

not against the minors and cannot be executed against them. But we wish to make it perfectly plain that nothing we have said is to prejudice in any manner the plaintiffs' right to apply to the Rangoon High Court for the amendment of the plaint or of the decree, or to obtain any other similar relief.

No order is necessary in the civil revision petition.

A.S.V.

CHIDAMBARAM  
CHETTIAR  
v.  
NATIONAL CITY  
BANK OF  
NEW YORK.

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## APPELLATE CIVIL.

*Before Mr. Justice Madhavan Nair.*

KAMBALA VENKANNA (PURCHASER), APPELLANT,

v.

GOTETI VEERARAJU AND ANOTHER (SECOND DEFENDANT  
AND PLAINTIFF), RESPONDENTS.\*

1936,  
April 21.

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*Interest—Contribution—Amount claimed by way of—Interest  
on—Rate of, and time from which it should be awarded—  
Discretion of Court as to.*

Though the awarding of interest on the amount claimed by way of contribution does not come under any specific provision of law, yet general equitable considerations justify the award of the same and as such the Court has a discretion to decide, on the facts and the circumstances of each case, the rate of interest and the time from which it should be awarded.

APPEAL against the decree of the Court of the Subordinate Judge of Narasapur in Appeal Suit No. 48 of 1928 preferred against the decree of the Court of the District Munsif of Narasapur in Original Suit No. 173 of 1925.

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\* Second Appeal No. 1881 of 1931.

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*P. Somasundaram* for appellant.

*V. Suryanarayana* for respondents.

*Cur. adv. vult.*

### JUDGMENT.

The purchaser from the plaintiff who was made a supplemental respondent in the lower appellate Court is the appellant in this second appeal.

The facts of the case are stated clearly in the judgments of the Courts below and need not be re-stated in detail. For the purposes of this second appeal which raises only one point, the only facts relevant are these : The plaintiff sued for contribution from the third item of the property, the owner of which is the second defendant who had purchased it from the first defendant. Items 1 and 2, along with the third and some other items, were subject to a first mortgage. Some of these items were subject to a second mortgage also. We are not concerned with the second mortgage or with items other than items 1, 2 and 3 in this second appeal. Plaintiff's father became the purchaser of items 1 and 2 in execution of a small cause decree in Small Cause Suit No. 84 of 1902 and after him the plaintiff came into possession of the same. The first defendant had become the owner of the third item and had sold it to the second defendant. The first mortgagee's son filed Original Suit No. 54 of 1910 in the Ellore Sub-Court impleading the first defendant also, among others, and obtained a decree and in execution thereof brought items 1 and 2 for sale on 30th June 1913 and from the proceeds realised his decree amount. The third item which was also

subject to the first mortgage was not proceeded against in execution. The plaintiff instituted the suit, out of which this second appeal arises, on 30th June 1925 for contribution from item 3 also rateably according to its value since it was included in the original mortgage. The defendants denied the plaintiff's right to contribution.

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The District Munsif granted the plaintiff a decree on 30th September 1927 for contribution from the third item. It was held by him that this item was liable to contribute Rs. 316-4-0 towards the decree debt (see issue 17). It was also held (see issue 15) that the plaintiff was entitled to claim interest on the amount from the date of the registered notice, Exhibit F, dated 20th February 1917, issued by him claiming the amount and interest. On appeal by the second defendant, the lower Court's decree was confirmed with regard to the amount decreed but the learned Judge disallowed the interest which had been allowed from the date of notice till the date of the lower Court's decree.

In this second appeal, Mr. Somasundaram on behalf of the appellant claims that he is entitled to a larger sum than Rs. 316-4-0 for contribution and that he is also entitled to interest on that amount. He claims interest from the date of payment of the decree amount by the appellant's predecessor, i.e., 30th June 1913. If this plea is not accepted, he argues that he is entitled to interest at least from the date of notice as awarded by the first Court.

As regards the amount of contribution claimed, it is agreed between the parties that the proper amount to which the appellant is entitled should be Rs. 344-0-2 and not Rs. 316-4-0. If the

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appellant is entitled to interest, he is entitled to it on this amount. Thus the only question that remains to be determined in this second appeal is whether the appellant can claim interest on the amount which he is entitled to get by way of contribution from the respondent (the second defendant) and from what date.

The question is purely one of law ; but no decisions directly bearing on the point, either English or Indian, have been brought to my notice. Of the various cases cited, the following may be referred to as somewhat relevant. In *Raushan Ali Khan Chowdhury v. Kabi Mohan Moitra*(1) it was assumed that the person claiming contribution was entitled to interest on the amount ; but it was disputed whether he should be allowed interest at twelve per cent per annum as the lower Court had granted or whether he should get only six per cent as provided for in the original mortgage decree. On this point, in coming to the conclusion that the plaintiffs are entitled to the interest allowed by the lower Court, the learned Judges said:

“ We think that it would not be right and proper to refuse to the plaintiffs the ordinary rate of interest which in a case like this the Court does allow.”

