

## APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyangar and Mr. Justice Moore.

ANNAMALAI CHETTY (PLAINTIFF), APPELLANT,

v.

1902.  
March 14.

VEERABADRAM CHETTY (THIRD DEFENDANT), RESPONDENT.\*

*Contract Act—IX of 1872, s. 74—Act VI of 1899, s. 4.—Stipulation for enhanced interest and for compound interest in case of default—Penalty.*

A bond stipulated for the payment, on a specified date, of half the principal sum advanced, together with interest at the rate of 15 per cent. per annum, and for the payment, on another date, of the balance of the principal, together with interest at the same rate. In case of default in the payment of either instalment it was provided that the whole amount of principal then due was to become payable, together with interest at the rate agreed, and compound interest on the whole amount at the rate of 24 per cent. per annum. Default was made, but the Subordinate Court awarded no compensation :

*Held*, that inasmuch as by section 74 of the Contract Act (as amended) the Court is to award reasonable compensation not exceeding the amount named in the contract, the Subordinate Court should find whether an addition of 9 per cent. was an unreasonable sum to allow as compensation, and, if so, what compensation should be allowed as reasonable for the non-payment of principal in the manner agreed upon ; the stipulation for payment of compound interest being regarded as compensation for non-payment of interest alone and not for non-payment of principal.

SUIT to recover from the first two defendants the sum of Rs. 604-2-0, by the sale of hypothecated property, that being the amount due under a registered hypothecation bond executed to plaintiff by the father of the first two defendants (since deceased), their family being undivided. The bond, which bore date 27th November 1890, stipulated for payment of Rs. 50 out of the principal, and interest on the whole amount, at the rate of 15 per cent. per annum, on 12th August 1891, and for payment of the remaining Rs. 50 of principal, and interest thereon at the same rate, on 12th August 1892. In the event of default in payment of either instalment, the whole amount of principal then due was to be paid, together with interest at the said rate then accrued

\* Second Appeal No. 88 of 1901 presented against the decree of B. Cammaran Nair, Additional Subordinate Judge of Tinnevely, in Appeal Suit No. 432 of 1899, presented against the decree of S. Ramasami Ayyangar, District Munsif of Srivilliputtur, in Original Suit No. 439 of 1899.

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due, and compound interest on the whole at the rate of 24 per cent. per annum. The principal defence was that the compound interest at the enhanced rate was penal and not enforceable. The District Munsif held that the stipulation for compound interest at the enhanced rate was not penal. He decreed the amount claimed, the interest to be calculated at the contract rate up to the date of suit, and at the rate of 6 per cent. thereafter. The Subordinate Judge (on an appeal, preferred by third defendant, the purchaser of the hypothecated property) considered that the provision for compound interest to be payable on default was not penal, and that it gave plaintiff reasonable damages, but he held that the further provision that the compound interest should be payable at the enhanced rate of 24 per cent. was penal. He disallowed the enhanced rate and reduced the amount of the decree to Rs. 331-5-4.

Plaintiff preferred this second appeal. Defendant No. 3 filed a memorandum of objections contending that the compound interest should have been held to be penal, and that plaintiff was only entitled to Rs. 246 in all, in respect of principal and interest.

Mr. *Stephen Andy* and *Ramakrishna Ayyar* for appellants.

Mr. *Peter Pillai* and Dr. *Swaminathan* for respondent.

JUDGMENT.—When the contract has been broken, as it has been here, the law (section 74, Indian Contract Act as revised) provides that the Court shall award reasonable compensation not exceeding the amount named in the contract. Here, however, the Subordinate Judge has awarded no compensation. We must call on the Subordinate Judge to submit a finding on the evidence on record as to whether he holds that an addition of 9 per cent. is an unreasonable amount to allow as compensation and, if so, what compensation he would allow as reasonable for non-payment of the principal according to the instalments. The stipulation in the document for payment of compound interest must be looked on as compensation for non-payment of interest only and not for non-payment of principal.