

Before Mr. Justice Richards and Mr. Justice Tudball.

DEBI SAHAI AND ANOTHER (PLAINTIFFS) v. GANGA SAHAI AND OTHERS  
(DEFENDANTS).\*

1910  
May 17.

Act No. IX of 1872 (Indian Contract Act), sections 16 and 19 A—Contract—  
Undue influence—Facts necessary to justify interference of court on the  
ground of undue influence.

The power of a court to interfere with contracts alleged to be unconscionable is limited by the provisions of the Indian Contract Act, 1872, sections 16 and 19A. The fact that an excessive rate of interest is charged in a contract is not alone sufficient to establish that the making thereof has been induced by undue influence, but the court must also find that the lender was in a position to dominate the will of the borrower when the contract was entered into before any presumption arises that the contract was induced by undue influence. *Balkishan Das v. Madan Lal* (1), *Kirpa Ram v. Sami-ud-din Ahmad Khan* (2) and *Dhanupal Das v. Maneshar Bahsh Singh* (3) referred to.

\* THE facts of this case were as follows :—

The defendant No. 1, who was the father of the other defendants, had executed in favour of the plaintiffs two mortgage-deeds for Rs. 215 and Rs. 99 on August 5th, 1897, and December 5th, 1899, respectively. The rate of interest in the first deed was Re. 1-14-0 per cent. per mensem, compound interest, with annual rests. There was a similar stipulation for compound interest in the second bond, but the rate agreed upon in this case was Re. 1-10-0 per cent. per mensem. The defendants had paid only Rs. 150, so the plaintiffs sought to recover the balance. The defendants pleaded, *inter alia*, that the rate of interest and compound interest entered in both the bonds were very severe and penal; and it was not enforceable by the court.

The courts below decreed the claim, but allowed interest at the rate of 2 per cent. per mensem, simple interest only. The judgement of the District Judge was as follows :—

"In this matter the learned Subordinate Judge has reduced the rate of interest on two bonds as unconscionable. The appellants appeal against the reduction. The defendants pleaded that the rate of interest was hard and unconscionable, but even had they not done so, it has been laid down in *Poma Dongra v. William Gillespie* (4) and *Balkishan Das v. Madan Lal* (1) that a court can *suo motu* reduce interest as unconscionable. It has been

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\* Second Appeal No. 913 of 1909, from a decree of Louis Stuart, District Judge of Meerut, dated the 15th of July, 1909, confirming a decree of Raghubansa Lal, Subordinate Judge of Meerut, dated the 19th of May, 1909.

(1) Weekly Notes, 1907, p. 55.

(2) (1903) I. L. R., 25 All., 284.

(3) (1906) I. L. R., 28 All., 570.

(4) (1907) I. L. R., 31 Bom., 343.

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laid down that in the case of an unconscionable bargain a court can interfere, in absence of undue influence or penal clauses, to reduce interest. Amongst many decisions to that effect may be mentioned *Kirpa Ram v. Samiuddin Ahmad Khan* (1), *Raghunath v. Nilkanth* (2) and *Raja Mokham Singh v. Raja Rup Singh* (3). There can thus be no doubt as to the fact that the learned Subordinate Judge has discretion to reduce interest. It remains to be decided whether he exercised that discretion wisely. The facts are as follows on this point:—One bond is dated 5th August, 1897, and was for Rs. 215. The other is dated 5th December, 1899, and was for Rs. 99. The learned Subordinate Judge has awarded simple interest at Rs. 24 per cent. and the total decree is for Rs. 750, as Rs. 150 have already been repaid. The appellants will receive in all their principal and twice as much again as interest. The security appears ample. Under the circumstances I consider that the learned Subordinate Judge exercised his discretion wisely. I dismiss this appeal.”

The plaintiffs appealed to the High Court.

Dr. Satish Chandra Banerji, for the appellants:—

The courts below were wrong in making a new contract for the parties. There is no suggestion in the written statement that any undue influence had been exercised upon the mortgagor or that there was fraud or any other inequitable circumstance. The rate of interest was a matter of contract, the parties entered into it with their eyes open, and unless a case were made out within the meaning of the amended section 16 of the Indian Contract Act, the court could not interfere simply because in its opinion the rate was high; *Dhanipal Das v. Maneshar Bakhsh* (4). The Allahabad cases relied upon by the court below are distinguishable, and so far as they purport to lay down certain equitable principles upon the strength of some old cases, they can no longer be supported. Compound interest is not penal, nor does the fact of the debtor's necessity establish by itself a case of undue influence; *Sundar Koer v. Rai Sham Krishen* (5). Reference was also made to *Meghraj v. Hargayan* (S. A. No. 891 of 1909, decided on the 16th of May, 1910).\*

\* The judgements in this case were as follows:—

RICHARDS, J.—This appeal arises out of a suit to enforce a mortgage. The only question which has been argued in the appeal is that the court below was not justified in reducing the interest from the contractual rate of 15 per cent. per annum compound interest to 15 per cent. simple interest all through. There

(1) (1903) I. L. R., 25 All., 284.

(2) (1898) L. R., 20 I. A., 112;

I. L. R., 20 Calc., 843.

(3) (1893) L. R., 20 I. A., 127;

I. L. R., 15 All., 352.

(4) (1908) I. L. R., 28 All., 70 (588).

(5) (1906) I. L. R., 84 Calc., 150.

The respondents were not represented.