The right to claim interest was obviously put by the learned Judges on equitable considerations. The question whether the plaintiffs are entitled to claim interest at all was not discussed as the point was not disputed. *Hari Raj Singh v. Ahmad-ud-din Khan*(2) is another case where also the right to claim interest on the contribution amount was assumed ; but the circumstances of the case were taken into consideration in refusing interest prior to the date

(1) (1906) 4 C.L.J. 79.

(2) (1897) I.L.R. 19 All. 545.

of the institution of the suit. In Second Appeal No. 1544 of 1931 (unreported) VENKATARAMANA RAO J. said :

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“The plaintiff is certainly entitled to interest on the amount decreed to him from the date of payment by him and also to a charge for the amount allowed.”

*Krishnaswami Pillai v. Janakalaxmi Ammal*(1) is another case which may also be referred to in this connection. In *Ahmad Wali Khan v. Shams-ul-jahan Begam*(2), strongly relied on by the respondent, the plaintiff, who was treated by the Privy Council as a co-mortgagor along with the respondents and had paid off the whole of the joint debt due on the mortgage, was given a proportionate share of that amount with interest from the date of the institution of the suit. Payment of the debt was made by him in 1896. Before the Privy Council it was argued that, treating him as a co-mortgagor, he was entitled to get one-third share of the debt together with interest, obviously from the date of payment. Though the point was thus raised in the course of the arguments, nothing was said about it in the judgment of the Privy Council, and so it cannot be said to be a decision against the appellant. In the first Court, treating him as a surety, the plaintiff was awarded the full amount including the interest claimed by him. This judgment was set aside by the High Court. The Privy Council discharged the decrees of the two Courts in the manner indicated above. In the circumstances this decision cannot be understood as one holding that a person claiming contribution is not entitled to claim interest on the amount claimed. The

(1) (1933) 66 M.L.J. 308.

(2) (1906) I.L.R. 28 All. 482 (P.C.).

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passages cited from Fisher on Mortgages, 6th Edition, page 909, paragraphs 1805 and 1810 ; Coote on Mortgages, Vol. I, page 801 ; and the decision in *Ashworth v. Munn*(1) do not directly bear on the point. Section 82 of the Transfer of Property Act, which explains " contribution ", has been relied on by both sides in support of their respective contentions. It is said on the one side that " mortgage debt " used in the section refers only to the exact amount of the mortgage, while on the other side it is said that it means the mortgage money, which would include the principal money and interest ; [see section 58 (a)].

This being the position with regard to the authorities, I think the point has to be decided with reference to principle. I do not see why on principle the plaintiff, who had paid off the entire decree amount and saved the property of the defendant from being proceeded against in execution, should be deprived of interest on the money paid in so far as it refers to the amount payable by the defendant. As mentioned in *Raushan Ali Khan Chowdhury v. Kali Mohan Moitra*(2), I think, in the circumstances, it would not be " right and proper " to refuse to the plaintiff interest on the amount claimed by him from the defendant. Even if the payment of interest does not come under any specific provision of law, still, if general equitable considerations justify the award of the same, that it is quite open to the Courts to award it, is a principle which cannot be disputed. In my opinion, equitable considerations require in a case like the present that interest should be awarded to the plaintiff on the contribution

(1) (1886) 34 Ch. D. 391.

(2) (1906) 4 C.L.J. 79.

amount. The claim being founded in equity, it is left to the Court to decide the rate of interest that should be awarded and the time from which it should be awarded. No doubt, logically speaking, the interest should be awarded from the date of payment of the decree amount, 30th June 1913. The plaintiff could have asked for the amount as well as the interest soon after the payment made by him. But he did not do so. The suit was instituted on 30th June 1925. By his delay in asking for the amount, the amount of interest has become necessarily enhanced. I do not see why the plaintiff should be given the indulgence of being allowed to claim a larger amount of interest by his delay in taking proceedings. But this plea cannot be urged against him if he is allowed to claim it from the date of demand by him, which was 28th February 1917 (see Exhibit F). This is the date from which interest was allowed by the first Court in his favour. The defendant knew on that date that interest was going to be claimed and he could have averted the enhancement of the amount by paying it promptly. I do not think it will be inequitable in the circumstances to award interest on the contribution amount allowed in favour of the appellant, that is, Rs. 344-0-2, from 28th February 1917 at the rate of six per cent per annum. In the result, in modification of the lower Court's decree, I hold that the appellant is entitled to recover Rs. 344-0-2 with interest at the rate of six per cent per annum from the date of the registered notice, 28th February 1917, interest on the aggregate sum being allowed at the same rate till the date of payment. The parties will pay and receive proportionate costs throughout.

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