

independent of the original mortgage, can be regarded as a payment of interest as such. The appeal is in part allowed: the decrees of the Courts below, so far as they decree the claim, must be reversed, except in so far as they award the claim for arrears of rent for three years. Proportionate costs in all Courts.

[3 Mad. 59.]

APPELLATE CIVIL.

The 27th January, 1880.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE INNES.

Monji Premji Set.....(Plaintiff) Appellant.

*versus*

Maliyakel Koyassan Koya Haji.....(Defendant) Respondent.\*

*Decree in form of award—Error in procedure—Appeal—Review.*

Applications for the extension of the period for the submission of an award and orders thereon should be made in writing and recorded.

When a party has been prejudiced by having the time allowed for taking objections to an award curtailed by the Court, no appeal lies, but a review should be granted by the Court of First Instance.

[60] IN this case appellant and respondent filed suits against each other, each claiming a balance due against the other on settlement of accounts.

By mutual consent the matters in dispute were referred to arbitration, and a majority of three out of five arbitrators submitted their award, rejecting both suits and saddling each party with his own costs.

The Subordinate Judge, after stating that applications made by the parties to set aside the award had been refused by the Court, gave judgment according to the award.

The appellant raised the following objections in appeal:—

- (1) That the award was invalid, having been made after the time fixed for its publication.
- (2) That there was neither application nor order on record extending the time for the submission of the award.
- (3) That the parties, having ten days' time to state their objections to the award, had been allowed only a few hours, although appellant objected and had no time even to get a copy of the award.

*Anundacharlu and Sundaram Sastri* for Appellant.

*Mr. Normandy and A. Ramachandrayyar* for the Respondent.

The Court (TURNER, C.J., and INNES, J.) delivered the following

**Judgment:**—We are of opinion that, except in the cases mentioned in the Act, there is no appeal from a decree which is passed in terms of the award; and therefore, although the appellant had apparently not the full time allowed him wherein to take exception to the award, we cannot interfere.

\*R.A. 101 of 1879 against the decree of the Subordinate Judge of South Malabar, dated 16th June 1879.

We must accept the declaration made by the Subordinate Judge that extensions of the period for the submission of the award were from time to time granted, though we may observe that applications for such extensions should ordinarily be in writing, and that most certainly orders thereon should be.

If the plaintiff has been prejudiced by the action of the Court below insisting on the delivery by him of his objections in a period less than that allowed by law, the Court below should, on application, review its proceedings.

The appeal is dismissed with costs.

[61] APPELLATE CIVIL.

The 23rd February, 1880.

PRESENT:

MR. JUSTICE KERNAN AND MR. JUSTICE MUTTUSAMI AYYAR.

Sri Raja Satracherla Jogi Razu Bahadur Garu.....(Plaintiff) Appellant,  
versus  
Sri Raja Setarama Razu Pedda Bhalyar Simhulu Garu  
and another.....(Defendants) Respondents.\*

*Bond payable by instalments—Provision that if default be made in payment of one instalment, the whole should become due —Waiver—Act IX of 1871, Schedule II, Article 75.*

Where a bond is payable by instalments with a provision that upon default of payment of any instalment the whole sum then unpaid shall become due with interest, the creditor, though he can elect but once to enforce this provision, may waive the benefit of it not only on the first but on any subsequent default.

THIS was an appeal against the decree of *B. Horsbrugh*, Acting District Judge of *Vizagapatam*, in Original Suit No. 6 of 1876.

The facts of the case and the arguments of Counsel are fully set forth in the **Judgments**.

The Advocate-General (*Hon. P. O'Sullivan*) for the Appellant.

*Mr. Gould* for the Respondent.

**Kernan, J.**—The question in this case is whether plaintiff's cause of action is barred by *Limitation*, Act IX of 1871.

The defendant executed a bond, dated the 6th of April 1867, for Rs. 6,000 payable by eight equal yearly instalments of Rs. 750 each, the first instalment to be paid on the 18th of February 1868, and the other instalments to fall due on the 18th of February in each succeeding year until the 18th of February 1875. The bond recited that the Rs. 6,000, debt was made up thus: Principal sum Rs. 4,000, interest calculated in advance Rs. 2,000. There was a provision in it that, in default of payment of any instalment, the whole sum then remaining unpaid should become due with one per cent. per month interest. The bond was executed to *Nishankuni Ramchandra Patrudugaru* Dewan, the *Merangi* Dewan, but he was only a trustee for plaintiff.

[62] Default was made in payment of the first instalment due on the 18th February 1868, and on the 26th of May 1868 the defendant paid Rs. 750, the first

\* Appeal No. 98 of 1879, against the decree of *B. Horsbrugh*, Acting District Judge of *Vizagapatam*, in O. S. No. 6 of 1876, dated 29th April 1879.