RICHARDS and TUDBALL, JJ. :—This appeal arises out of a suit on foot of two mortgages. The rate of interest was Re. 1-14-0 per cent. per mensem with yearly rests. The first bond was

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appears to be no reason for setting aside the contract of the parties save the fact that the rate of interest was 15 per cent. compound interest with half-yearly rests, coupled with the fact that the security was considered by the court below to be a good security. The learned Judge in reducing the interest said :—“This is in my opinion an unconscionable rate on what was apparently a perfect security. The court has absolute discretion to reduce the interest in such a case even when the point is not raised.” He then refers to the case of *Balkishan Das v. Madan Lal* (W. N., 1907, p. 55). The facts of that case were very different from the facts of the present case, as will appear on a reference to the report. At the time of the execution of the bond the borrower was heavily indebted to the lender. He was an extravagant and dissipated man and the terms of the contract were undoubtedly hard and unconscionable. Not only was the rate of interest extremely high, Rs. 37-8 per cent. per annum with six-monthly rests, but the bond contained other onerous terms. As I was party to the decision in *Balkishan Das v. Madan Lal*, and as I think the case has been a little misunderstood, I desire to say a few words on what I conceive to be the law on this question. In my opinion the court's power to interfere with contracts in cases like the present is limited to the provisions of the Indian Contract Act. Section 19A of that Act provides that “when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside, either absolutely, or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the court may seem just.” In order to see what is meant by the expression ‘undue influence’ we have to look to the provisions of section 16, clauses (1) and (2). Then comes clause (3) which is the only clause that could possibly apply to a case like the present. This clause provides that “where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.” Now, assuming for the purposes of argument that the court is entitled to hold a bargain to be unconscionable merely on the ground that the rate of interest is excessive having regard to the security, it is necessary to find also that the lender was in a position to dominate the will of the borrower when the contract was entered into before any presumption arises that the contract was induced by undue influence. There is nothing in the present case to suggest that the lender was in a position to dominate the will of the borrower. See also *Dhanipal Das v. Maneshwar Bakshi* (I. L. R., 28 All., 570). I think the appeal should be allowed.

TUDBALL, J.—I fully agree. In all cases of this kind the court must look to the facts and circumstances of the case, and unless in a case there is unfair

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dated the 5th of August, 1897, for Rs. 215, and the second was dated 5th December, 1899, for Rs. 99. The total amount claimed was Rs. 1,270-9-0 after allowing payment of Rs. 150. The only question is whether or not the court below was justified in reducing the interest from the contractual rate of Re. 1-14-0 per cent. per mensem compound interest with yearly rests to Rs. 24 per cent. per annum simple interest. The learned Judge says:—The defendants pleaded that the rate of interest was hard and unconscionable," and he then goes on to cite cases upon which he relies as authorities for the proposition that the court can of its own motion reduce interest as unconscionable. He says:—"It has been laid down that in the case of an unconscionable bargain a court can interfere in the absence of undue influence or penal clauses to reduce interest. There can be no doubt that the learned Subordinate Judge had discretion to reduce interest." It will be seen that it was neither pleaded nor proved that there was any undue influence or any penalty. In the judgement of this Bench delivered on the 16th of May, 1910, in Second Appeal No. 891 of 1909, we pointed out that the power of a court to interfere with contracts is limited to the provisions of the Contract Act. There are dicta to be found in the cases of *Balkishan Das v. Madan Lal* (1) and *Kirpa Ram v. Sami-ud-din Ahmad Khan* (2) which seem to us liable to misconstruction. These dicta must be read in conjunction with the facts of the cases. We therefore think it right to refer to the decision of their Lordships of the Privy Council in the case of *Dhanipal Das v. Maneshar Bakhsh Singh* (3). At page 583 of the report their Lordships,

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dealing, the court must enforce the contract made by the parties. In the present case, there is absolutely nothing to suggest that there was undue influence of any sort or any unfair dealing on the part of the lender, and I can see no just reason why any relief should be given to the debtor under these circumstances. I would also admit the appeal.

By THE COURT.—Order of the Court is that we allow the appeal, modify the decrees of both the courts below and decree the plaintiffs' claim for Rs. 908-8-0 plus simple interest from the date of suit at 6 per cent. per annum as the plaintiffs waited for a long time. We direct that the parties abide their own costs in all courts. We extend the time for payment to the 16th of November, 1910.

(1) Weekly Notes, 1907, p. 55. (2) (1909) I. L. R., 25 All., 284.

(3) (1906) I. L. R., 28 All., 670.

referring to the decision of the Subordinate Judge which had been confirmed by the Judicial Commissioner of Oudh, said as follows:—"The Subordinate Judge was wrong in deciding the case in accordance with what he supposed to be English equitable doctrine. He ought to have considered the terms of the amended section 16 only." The Contract Act is referred to. It is quite clear that it is only under section 16 in cases like the present that the court has power to interfere with a contract entered into by the parties. The section is limited to contracts induced by undue influence. A contract induced by undue influence is defined by section 16, clause (1) of the Contract Act. Clause (3) is the only clause which refers to unconscionable bargains, and in applying the provisions of the section it will be seen that it is only where the lender is in a position to dominate the will of the borrower that a presumption arises that a transaction which on the face of it appears to be unconscionable was induced by undue influence. In the present case, as already pointed out, undue influence was neither pleaded nor proved, nor is there anything whatever to show that the plaintiffs were in a position to dominate the will of the borrowers. Under these circumstances we allow the appeal and modify the decrees of the courts below by decreeing the plaintiffs' claim in full. As the rate of interest was in our opinion very high, we allow no interest from the date of suit. The appellants must have their costs.

*Appeal allowed.*

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