

## APPELLATE CIVIL.

Before Das and Adami, JJ.

CHOTA NAGPUR BANKING ASSOCIATION LTD.

1922

v.

January, 6.

BHAGWAT BUX RAI.\*

*Interest—mortgage bond—high rate of interest, whether court has power to decrease—Contract Act, 1872 (Act IX of 1872), sections 16 and 74.*

A court has no power to decrease the rate of interest provided for a mortgage bond merely on the ground that the value of the property secured by the bond is sufficient for repayment of the loan.

*Baluaki Mahapatra v. Krupasindhu Mahapatra (1), referred to.*

The mere fact that the borrower was in need of money and that the lender was the only person who was able to advance the sum required by him is not sufficient to establish undue influence by the lender within the meaning of section 16 of the Contract Act, 1872.

The facts of the case material to this report were as follows:—

The Chota Nagpur Banking Association Ltd. instituted the present suit against the defendant on the foot of a mortgage for Rs. 30,000 executed by the latter on the 10th January, 1913. The bond provided that interest should be paid on the loan at 12 *per cent. per annum* with yearly rests. The defendant pleaded that the rate of interest provided in the bond was excessive and that the stipulation for compound interest was not enforceable in law. He contended that at the time when he borrowed the money he was in need of Rs. 30,000 to meet the expenses of litigation and that the Bank was the only capitalist in a position to advance the amount required and that the Bank took advantage of the position in which he was placed. The trial court found that the property mortgaged by the defendant to

\* Appeal from Original Decree No. 95 of 1919, from a decision of Babu Suresh Chandra Sen, Special Subordinate Judge of Palamu, dated the 2nd April, 1919.

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secure the loan was of sufficient value to insure the Bank against loss and that the Bank had taken advantage of its position to drive a hard and uncounscionable bargain with the defendant. The stipulation for compound interest was held to be a penalty under section 74 of the Contract Act, 1872. The suit was decreed for the principal sum together with simple interest at 12 *per cent. per annum* up to the date provided for payment and thereafter at 6 *per cent.*

The plaintiff appealed to the High Court.

*Bankim Chandra De*, for the appellant:—The court had no power to reduce the bond rate without finding that the Bank had exercised undue influence. In *Batuaki Mahapatra v. Krupasindhu Mahapatra* (1) this court refused to decrease the rate of interest in a bond which stipulated for interest at 37 *per cent.* See also *Nathuni Sahu v. Baijnath Prasad* (2). A provision for compound interest is not necessarily a penalty under section 74. [*Lakhi Chand Sahu v. Pearcehand Sahu* (3)]. There was no undue influence. The defendant was at liberty to take the loan on the Bank's terms or leave it. [See *Aziz Khan v. Duni Chand* (4)].

*Sambhu Saran and Devaki Prasad Sinha* for the respondent:—The tendency of modern decisions is not to allow a high rate of interest in security bonds when the property covered by the bond is sufficient to insure repayment of the loan. [*Khagaram Das v. Rimsankar Das Pramanik* (5), *Bowwan Raja Chellaphroo Chowdhuri v. Banga Behari Sen* (6) and *Sonat Kumar Das v. Indra Nath Barman* (7).] Owing to the circumstances in which he was placed the defendant had to take the advance from anyone who would lend it and the Bank took advantage of this to drive a hard bargain. The defendant had no alternative but to accept.

*Bankim Chandra De*, was not called upon to reply.

DAS, J.—This appeal arises out of a suit instituted by the appellant Bank against the respondent to enforce a

(1) (1917) Pat. 135; 2 Pat. L. W. 175; 42 Ind. Cas. 680.

(2) (1917) 2 Pat. L. J. 212.

(5) (1915) I. L. R. 42 Cal. 652.

(3) (1917) 2 Pat. L. J. 233.

(6) (1915 16) 20 Cal. W. N. 408.

(4) (1918-19) 33 Cal. W. N. 130. P. C.

(7) (1916-17) 21-Cal W. N. 749.

mortgage bond executed by the respondent in favour of the appellant Bank.

The only question that arises in this appeal is as to the interest claimed by the appellant Bank.

The bond provided that interest should run at the rate of 12 *per cent.* with annual rests. The learned Subordinate Judge has taken the view that the provision as to "the high and exorbitant rate of interest with stipulation for compound interest was a hard and unconscionable bargain and operated by way of penalty under section 74 of the Contract Act." I am wholly unable to agree with this view. The learned Subordinate Judge is in error in thinking that the tendency in the modern decisions is to disallow high rate of interest on security bonds where a property is sufficient for payment of a loan advanced by the creditors. I may refer to the decision of this court in *Baluaki Mahapatra v. Krupasinthu Mahapatra* (1). In that case the rate of interest was 37 *per cent.* The learned Judges thought that the court had no jurisdiction whatever to reduce the rate of interest. It was pointed out that the "Indian law does not recognize the English principle of equity which gives relief to a debtor whenever a court considers the rate of interest unduly high. "The law of India," as Mr. Justice Mullick has pointed out in that case, "is that unless the debtor can bring himself within the four corners of section 16 of the Indian Contract Act, he is entitled to no relief."

Now the learned Subordinate Judge was aware of these decisions, and so he tried to make out a case of section 16 of the Indian Contract Act for the defendant. His reasonings may be given in his own words:

"The defendant was in need of money to meet the expenses of certain litigations. The Bank was the only capitalist which could advance a loan of Rs. 30,000. It is in evidence that the security offered by the defendant was found sufficient and satisfactory on enquiry made by the officers of the Bank. The defendant, therefore, urges that the Bank really took advantage of his position and embodied the said stipulation in the bond."

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All that I can say is that this reasoning does not convince me at all. If this reasoning be correct, then it might be said that whenever a person is in need of money, the creditor is in a position to dominate the will of the debtor. A case under section 16 is not made out by the finding arrived at by the learned Subordinate Judge in this case.

I would allow the appeal, modify the decree passed by the learned Subordinate Judge and allow interest at 12 *per cent.* with yearly rests.

The mortgage decree must be drawn up by the office in accordance with this decision. Period of grace 3 months from the date of this decree.

The appellant Bank is entitled to the costs of this appeal.

ADAMI, J.—I agree.

*Appeal allowed.*

### APPELLATE CIVIL.

*Before Das and Adami, JJ.*

DEBI LAL SAH

v.

NAND KISHORE GIR. \*

*Hindu Law—Mitakshara—joint family—mortgage by karta to meet marriage expenses of male member of the family, whether binds the members.*

A debt incurred by the *karta* of a joint Hindu family for the purpose of meeting the marriage expenses of a male member of the family is binding on the members of the family

*Govindarazulu Narasimham v. Devarabhotla Venkatanarasayya* (1), not followed.

\*Appeal from Original Decree No. 39 of 1919, from a decision of Mr. Sheikh Ahmad Hussain, Subordinate Judge of Muzaffarpur, dated the 28th November, 1919.