

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice,
and Mr. Justice Parker.*

APPA RÁU (PLAINTIFF), APPELLANT,

and

SURYANÁRÁYANA (DEFENDANT), RESPONDENT.*

1887.
January 26.

Contract Act, s. 74—Penalty—Enhanced rate of interest and compound interest.

A mortgagor agreed that if any instalment of interest accruing due on the mortgage was not paid, he should pay compound interest and discharge the principal in one year, and further that if the principal was not so discharged he should pay interest at an enhanced rate:

Held that the mortgagee could enforce the agreement.

THIS was a suit brought by a mortgagee to recover a balance of interest due on a mortgage bond in which the mortgagor agreed as follows:—

“Should I so fail to pay the amount of interest, I shall pay the interest at 2 per cent. per month, as stated above, on the amount of the interest also from the expiry of the instalment. I shall pay the principal, the amount of interest due, and the amount of interest thereon, within one year in Vizagapatam. Should I fail to clear a year hence the whole amount due to you, I shall pay you the whole of the amount due, together with interest on it from that date at the rate of 3 per cent. per month.”

Default was made in payment of an instalment of interest, and the principal was not discharged within the following year.

The District Múnsif of Vizagapatam held that the agreement set out above was penal in character and not enforceable by the mortgagee, and that he was only entitled to interest at the original rate of 2 per cent. per month and decreed accordingly.

On appeal the District Judge of Vizagapatam confirmed the decree of the District Múnsif.

The plaintiff appealed.

Mr. K. Brown for appellant cited (*inter alia*) Contract Act, s. 74—*Adanky Rámachandra Row v. Indukúri Appalaráju Gáru* (2 M.H.C.R., 451); *Mackintosh v. Crow* (L.L.R., 9 Cal., 689);

APPA RÁU *Behary Loll Doss v. Tej Narain* (I.L.R., 10 Cal., 764); *Sungut Lal v. Baijnath Roy* (I.L.R., 13 Cal., 164).
 SURYANÁRÁ-
 YANA.

The Advocate-General (Honorable *P. O' Sullivan*) for respondent referred to Madras Regulation XXXIV of 1802 and cited *Dip Narain Rai v. Dipan Rai* (I.L.R., 8 All., 185).

The Court (Collins, C.J., and Parker, J.) delivered the following

JUDGMENT:—It has frequently been held that an agreement to add interest to principal and so to pay compound interest is not a penalty. The only question is whether an agreement to pay an increased rate of interest as well as compound interest amounts to a penalty.

The old laws as to usury referred to by the learned Advocate-General have now been repealed, and the only case of authority relied upon is *Dip Narain Rai v. Dipan Rai*.(1) It was therein held that if a lender stipulated for both kinds of damages, viz., compound interest and also interest at an increased rate, the two stipulations together could not be regarded as a fair agreement with reference to the loss sustained by the lender but would amount to a penalty. The learned Judges did not, however, refer to any authorities in support of the proposition thus laid down.

With all deference, we cannot assent to so general a rule, and are of opinion that the question must largely depend upon the circumstances of each particular case. It might easily happen that for special reasons a sum of money might be at first lent on unusually favorable terms and that, if unpaid at the time stipulated, compound together with increased interest, would not amount to more than a fair indemnity against loss.

We think the true principal of decision is that a Court should not interfere to protect persons who, with their eyes open, choose knowingly to enter into even somewhat extortionate bargains, but that it is only when a person has entered into such a bargain in ignorance of the unfair nature of the transaction, advantage having been taken of youth, ignorance or credulity, that a Court of Equity is justified in interfering, *Mackintosh v. Wingrove*.(2) No such plea was raised in the case now before us.

The appeal is allowed, and, in modification of the decrees in the Courts below, we award the plaintiff the sum sued for together with his costs throughout.

(1) I.L.R., 8 All., 185.

(2) I.L.R., 4 Cal., 137.