Calc. 690. |
| (12) (1915) 22 C. L. J. 311 ; 20 C. W. N. 408. | |

Roy, executed these bonds in Sraban 1305 in favour of the defendants Nos. 4 and 5, Jadav Saha and his brother, who afterwards for a consideration sold their rights under the bonds to plaintiff, Gopeshwar Saha. The plaintiff brought a suit on the 13th of September 1911 against the executant defendant No. 1 and Dino Nath Biswas defendant No. 2 to whom defendant No. 1 had transferred the properties under the bonds and against certain others. Various issues were raised; but the most important were these—

(i) Is the plaintiff in any way barred by his own acts and conduct from enforcing any part of his claim for interest?

(ii) Was the bargain of defendants Nos. 4 and 5 with defendant No. 1 in any way unconscionable? If so, can plaintiff enforce his claim on the bonds?

(iii) Is the suit bad for defect of parties?

Issue No. (i) was decided by the first Court against the plaintiff and the facts found were that the plaintiff, a rich and powerful man of the locality, had complete influence over defendant No. 1 who was a needy man, much in debt and had used the influence unscrupulously to the material injury of the defendant No. 1. It is said that the plaintiff gave out hopes to the defendant No. 1 that he could purchase all but four of defendant No. 1's properties and could with the consideration clear off all his debts; that upon this understanding he induced defendant No. 1 to execute a mortgage bond for Rs. 1,373 which sum he would use in clearing up debts which pressed upon defendant No. 1, but the plaintiff did not carry out his promise and that the defendant did not receive any consideration at all for that bond; that, therefore, the defendant No. 1, in distress, turned to defendant No. 2, who is a pleader and money-lender of the locality, and in Sraban 1315 contracted to sell his properties to him. In Kartik

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1315, defendant No. 1 was proceeding to the Registration office to register the contract deed in favour of defendant No. 2, but the plaintiff had him called away from the way and persuaded him not to register the deed telling him that he would himself buy the properties and satisfy all his debts. The defendant No. 1 was thereafter under complete control of the plaintiff who, it is said, assisted defendant No. 1 in resisting a registration notice which a peon went to serve on behalf of defendant No. 2. Both defendant No. 1 and plaintiff were convicted by a Magistrate, but they were subsequently acquitted by the High Court. The defendant No. 2 brought a suit to enforce the registration of the contract deed; but the plaintiff with men and money helped defendant No. 1 in that suit but in vain. Defendant No. 2 won the suit.

Then the plaintiff gave up defendant No. 1 and declined to buy the properties. The defendant No. 1 had to go back to defendant No. 2 and make up with him and it was only on the 30th Bhadra 1318 that he could sell his properties to defendant No. 2. Upon these facts the lower Court held that the plaintiff caused material injury to defendant No. 1 and has, on the ground of equity, disallowed interests on the bonds from the middle of Kartik 1315 to Bhadra 30th 1318. The lower Appellate Court upheld the decision of the Subordinate Judge on this point. As regards the second issue, the Courts decided against the defendants holding that there was nothing at all to prove undue influence, except the fact that the defendant No. 1 was in debt and that defendant No. 4 was his creditor. The third issue also was decided against the defendants.

Both the parties appealed to the High Court.

Babu Dwarka Nath Chuckerburty (with him

Babu Provash Chandra Mitra and *Babu Suresh Chandra Bose*), for the plaintiff, submitted that no wrong was done by the plaintiff to defendant No. 1. If a man tries to injure another, and in so doing, injures himself, is he entitled to any consideration? Assuming that I tried to help the defendant No. 1 to the detriment of another, how does that entitle the defendant No. 1 to make a complaint against me? Where is the equity? No such defence as this is known to law. There is no ground for the suspension of interest.

