

APPELLATE CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice King

GAJRAJ SINGH AND ANOTHER (PLAINTIFFS) v. MUHAMMAD
MUSHTAQ ALI (DEFENDANT)*

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September, 13

Usurious Loans Act (X of 1918), section 3—Interest—Mortgage giving ample and sound security—Fair rate of interest.

In a case where the mortgagor gave ample security for the loan and there were no incumbrances on, or other claimants to, the mortgaged property, it was held that *prima facie* and in the absence of special circumstances to the contrary, the rate of 12 per cent. per annum simple interest may be taken as a fair and proper rate and that the condition for compounding it would make it an excessive rate and transform the transaction into a substantially unfair one.

Messrs. P. L. Banerji and Harnandan Prasad, for the appellants.

Messrs. Shiva Prasad Sinha and Akhtar Husain Khan, for the respondent.

SULAIMAN, C. J., and KING, J.:—This is a plaintiffs' appeal arising out of a suit for sale on the basis of a mortgage deed dated the 18th of June, 1918, executed by the defendant, Muhammad Mushtaq Ali, in favour of Lakhpat Singh, father of plaintiff appellant No. 1 and grandfather of plaintiff appellant No. 2. The property consisted of large shares in no less than seven villages. The amount was Rs.14,500 carrying interest at the rate of 12 per cent. per annum compoundable annually. The mortgage money was taken in order to set off the amount due on a promissory note dated the 18th of January, 1918, another sum due on another promissory note dated the 17th of April, 1918, money required for deposit of pre-emption money and some money received at the time of the registration for the purpose of redeeming zamindari property in other villages.

The claim was contested by the defendant on many grounds which have already been decided against him

*First Appeal No. 553 of 1930, from a decree of P. C. Agarwal, Subordinate Judge of Budaun, dated the 30th of May, 1930.

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except a plea that the rate of interest was unfair to him. The learned Subordinate Judge, in dealing with issue No. 3 which related to this question, found that the value of the property, if taken at the rate of 20 times the annual profits, would be over Rs.56,000. The patwari of the village had, however, stated that the zamindari property in the village used to be sold at 57 times the profit. The court below has distinctly found that the mortgagee had ample security for his money, because there was no incumbrance on the property and there were no other claimants to the mortgaged property. He considered that the rate of interest at Re.1 per cent. per mensem, compoundable every year, is so excessive on the sum of Rs.14,500 where the security is ample that it leads one to infer that the transaction between the parties was substantially unfair. He considered that the plea of the defendant that the rate was excessive and unenforceable was substantially a plea that the rate should be reduced under the Usurious Loans Act. The learned Judge pointed out that on four different occasions the defendant from 1916 to 1923 had borrowed sums ranging from Rs.300 to over Rs.1,400 at rates from annas 4 to annas 8 per cent. per mensem simple, but in one case at annas 6 per cent. per mensem with yearly rests, that the plaintiffs' evidence, which consisted of a statement of one witness that the defendant could not get money at a smaller rate of interest than Re.1 per cent. per mensem compoundable every year, was worthless and could not be believed. He discussed the documents produced by the plaintiffs to show that high rates of interest had been charged on the documents executed by the defendant. Two of them were executed in 1909 and 1910 before the passing of the Usurious Loans Act and they carried interest at the rate of Re.1 per cent. per mensem compoundable every six months, and annas 13 per cent. per mensem compoundable every six months, respectively. The third was of the same date as the mortgage in question, i.e. the 18th of June, 1918. It was for a sum of Rs.6,000

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only and carried interest at Re.1 per cent. per mensem compoundable every year. There was no evidence before the court as to the value of the properties which were mortgaged in the first two deeds, but there was a statement in the written statement filed by the defendant in a previous suit suggesting that the property covered by the third deed was worth Rs.35,000, but the judgment of that suit was not before the court. So the court has remarked that it did not appear on what grounds the other court has refused to reduce the rate of interest. The learned Judge concluded that this one instance of interest at Re.1 per cent. per mensem compoundable every year could not be regarded as the prevailing rate.

The learned Judge further noticed that there was a great pressure of necessity for these sums of moneys. Two of the promissory notes, one of which was in favour of the mortgagee and carried interest at Rs.12 per cent. per annum simple, were renewed under this bond. There was greater necessity so far as the deposit of pre-emption money was concerned, as it had to be made within the short time fixed by the court. There was nothing to show what the rate of interest under the previous mortgage deed was. The learned Judge thought that if the defendant was able to get small sums of money at the rate of annas 8 per cent. per mensem, he should have been able to get large sums of money at a much cheaper rate of interest. In favour of the plaintiffs he noticed that at that time the market was tight on account of the war and that it was a year of scarcity. In view of all these circumstances he felt so impressed that he held that the rate of interest at Re.1 per cent. per mensem compoundable every year was excessive and for this transaction the rate of interest at Rs.6 per cent. per annum simple would be substantially fair.

