

COMMISSIONER OF
INCOME-TAX,
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Ilahi Muhammad Shaft v. Commissioner of Income-tax, Delhi(1), where the same question arose in a slightly more extreme form and was decided in the same manner.

Our answer to the question referred to us is in the affirmative. The respondent will receive the costs of this application. Vakil's fee Rs. 250. Deposit to be returned. O.P. No. 16 of 1929 is not pressed and is dismissed with costs. Vakil's fee Rs. 100.

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APPELLATE CIVIL.

*Before Mr. Justice Madhavan Nair and
Mr. Justice Cornish.*

1929,
September
23.

SAIT ASURAM SADA SUK BHATTADU (THIRD
COUNTER-PETITIONER), APPELLANT,

v.

THE SUB-COLLECTOR OF RAJAHMUNDRY AND ANOTHER
(PETITIONER AND SECOND COUNTER-PETITIONER),
RESPONDENTS.*

Civil Procedure Code (Act V of 1908), sec. 144—Restitution—Security bond for return of principal amount only—Stay of execution—Amount deposited in Court, drawn by appellant—Liability to interest on principal amount on restitution, in the absence of provision therefor in the bond.

In an application under section 144, Civil Procedure Code, (1908), for restitution of an amount paid into Court by the respondents and taken out by the appellant on his giving a security bond for repayment of such amount which did not contain a provision for interest on such amount,

Held, that the party who drew out the money was liable to pay interest in restitution on the principal amount under

(1) (1929) I.L.R., 11 Lah., 38.

* Appeal against Order No. 115 of 1928.

section 144 of the Code, even though the security bond did not contain a provision for payment of interest; *Indra Chand Bothra v. Mr. A. H. Forbes*, (1917) 2 Pat. L.J., 149 and *The Collector of Ahmedabad v. Lavji Mulji*, (1911) I.L.R., 35 Bom., 255, followed; *Alagappa Chettiar v. Muthukumara Chettiar*, (1918) I.L.R., 41 Mad., 316, referred to.

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APPEAL against the order of the District Court of East Gōdāvāri at Rajahmundry in E.P. No. 20 of 1927 in O.P. No. 16 of 1922.

G. Lakshmanu for appellant.—The appellant is a mortgagee of the properties, acquired under the Land Acquisition Act; he applied and was joined as a party respondent in one of the connected appeals in the High Court in a land acquisition case. He executed a security bond and drew the money deposited by the Government. There was no stipulation in the bond for paying interest on restitution of the amount taken by him. Hence there is no liability on him to pay interest. Section 144, Civil Procedure Code does not apply, where a security bond has been taken. Apart from the bond there is no ground of liability. Appellant is not liable for the costs, as he was not a party to the decree of the lower Court, and there is no liability on the appellant under the decree. The decision in *Alagappa Chettiar v. Muthukumara Chettiar*(1) is not under section 144, Civil Procedure Code.

Government Pleader (P. Venkataramana Rao) for respondent.—Section 144, Civil Procedure Code applies to this case; interest is payable under section 144, though a bond has been taken for the restitution of the principal amount. The bond does not prohibit an order for interest under section 144, Civil Procedure Code. The point is covered by authority; see *Indra Chand Bothra v. Mr. A. H. Forbes*(2), *Alagappa Chettiar v. Muthukumara Chettiar*(1), and *The Collector of Ahmedabad v. Lavji Mulji*(3).

As for the liability for costs, the appellant is liable to pay what is payable under the decree by the first and the second claimants in the case. The latter were liable to have the costs set off under Order XXI, rule 2, Civil Procedure Code. The appellant claims only through the claimants 1 and 2.

(1) (1917) I.L.R., 41 Mad., 316.

(2) (1917) 2 Pat. L.J., 149.

(3) (1911) I.L.R., 35 Bom., 255.

JUDGMENT.

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MADHAVAN NAIR, J.—This appeal arises out of an application under sections 144 and 151, Civil Procedure Code, for restitution against the third respondent in A.S. No. 256 of 1924 before this Court and also for the recovery of costs that were ordered to be paid by the claimants 1 and 2 in the two connected appeals Nos. 256 of 1924 and 324 of 1924. The facts of the case are stated in detail by the learned District Judge and need not be re-stated.

It appears that a sum of Rs. 22,614-12-0 was ordered to be paid in excess by the District Judge to the claimants in a certain land acquisition proceeding on a reference to him under the Land Acquisition Act. Against the order to pay the excess amount two appeals were preferred to the High Court, one A.S. No. 324 of 1924 by the claimants in that proceeding and another A.S. No. 256 of 1924 by the Government. In A.S. No. 256 of 1924, the Government filed an application for stay of execution of the order that the third respondent may be allowed on furnishing security to take the amount of money that would be deposited by the Government in the lower Court. This order was passed on 24th September 1924, and the money was deposited by the Government on 9th October 1924. The security bond which was executed by the third respondent, the appellant before us, is Exhibit A. In that security bond, the appellant undertakes that

“if A.S. No. 256 of 1924 on the file of the Madras High Court should be partly or wholly decided in favour of the appellant and the third respondent deposits in the Court the said sum of Rs. 22,614-12-0 or any part thereof as he may be required to pay back under the decree of the High Court, this bond shall be void and of no effect, otherwise it shall remain in force.”

