

## APPELLATE CIVIL.

*Before Mr. Justice Varadachariar and Mr. Justice Burn.*1934,  
August 7.VEPA SURAMMA AND ANOTHER (DEFENDANTS 1 AND 3),  
APPELLANTS,

v.

CHAKKA VENKAYYA AND EIGHT OTHERS (PLAINTIFFS 1 AND  
2 AND DEFENDANTS 2 AND 4 AND NIL),  
RESPONDENTS.\**Indian Contract Act (IX of 1872), sec. 74—Mortgage—Provision for interest on interest at an enhanced rate from date of default—Reduction of interest on the ground that it amounted to penalty—Character of such rate of interest—Whether mortgage security enures for the reduced rate.*

A mortgage bond provided for payment of interest on interest at an enhanced rate from the date of default and the lower Court in the exercise of its powers under section 74 of the Indian Contract Act reduced the enhanced rate of interest. On objection taken to the enforceability by way of charge on the mortgaged properties of the compensation allowed by the Court in place of the provision in the bond for enhanced interest,

*held*, that the interest upon interest is part of the contract, and the fact that under section 74 of the Contract Act the Court is given power to reduce that rate under certain contingencies does not make the interest at the reduced rate any the less a claim under the contract. Though the word "penalty" is used in section 74 of the Contract Act when speaking of the "enhanced interest", yet it is not used in the sense of a claim *dehors* the contract.

APPEAL against the decree of the Court of the Subordinate Judge of Vizagapatam, dated 8th March 1926 and passed in Original Suit No. 38 of 1924.

*G. Lakshmana* for appellants.*P. Somasundaram* for respondents.

The JUDGMENT of the Court was delivered by VARADACHARIAR J.—This appeal arises out of a suit on a mortgage (Exhibit A in the case) dated 16th October 1908. Only two questions were raised in the memorandum of appeal ; one relating to limitation in respect of interest accruing due between the years 1908 and 1912, and the other relating to the enforceability by way of charge on the property of the compensation allowed by the Court in place of the provision in the bond for enhanced interest.

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As regards the first point, Mr. Lakshman's argument is that an independent suit for the amount of interest accruing due each year, between the years 1908 and 1912, could have been brought, that these claims for interest furnished separate causes of action, and therefore this suit brought in 1924 is to that extent barred by limitation. We are unable to agree with this contention. The language of the document shows that interest is payable till the principal amount is paid and ordinarily there is only a single cause of action for both principal and interest as from the date when the principal becomes payable. There is no doubt a further provision in the document fixing a date for payment of interest annually, but it is not reasonable to construe this as giving an independent cause of action for the claim for interest at the end of each year. This has obviously been put in only for the purpose of entitling the mortgagee to claim interest upon interest, if the interest is not paid on the due dates. This argument therefore fails.

The other argument on behalf of the appellants was put as follows :—Under the explanation to section 74 of the Contract Act the stipulation for

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increased interest from the date of default may be a stipulation by way of "penalty", and the lower Court has in this case in exercise of its powers under section 74 reduced the enhanced rate of interest payable upon interest to twelve annas per annum from the agreed rate of thirteen annas; the amount thus allowed by the Court is not really a claim for interest under the bond but one by way of "damages", and in respect of this amount no security created by the document can be available. In support of this proposition Mr. Lakshmanna referred to the case of *Motan Mal v. Muhammad Bakhsh*(1). The Full Bench there took care to point out that neither by the most liberal interpretation of the contract nor even by any kind of implication therefrom would it be possible to say in that case that interest was payable *under the contract*. Therefore they treated it as a claim for damages pure and simple. In that sense, it would not really form part of what is spoken of in the Transfer of Property Act as "mortgage money" and therefore it cannot be enforced by way of charge on the property. But that is not the position here. The interest upon interest is clearly part of the contract; the fact that under section 74 of the Contract Act the Court is given power to reduce that rate under certain contingencies does not make the interest at the reduced rate any the less a claim under the Contract Act. No doubt, the word "penalty" is used in section 74 of the Contract Act when speaking of "enhanced interest", but it is not in the sense of a claim *dehors* the contract, because the correlative

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(1) (1922) I.L.R. 3 Lah. 200 (F.B.).

expression "liquidated damages", well known to the English Law and used in the Contract Act prior to 1899, has always been understood to mean a provision made in the contract itself. Therefore the mere use of the expression penalty or damages ought not to be understood as amounting to a claim outside the contract.

Another point was suggested by Mr. Lakshmanna relating to the claim for interest upon interest after 1912. That point was not raised either in the Court below or in the grounds of appeal here and the clause in the mortgage document is so ambiguous that one cannot safely say that the parties did not intend that interest in arrears should carry interest even after 1912. There is no particular reason that we can see for drawing a distinction in this respect between default in payment of interest prior to 1912 and default in payment of interest subsequent to 1912. The appeal therefore fails and is dismissed with costs.

Mr. Somasundaram on behalf of the respondents has brought it to our notice that during the pendency of the appeal the plaintiffs in the Court below have died and that their representatives have been brought on the record and that affidavits have been filed here stating that the amount due under this decree has fallen to the branch of the second plaintiff and that it is accordingly payable to the ninth respondent here. In the absence of fuller information and of the appellants' assent we are not prepared to make the necessary variation in the decree here to give effect to this representation. Mr. Somasundaram agrees that it will be sufficient if we note it.

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G.R.