Babu Biraj Mohan Majumdar, for the defendants, contended that it was the conduct of the plaintiff which prevented the defendant No. 1 from carrying out the transaction which he had arranged with defendant No. 2. Defendant No. 1 was completely under the control of the plaintiff. Both the Courts have disallowed interest from the middle of Kartik 1315 to Bhadra 30th 1318, and rightly so, since, during that period, the debtor was prevented by the improper act of the creditor from repaying the loan, as he would undoubtedly have done, by selling off the mortgaged properties. It was further submitted that the rate of interest was penal and as such the Court should grant relief.

Babu Dwarka Nath Chuckerburty, in reply.

Cur. adv. vult.

MOOKERJEE AND NEWBOULD JJ. These appeals are directed against the decree in a suit to enforce two mortgage bonds assigned by the original mortgagee to the plaintiff. The bonds were executed on the 25th July 1898 and were assigned to the plaintiff on the 16th July 1906. The principal sums secured by the bonds were Rs. 525 and Rs. 375, respectively, which carried interest at the rate of 15½ per cent. per year with triennial rests. The plaintiff commenced this

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action on the 13th September 1911 for recovery of Rs. 4,979-9 annas, namely, Rs. 900 as principal and Rs. 4,079-9 annas as interest thereon. He joined as principal defendants the mortgagor as also the purchaser of the equity of redemption, in whose favour the transfer was completed on the 16th September 1911. The substantial question in controversy relates to the amount of interest justly recoverable by the plaintiff. The defendants contended, *first*, that the rate of interest was penal and, *secondly*, that the interest was suspended from the 1st November 1908 to the 16th September 1911, as during that period the debtor was prevented by the improper act of the creditor from repaying the loan, as he would otherwise have done, by the sale of the mortgaged properties. The Subordinate Judge overruled the first contention, but gave effect to the second objection and made the usual mortgage decree for a portion of the amount claimed. The plaintiff, as also the defendants, appealed to the District Judge against this decision. The District Judge has confirmed the decree of the trial Judge and has dismissed both the appeals. Against this decree of the District Judge, the plaintiff and the defendants have presented separate appeals to this Court. The plaintiff has contended that interest should have been allowed for the entire period from the date of the mortgages to the date fixed in the decree for redemption. The defendants have argued that the contract rate of interest was extravagantly high and unconscionable, and that interest should consequently have been decreed only at a reduced rate.

As regards the appeal by the plaintiff, there can be no doubt that where delay in the payment of the principal debt is caused by some improper act or omission of the creditor, the general rule is that the accrual of

interest will be regarded as suspended during such period. In the case before us, the facts concurrently found by the Courts below may be briefly recited. The mortgagor, hard passed by the high rate of interest on the loan, found himself in a helpless condition, and on the 6th August 1908 entered into a written agreement with the second defendant to sell the mortgaged property to him with a view to satisfy the mortgage debt from the sale-proceeds. The plaintiff, the assignee of the mortgage bonds, was himself anxious to purchase the property; so he forthwith intervened and urged the mortgagor to break his contract with the intending purchaser. The mortgagor was reluctant to resile from his agreement and explained to the plaintiff the obvious danger of the course proposed by him, as the contract was complete and enforceable. The plaintiff, however, successfully dissuaded the mortgagor from the contemplated sale. The result was a suit by the intending purchaser against the mortgagor for specific performance of the contract. The plaintiff did his best to defend the suit in the name of the mortgagor, but he was ultimately thwarted, as the suit was decreed. The mortgagor was accordingly obliged to complete the sale in favour of the purchaser, which he did on the 16th September 1911. The plaintiff, thus foiled in his design to seize the mortgaged property, sued to enforce the securities he held. The question arises, whether, in the circumstances stated, the accrual of interest should not, in justice, be deemed to have been suspended during the period when, but for the improper intervention of the plaintiff, the mortgagor might have completed the sale of the mortgaged property and repaid the loan from the sale-proceeds. The Courts below have concurrently answered this question against the plaintiff. The principle that if the failure to make payment of the principal debt is