He withdrew the money from the Court after executing this security bond. The High Court dismissed A.S. No. 324 of 1924 filed by the claimants who were respondents 1 and 2 and allowed the appeal by the Government, A.S. No. 256 of 1924 to a certain extent, with the result that the amount to be deposited by the Government as compensation for the lands of respondents 1 and 2 was reduced by Rs. 17,148-15-10 and the respondents 1 and 2 were made liable to pay the Government by way of costs Rs. 1,601-1-2 and Rs. 756-12-5. There was no decree against or in favour of the third respondent. Now, the Government have filed the present application for recovery of the amount of Rs. 17,148-15-10 *plus* interest upon that amount as well as the two sums ordered as costs from the third respondent. The third respondent does not deny his liability to pay the amount of Rs. 17,148-15-10; but his case is that he should not be called upon to pay interest upon that amount nor should be asked to pay the costs. The learned District Judge has disallowed both these contentions. In the present appeal, the appellant urges both these grounds.

As regards interest, the argument of the learned Advocate for the appellant is that under the security bond executed by the third respondent he undertook to pay the total amount. There is no provision made for the payment of interest and, therefore, he is not bound to pay interest to the Government. The question is, whether there is the limitation of the liability to pay interest introduced in this security bond. The proceeding is admittedly one under section 144, Civil Procedure Code, and the Court has discretion to order the payment of interest on the amount which the parties are bound to pay back to the Government by way of restitution under that section. We do not think that

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the security bond in any way limits the liability for the payment of interest which the Court has got power to order as against the third respondent. In the decision reported in *Indra Chand Bothra v. Mr. A. H. Forbes*(1), it was held that—

“under section 144 of the Code of Civil Procedure, the Court may in its discretion award such interest as it chooses, and the fact that the principal only is secured by a bond under the order of the Court at the time of the withdrawal of the sum originally decreed, does not affect the liability of the person ordered to make restitution to pay interest in accordance with the section.”

This case was followed by this Court in the decision in *Alagappa Chettiar v. Muthukumara Chettiar*(2). No doubt, the decision of our Court was not one under section 144, Civil Procedure Code, but the learned Judges followed the principle underlying that section. The learned Judge of this Court, SRINIVASA AYYANGAR, J., decided against the contention that the party should be ordered to pay interest on the ground that the undertaking given by the party did not provide for the payment of interest in that case. The learned Judges in the Letters Patent Appeals, following the decision in *Indra Chand Bothra v. Mr. A. H. Forbes*(1), set aside the decision. The decision in *The Collector of Ahmedabad v. Lavji Mulji*(3), referred to by the learned Government Pleader, comes nearer to the point as it relates to the payment of compensation under the Land Acquisition Proceedings, though there was no security bond executed in that case. In that case, as in the one before us, the High Court reduced the amount of compensation payable to the claimant and, when the Government applied to recover from the claimant interest upon the excess

(1) (1917) 2 Pat. L.J., 149.

(2) (1917) I.L.R., 41 Mad., 316.

(3) (1911) I.L.R., 35 Bom., 255.

amount drawn by him from the Court, that claim was allowed. It washeld—

“that the interest claimed should be awarded, inasmuch as the claimant had had the benefit of the money belonging to the Government in excess of that to which the High Court held him to be entitled, and the benefit was represented not only by the excess wrongly taken by the claimant from the District Court but also the amount of interest which the excess carried.”

We are prepared to apply the principle underlying these decisions to the present case. One special feature of this case may be noticed and that is, that the Government asked for an order staying execution of the decree and deposited the money when the order in favour of the third respondent was made here. In these circumstances, we think the order as regards interest should be upheld.

The next argument of the appellant is that he should not be asked to pay costs, because he was not a party to the suit and there was no order against him.

It is true that there was no decree against him as regards costs; but, for the purpose of the present case, we think he stands in the shoes of claimants 1 and 2, and the amount which was ordered to be paid by the High Court was in favour of the claimants. As a matter of fact, the appellant before us has no claim to the money except through the claimants 1 and 2 and, for the purpose of the proceedings under the Land Acquisition Act and these connected proceedings for restitution, his interest must be considered to be identical with the interest of claimants 1 and 2. And, further, in the security bond he undertook to deposit in Court whatever money he might be required to pay back under the decree of the High Court; that is to say, he made himself liable to the decree of the High Court and the

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decree of the High Court made the claimants 1 and 2 in the two appeals before it liable for costs of the Government. In these circumstances, we uphold the order as regards costs as well.

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In the result, the Civil Miscellaneous Appeal is dismissed with costs.

CORNISH, J.—I agree.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Cornish.

1929,
October 17.

O. M. SUBRAMANIAN (PLAINTIFF), APPELLANT,

v.

C. APPADURAI MUDALI AND ANOTHER (DEFENDANTS),
RESPONDENTS.*

Original Side Fee Rules, O. VI, r. 1 (b) and (c)—Suit on Original Side—Posted for final disposal—Some defendants admit claim, others ex parte—Plaintiff calls one defendant to prove claim against ex parte defendants—Whether suit “disposed of”—Applicability of clause (b) in r. 1.

Where a suit on the Original Side of the High Court came on for final disposal, and the first and the second defendants admitted the plaintiff's claim, and the third and the fourth defendants were *ex parte*, and the plaintiff had to call the first defendant to prove his claim against the third and the fourth defendants, and the suit was decreed, *held*, that the suit was not “disposed of” within the meaning of Order VI, rule 1 (c) of the Original Side Fee Rules, but that the suit was decided “*ex parte*” with reference to some of the defendants, and “on confession of judgment” with reference to the other defendants, and that therefore the plaintiff would be entitled to tax his costs only under clause (b) of the above rule.

* Original Side Appeal No. 32 of 1929.