This conclusion is challenged on behalf of the appellants. We have no doubt in our minds that in spite of all the circumstances mentioned by the learned

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Subordinate Judge the rate of interest at Rs.6 per cent. per annum is certainly too low. Even the banks would not have advanced money at such a rate of interest. We think that Rs.12 per cent. per annum would not be necessarily excessive.

The next question is whether the fact that this rate was at a compound rate would alter the situation. It is very difficult to lay down any hard and fast rule as regards a proper rate of interest for mortgage transactions. The rate would naturally depend on many circumstances and also on local conditions. It is also true that for a number of years prior to 1918 rates of interest prevailing in this province were much higher. We may in this connection cite the case of *Balla Mal v. Ahad Shah* (1).

The Usurious Loans Act was enacted to confer a power upon the courts to examine whether the rate of interest agreed upon was excessive or not and whether the transaction was substantially fair.

Although in certain aspects the case of money borrowed by a member of a joint Hindu family is different, the fact remains that there is likely to be greater complication as regards proof of legal necessity in such a transaction than in cases of transfers by Muhammadan owners. But even in such cases their Lordships of the Privy Council have upheld the rate of 12 per cent. per annum simple, in the absence of special proof of legal necessity.

In *Hurro Nath Rai Chowdhri v. Randhir Singh* (2) their Lordships accepted the view of the High Court that the stipulation for the payment of interest at the rate of 18 per cent. per annum was high and had been properly reduced to 12 per cent. per annum simple by the High Court. No special necessity for borrowing money at a higher rate was proved in that case.

In *Nazir Begam v. Rao Raghunath Singh* (3), which was also a case of transfer by a member of a joint Hindu

(1) (1918) 16 A.L.J., 905.

(2) (1890) I.L.R., 18 Cal., 311.

(3) (1919) I.L.R., 41 All., 571.

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family, the High Court had reduced the amount of interest from Rs.2-8-0 per cent. per mensem with half yearly rests to Rs.12 per cent. per annum simple. Their Lordships affirming that decree remarked: "It is incumbent on those who support a mortgage made by the manager of a joint Hindu family to show not only that there was necessity to borrow but that it was not unreasonable to borrow at some such *high rate* and upon some *such terms*; and if it is not shown that there was necessity to borrow at the rate and upon the terms contained in the mortgage, that rate and those terms cannot stand."

In *Narain Das v. Abinash Chandar* (1), where there was a mortgage for Rs.50,000, their Lordships held that the rate of 12 per cent. per annum simple should be allowed. It was observed: "It appears, according to our notions in this country, a high rate of interest, but that has nothing whatever to do with the matter which their Lordships have to consider. It may very well be that, having regard to the local conditions in India, it is a very proper and reasonable rate to impose, and their Lordships see no reason whatever why any alteration should be made as to the amount." That was a case which went up to the Privy Council from this province and their Lordships expressed the opinion that a rate of 12 per cent. per annum according to their Lordships' notions was high but that it might be proper and reasonable, having regard to local conditions in India.

In *Sunder Mull v. Satya Kinker Sahana* (2) their Lordships upheld the reduction from 15 per cent. per annum to 12 per cent. per annum; but at the same time pointed out that as compound interest is common and may often be necessary and proper in India under the circumstances of this country there should be no presumption one way or the other, and that the conclusion should depend on the evidence which is tendered.

In *Ram Bujhawan Prasad Singh v. Nathu Ram* (3) their Lordships upheld the finding of the Subordinate

(1) (1922) 21 A.L.J., 201.

(2) (1927) I.L.R., 7 Pat., 294.

(3) (1922) I.L.R., 2 Pat., 285.

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Judge that simple interest at 12 per cent. per annum was a fair and commercial rate of interest.

No doubt all these cases are to be distinguished on the ground that they were not cases decided expressly under the provisions of the Usurious Loans Act; but in our opinion they furnish a sufficient guide to us for holding that *prima facie* and in the absence of special circumstances to the contrary, the rate of 12 per cent. per annum may be taken as a fair, proper and reasonable rate. The learned Subordinate Judge in this particular case has been influenced by many circumstances which were in favour of the mortgagor and has already gone to the length of holding that the proper rate of interest would be Rs.6 per cent. per annum simple. We, therefore, think that in this case a rate of 12 per cent. per annum should be considered to be a fair and proper rate and that the condition for compounding it would make it an excessive rate and transform the transaction into a substantially unfair one.

We accordingly allow this appeal in part, modify the decree of the court below and uphold the decree for payment of the principal sum but direct that it should carry interest at 12 per cent. per annum from the date of the mortgage till the date of the decree. Thereafter the usual rate of 6 per cent. per annum on the consolidated sum is allowed. We direct that the parties should receive and pay costs in proportion to success and failure.

REVISIONAL CIVIL

Before Mr. Justice Young and Mr. Justice Collister

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MASURIA DIN (APPLICANT) *v.* MOTI LAL AND ANOTHER
(OPPOSITE PARTIES)*

Civil Procedure Code, order XLIV, rule 1, proviso—Application for leave to appeal as a pauper—Summary rejection after issue of notice to opposite party and Government Pleader—Revision—Civil Procedure Code, section 115.

*Civil Revision No. 10 of 1933.