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due to an improper act of the creditor or to such conduct on his part as prevents the debtor from repaying the loan, interest on such debt stands suspended during the time the debtor is so prevented, is of extensive application. The Courts have taken recourse in various reported decisions, both in England and in the United States, to this principle to attain the ends of justice. No useful purpose would be served by an analysis of the varying circumstances of the different cases, but reference may be made to the decisions in *Edwards v. Warden* (1), *Merry v. Ryves* (2), *Marlborough v. Strong* (3), *Cameron v. Smith* (4), *Bann v. Dalzel* (5), *Anderton v. Arrowsmith* (6), *Laing v. Stone* (7), *London Ry. Co. v. South Eastern Ry. Co.* (8), *Webster v. British Empire* (9), *Hayes v. Elmsley* (10), *Stevenson v. Davis* (11), *Bowman v. Wilson* (12), *Pinkard v. Ingersoll* (13), *Union Insurance Co. v. Chicago Ry. Co.* (14), *Southern W. L. Co. v. Haas* (15), *Watson v. McManus* (16), *Morford v. Ambrose* (17), *Hart v. Brand* (18), *Suffolk Bank v. Worcester Bank* (19), *Steven v. Baringar* (20), *Reid v. Russelaer* (21), *Plotner v. Warehouse* (22). It is obviously just that if a creditor, by his own act, puts it out of the power of the debtor to make payment.

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| (1) (1876) 1 App. Cas. 281. | (12) (1881) 2 MacCrary (U. S.) 394. |
| (2) (1757) 1 Eden. 1. | (13) (1847) 12 Alabama 441. |
| (3) (1723) 4 Brown P. C. 539. | (14) (1893) 146 Ill. 320. |
| (4) (1819) 2 B. & Ald. 305. | (15) (1888) 76 Iowa 432. |
| (5) (1828) Moo. & M. 228. | (16) (1909) 223 Pa 583. |
| (6) (1839) 2 P. & D. 408. | (17) (1830) 3 JJ. Marshall Ry. 688. |
| (7) (1828) 2 Man. & Ry. 561 ;
Moo. & M. 229. | (18) (1818) 1 A. K. Marshall 159 ;
10 Am. Dec. 715 |
| (8) [1892] 1 Ch. 120. | (19) (1827) 5 Pickering (Mass.) 106. |
| (9) (1880) 15 Ch. D. 169. | (20) (1835) 13 Wendell N. Y. 639. |
| (10) (1893) 23 Can. Sup. Ct. 623. | (21) (1824) 3 Cowan N. Y. 393 ;
5 Cowan 587. |
| (11) (1893) 23 Can. Sup. Ct. 629. | (22) (1909) 122 S. W. 443. |

no interest should be recoverable for the period during which the debtor was thus prevented from paying the creditor; the wrong was with him and he cannot charge the effect to the other. This doctrine is based on the plainest grounds of justice, equity and good conscience and has been rightly applied by the Courts below for the protection of the defendants.

As regards the appeal by the defendants, the decisions of this Court in *Khagaram Das v. Ramsankar Das* (1), *Abdul Majeed v. Khirode Chandra Pal* (2), and *Bouwang v. Banga Behari Sen* (3), show that a Court is competent to grant relief whenever the rate of interest appears to the Court to be of a penal character, that is, so unconscionable and extravagant that no Court shall allow it. We are not prepared to hold that the present case falls within that rule. The amount claimed as interest, if distributed over the entire period, works out at the rate of 35 per cent. per annum simple interest, while the amount actually decreed by the Courts below works out at the rate of 22 per cent. per annum simple interest. We cannot say that this rate is so excessive as to justify our interference.

The result is that both the appeals are dismissed and the decree of the District Judge is affirmed.

S. K. B.

Appeals dismissed.

- (1) (1914) I. L. R. 42 Calc. 652 ; (2) (1914) I. L. R. 42 Calc. 690.
21 C.L.J. 79 ; 19 C.W.N. 775. (3) (1915) 22 C. L. J. 311 ;
20 C. W. N. 408.

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