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proceedings in insolvency and that the present petition is therefore unsustainable. We therefore agree with the learned District Judge and dismiss this appeal with customary costs throughout including pleader's fee. This disposes of the memorandum of objections.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair and Mr. Justice Jackson.

1932,
 October 21.

SRI VENKATACHALAPATHI NIDHI, LTD.,
 COIMBATORE, AND TWO OTHERS (PLAINTIFFS AND NIL),
 APPELLANTS,

v.

G. K. NANJAPPA GOUNDAN AND THREE OTHERS
 (DEFENDANTS ONE TO THREE AND NIL), RESPONDENTS.*

Negotiable Instrument—Suit on a, under the summary procedure under O. XXXVII of the Code of Civil Procedure (Act V of 1908)—Instrument silent as to interest—Power of Court to award the statutory rate of interest under sec. 80 of Indian Negotiable Instruments Act (XXVI of 1881).

In a suit on a negotiable instrument under the summary procedure, the Court has power to award the statutory rate of interest, six per cent per annum, when there is no term in the instrument for the payment of interest. The operation of section 80 of the Negotiable Instruments Act is not excluded by Order XXXVII, rule 2 of the Code of Civil Procedure.

APPEAL against the decree of the Court of the Subordinate Judge of Coimbatore in Original Suit No. 64 of 1925.

M. Krishna Bharati for appellants.

S. Ranganadha Ayyar for respondents.

The JUDGMENT of the Court was delivered by MADHAVAN NAIR J.—The plaintiff is the appellant. The suit out of which this appeal arises was instituted by him for the recovery of Rs. 5,000 with interest on five hundis, Exhibits A to A-4. A decree has been given in his favour for the principal amount. The learned Judge having refused to award him interest on the principal amount, in this appeal the plaintiff claims that he is entitled to interest.

The suit was instituted under Order XXXVII of the Code of Civil Procedure under the special rules relating to summary procedure on negotiable instruments. Under rule 2 (2) (a) of this Order the plaintiff is entitled to get interest on the amount claimed in accordance with the provisions of section 79 or section 80, as the case may be, of the Negotiable Instruments Act of 1881 up to the date of the institution of the suit, or for the sum mentioned in the summons, whichever is less, and for interest up to the date of the decree at the same rate or at such other rate as the Court thinks fit. Since there is no agreement to pay any interest in the documents, section 79 is obviously inapplicable, and so, under Order XXXVII, rule 2 (2) (a), the plaintiff will be entitled to get only the statutory rate of interest, six per cent, under section 80. But the learned Judge refuses to apply section 80 because he says that the operation of this section is excluded by Order XXXVII, rule 2. We have read the section carefully. We are not able to see how the operation of section 80 of the Indian Negotiable Instruments Act is excluded by Order XXXVII, rule 2, Civil Procedure Code. On the other hand, it seems to us that Order XXXVII, rule 2, makes section 79 or section 80, as the case may be, specifically applicable to a case filed under Order XXXVII. We cannot therefore accept the opinion of

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NIDHI, LTD.

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NANJAPPA
GOUNDAN.

MADHAVAN
NAIR J.

VENKATA-
CHALAPATHI
NIDHI, LTD.

v.
NANJAPPA
GOUNDAN.

MADHAVAN
NAIR J.

the learned Judge that the plaintiff is not entitled to the statutory interest mentioned in section 80.

It is argued on behalf of the appellant that he is entitled to thirty-three and one-third per cent which he has claimed in the plaint. He contends that Order XXXVII, Civil Procedure Code, supports him, having regard to the language of rule 2, namely, "the allegations in the plaint shall be deemed to be admitted". We are not able to accept this contention. No authority in support of the plea has been cited. On the other hand it appears to us that that interpretation cannot be accepted, because in clause (a) of sub-rule 2, special provision for interest is made to the effect that section 79 or section 80 of the Negotiable Instruments Act will apply as the case may be. Therefore the admissions of the allegations in the plaint relied upon by the appellant under sub-rule 2 cannot refer to the award of interest which is specifically provided for in clause (a). We would therefore allow the appeal and award interest at the rate of six per cent from the date of the hundis to the date of the decree and subsequent interest also at the same rate thereafter.

The plaintiff will get his costs in this appeal on the amount which we have decreed to him.

G.R.
