

Before Mr. Justice Know and Mr. Justice Blair.

BEHARI LAL (PLAINTIFF) v. RAM GHULAM AND OTHERS (DEFENDANTS).^{*}
*Act No. IV of 1882 (Transfer of Property Act), sections 83, 84—Mortgage
 —Repayment of money lent—Lender not bound to accept payment by
 instalments unless he has so agreed.*

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Where no stipulation or covenant has been made between the contracting parties as to the repayment of a sum borrowed, the lender is entitled to decline to receive payment of a sum due to him in instalments and he can claim that the whole sum due be paid at one and the same time.

On the 9th of May 1891 Narain Das and others mortgaged to Ganga Ram two shops and a share in mauza Silsanda. On the 9th of March 1892 the mortgagors sold the share in mauza Silsanda to Muhammad Azim Khan and others, and on that sale Rs. 660 were left with the vendees to be paid to the mortgagee in discharge of the mortgage of 1891. In March 1893 Ram Ghulam and others brought a suit for pre-emption against Muhammad Azim Khan and his co-vendees, and obtained a decree, which directed that a deposit of Rs. 881-5-0 was to be made by the pre-emptors to the credit of the vendees. In that amount the above-mentioned sum of Rs. 660 was included. On the 11th of July 1893 Ram Ghulam sent a post-card to Ganga Ram informing him that Rs. 660 had been paid into Court on his account. This money Ganga Ram declined to receive on the ground that the amount due to him was Rs. 773. On the 7th of December 1898, Behari Lal, as the representative of his father Ganga Ram, who was then deceased, instituted a suit against the mortgagors and the pre-emptors for recovery of a sum of Rs. 1,444, odd as due on the mortgage. The Court of first instance (Subordinate Judge of Farrukhabad) gave the plaintiff a decree for practically the whole of his claim. The defendants pre-emptors appealed, raising the plea that as they had paid into Court Rs. 660 and had given notice of that deposit to the mortgagee, no interest was thereafter due from them. The lower appellate Court (District Judge of Farrukhabad) held that as there was nothing in the mortgage deed which bound the mortgagors to repay the principal and interest in one lump sum within the

^{*} Second Appeal No. 830 of 1899, from a decree of Pandit Sri Lal, District Judge of Farrukhabad, dated the 30th of August 1899, modifying a decree of Pandit Rai Indar Narain, Subordinate Judge of Fatchgarh, dated the 13th of April 1899.

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term of three years, and as the sum of Rs. 660 more than covered the principal sum secured by the deed, the mortgagee acted unreasonably in rejecting the deposit made under the orders of a competent Court and could not equitably claim interest upon the sum so deposited. That Court accordingly granted the mortgagee only the sum of Rs. 873-4-0, together with interest on Rs. 113-7-6.

Against this decree the mortgagee appealed to the High Court.

Babu *Jogindro Nath Chaudhri* and *Munshi Gulzari Lal*, for the appellant.

Pandit *Sundar Lal* and Pandit *Baldeo Ram Dave*, for the respondents.

KNOX and BLAIR, JJ.—Certain of the respondents had, on the 9th May, 1891, executed a bond, whereby they hypothecated two shops and a certain share in mauza Silsanda to the father of the present appellant. On the 9th of March, 1892, the mortgagor sold the share in mauza Silsanda to other parties, and left the sum of Rs. 660 out of the consideration money with the vendees, saying that it was to be paid to the appellant in satisfaction of the bond of 1891. In March, 1893, Ram Ghulam and others, who are also arrayed as respondents in this Court, brought a pre-emption suit against Muhammad Azim Khan and his co-vendees, and obtained a decree, which directed that a deposit of Rs. 881-5-0 was to be made by the pre-emptors to the credit of Azim Khan and others aforesaid. The sum of Rs. 660 is included in the amount of Rs. 881-5-0. Ram Ghulam, on the 11th of July, 1893, had sent a post-card to Ganga Ram, informing him that Rs. 660 had been paid into Court on his account. Ganga Ram declined to take this on the ground that the amount due to him was Rs. 773. Nothing further was done in the matter until the present suit was instituted by the representative of Ganga Ram, claiming to recover the sum of Rs. 1,444 odd as due on the mortgage. The Court of first instance gave a decree for Rs. 1,378, practically for all that the appellant claimed. The lower appellate Court gave force to the plea raised by the respondents Ram Ghulam and others, which was to the effect that as they had deposited Rs. 660, and had given notice of that deposit, no

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interest was thenceforward due. The Court held that as there was nothing in the mortgage deed which bound the mortgagors to repay the principal and interest in one lump sum within the term of three years, and as the sum of Rs. 660 more than covered the principal sum secured by the deed, the appellant acted unreasonably in rejecting the deposit made under the orders of a competent Court, and he could not equitably claim interest upon the sum so deposited. It accordingly granted the appellant only the sum of Rs. 873-4-0, together with interest on Rs. 113-7-6.

The main plea urged before us is that the plaintiff was not bound to accept payment of part of the mortgage money, and not being so bound, he is entitled to interest and compound interest as if it had never been deposited. Neither on the part of the appellant nor of the respondents were we referred to any precedents either of English or of Indian law. The appellant took his stand upon the principle to be found in sections 83 and 84 of the Transfer of Property Act. It seems to us that where no stipulation or covenant has been made between the contracting parties as to payment of a sum borrowed, the lender is entitled to decline to receive payment of a sum due to him in instalments, and he can claim that the whole sum due be paid at one and the same time. Such seems to us to be the principle which governs the payment of moneys lent in English law, and we know of no opposite authority in the Indian law. It is, moreover, in general accordance with the principles of contract law as laid down in Leake and other leading authorities. We might go further and say that on the principle of common sense a lender who wants to put his money to use would be obviously embarrassed if he were repaid a large amount in continual dribblets, and we do not see why he should be compelled to undergo this loss. We accordingly set aside the judgment and decree of the lower appellate Court, and restore that of the Court of first instance, with costs in proportion to success and failure. This disposes of the objection under section 561.

The decree will contain provisions for payment within six months from this date.

Appeal decreed.