

APPELLATE CIVIL.

Before Rankin C. J. and C. C. Ghose J.

SHYAMLAL BASU

v.

KALIM SHEIKH.*

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Feb. 25.

Rent—Contractual interest—Principle of awarding—Court, discretion of, if any—Defendant's conduct—Stipulation—Penalty—Reasonable compensation—Indian Contract Act (IX of 1872), s. 70.

A court cannot, considering the conduct of the defendants, disallow the stipulated interest on the rent in arrears.

The plaintiff has a contractual right to interest; and, in order to obtain a decree for interest, it is not necessary to show that the defendants have acted unreasonably.

If the defendants have not paid their rent in time, the plaintiff is entitled to interest.

To allow contractual interest does not rest on the discretion of the court.

A stipulation that, if the paddy rent is not paid by a certain month, then in the next year half as much again of the paddy would be required to discharge the arrears, is a stipulation by way of penalty and comes under section 74 of the Contract Act; the landlord is entitled to get reasonable compensation, the amount being at the discretion of the court.

SECOND APPEAL by the plaintiff.

The facts of the case, out of which this appeal arose, appear in the judgment under report herein, as well as in the following extract from the judgment of the trial court:—

In this suit the plaintiff sues the defendants for the arrears of money rent and cesses and also for the price of paddy payable for their *jama* for the years 1328 to 1331 B.S. He has claimed money rent at the annual rate of Rs. 58-10 as. 7 gds. and cesses at the annual rate of Re. 1-13 as. 5 gds. The defendant No. 1 appears and contests the suit. He urges that the plaintiff alone is not entitled to the cesses claimed and that the prices claimed by him are excessive. The defendant No. 1 further urges that he deposited the arrears claimed more than six months prior to the institution of the suit, that there are therefore no arrears and that the suit is barred by limitation.

Both courts below having disallowed interest on the arrears of rent decreed, the plaintiff preferred this Second Appeal to the High Court.

*Appeal from Appellate Decree, No. 2757 of 1927, against the decree of R. C. Sen, District Judge of Khulna, dated Aug. 3, 1927, modifying the decree of Janakinath Mukherji, Additional Subordinate Judge of Khulna, dated Jan. 5, 1926.

Anilchandra Ray Chaudhuri, for *Shantikumar Ray Chaudhuri*, for the appellant.

Upendrakumar Ray, for *Haripada Chatterji*, for the respondent.

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RANKIN C. J: I think this appeal should be allowed and the case should be sent back to the lower appellate court to be disposed of in respect of the following three matters.

First of all, it is alleged by the appellant that there is a slip of some Rs. 200 in drawing up the decree, in that the decree has been drawn up so as not to give him Rs. 200 which has really been awarded to him by the judgment. We cannot in this Court tell whether this sum of Rs. 200 has been omitted by design or whether it has been omitted by miscalculation or whether it has been omitted for good reasons. So, this matter must go back to the lower appellate court to be put right.

The next thing is that the appellant complains that the lower appellate court has refused to give him any interest at all on the money rent inspite of the fact that in the *kabuliyat* there is a rate mentioned which amounts, as I understand, to some $37\frac{1}{2}$ per cent. per annum. It appears to me that the defendants have no defence at all to a claim for interest on the arrears of rent at the *kabuliyat* rate. It appears to me also that it is no sound reason to say that, considering the conduct of the defendants, the Subordinate Judge could disallow any interest on the rent in arrears. The plaintiff has a contractual right to interest. It does not appear necessary, in order to obtain a decree for interest, to show that the defendants have acted unreasonably at all. The point is that, if the defendants have not paid their rent in time, the plaintiff is entitled to interest. The courts below seem to think that to allow contractual interest rests on their discretion. That is not so. That matter must be put right by the lower appellate court.

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The third question is the question of the stipulation that, if the paddy rent is not paid by the month of *Falgun*, then in the next year half as much again of the paddy would be required to discharge the arrear. It appears to me that that stipulation is a stipulation by way of penalty and comes under section 74 of the Indian Contract Act. If it comes under section 74, then the law says that the plaintiff is entitled to get reasonable compensation. It is perfectly easy to assess reasonable compensation. For example, paddy of a certain value should have been given to the plaintiff on a given date. If it is not so paid, it is quite easy to think that 5 *per cent.*, 10 *per cent.* or 25 *per cent. per annum* should be added to that figure as compensation for the paddy not being paid at the time when it was due. But the amount, which is to be added in this way, will be in the discretion of the court.

For these reasons, the appeal succeeds, and the case must be sent back to the lower appellate court to work out the decree properly on those lines. The appellant is entitled to his costs of this appeal.

GHOSE J. I agree.

Case remanded.

G.S.