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In support of the *first* contention, we have been referred to the decision of this Court in the case of *Surnamoyi Dasi* v. *Ashutosh Goswami* (1). That case however is distinguishable from the present, for in that the land attached was in fact sold after the claim had been disallowed under section 281, Civil Procedure Code.

In our opinion the principle laid down by the Bombay High Court in the case of *Ibrahimbhai* v. *Kabulabhai* (2), which was followed in the case of *Gopal Purshotam* v. *Bai Divali* (3) applies to the present case. The object of the claim preferred by the plaintiff under section 278, Civil Procedure Code, was to obtain the removal of the attachment and when that attachment had been removed after payment of the decretal amount, there was no longer an attachment or any proceeding in execution on which the order could operate to the prejudice of the plaintiff, and therefore there was no necessity to bring a suit to set [232] aside the order. We are unable to accept the view suggested on behalf of the appellants that, in spite of the withdrawal of the attachment, the dismissal of the claim under section 281, Civil Procedure Code, could, by virtue of the provisions of section 283, Civil Procedure Code, have the effect of finally determining the question of title between the parties. The first point in support of the appeal therefore fails.

As to the *second* point we think that in this case the remand is not open to objection. The finding of the Munsif does not show what issues were framed other than those in bar, which he has decided, and he has not dealt with the evidence adduced by the parties. We think that in this case the evidence should be duly weighed and considered by the Court of first instance and findings arrived at on the other issues raised in the case. This point also fails, and we dismiss the appeal with costs.

Appeal dismissed.

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31 C. 233 (=7 C. W. N. 876.)

[233] APPELLATE CIVIL.

Before Mr. Justice Brett and Mr. Justice Mitra.

UMESH CHANDRA KHASNAVIS v. GOLAP LAL MUSTAFI. *

[25th May and 12th June, 1903.]

Interest—Compound interest—Unconscionable bargain—Unfair dealing—Delay in suit—Urgent necessity—Pardanashin lady.

A bargain as to compound interest in a mortgage bond, which is not itself open to objection as hard and unconscionable, cannot be held to have assumed that character by reason of the delay on the part of the creditor in suing on the bond.

Madho Singh v. *Kashi Ram* (4), dissented from.

When the interest charged in a mortgage bond is very high and the debtor is of full capacity, the general rule is that the Court will not grant relief without proof of unfair dealing or undue pressure or influence on the part of the creditor, or that the creditor has taken unfair advantage of the debtor's weakness and necessities, or that the debtor has been overreached, tricked or deceived, or that he was ignorant of the unfair nature of the transaction. The case of a female debtor in fiduciary relation to the creditor and of an expectant heir are exceptions to the general rule.

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* Appeal from Original Decree No. 188 of 1901, against the decree of Benode Behary Mitter, Subordinate Judge of Dinajpur, dated April 12, 1901.

(1) (1900) I. L. R. 27 Cal. 714.
(2) (1888) I. L. R. 13 Bom. 72.
(3) (1893) I. L. R. 18 Bom. 241.
(4) (1887) I. L. R. 9 All. 228.

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Zebonnissa v. *Brojendro Coomar Roy Chowdhury* (1), *Mackintosh* v. *Wingrove* (2), *Magniram Marwari* v. *Bajpati Koeri* (3), *Surya Narain Singh* v. *Jogendra Narain Roy Chowdhury* (4) and *Wilton & Co.* v. *Osborn* (5), followed.

Kashi Lal Jowhari v. *Kamini Debi* (6), *Sudisht Lal* v. *Sheobarat Koer* (7), *Nistarini Dassi* v. *Nundo Lall Bose* (8), *Khas Mehal* v *The Administrator-General of Bengal* (9), *Kamini Sundari Chaodhrani* v. *Kali Prosunno Ghose* (10) and *Beynon* v. *Cook* (11), distinguished.

The mere fact that the debtor was in urgent need of money is not sufficient in itself to raise the presumption that the creditor took unfair advantage of his necessity.

[Appr. 1 N. L. R. 9 ; 8 O. C. 210; Ref. 8 O. C. 193 ; 5 C. L. J. 542 ; 17 C. L. J. 221 =18 I. C. 965 ; 36 Mad 229.]

[234] APPEAL by the plaintiff, Umesh Chandra Khasnavis.

A motgage bond, dated the 21st March 1888, was executed by the defendants 1 to 6—Bihari Lal Mustafi, Giri Lal Mustafi, Golap Lal Mustafi, Hara Lal Mustafi, and Haraykristna Mustafi, and four *pardanashin* ladies—Ichhamoyi Dassi (the predecessor in interest of the defendant No. 5), Bisseswari Dassi (the defendant No. 7), Rajomayi Dassi (the defendant No. 8), and Rajendramoni Dassi (the defendant No. 9)—in favour of Sarada Sundari Dassi, the mother of the plaintiff, in consideration of a loan of Rs. 1,999. The stipulation as to the rate of interest was as follows :—

" We will pay interest upon the said amount at the rate of Rs. 1-12 per cent. per mensem. The time for payment is the month of Aswin 1295 (September-October 1888), when we will pay the whole amount with interest all at once and take back this mortgage bond . . . . And so long as the said amount is not wholly repaid, we shall pay interest at the said rate ; and if we do not pay the amount of interest within the year, then from the 1st Baishak of the next year, that amount of interest shall be considered as principal and upon that interest shall run at that rate."

The present suit was instituted on the 8th August, 1900 for Rs. 19,749-3 on account of the said mortgage bond. The defendants pleaded that the claim for interest was unjust, excessive and illegal, and that they never agreed to pay compound interest. The Subordinate Judge was of opinion that the construction put upon the terms of the bond by the plaintiff in calculating the compound interest from year to year was correct, but he held that the bargain as to compound interest was a hard and unconscionable one and the Court ought not to enforce it. In coming to this conclusion, he felt doubtful whether the female executants really understood the nature of the contract about the interest, and referred to the facts that the money was chiefly required for payment of Government revenue on account of a mehal about to be put up to sale, and that no suit was brought for nearly 12 years from due date. He accordingly decreed the suit for the principal sum with simple interest only.

Dr. *Rash Behary Ghose* (Babu *Mukunda Nath Roy* and Babu *Hem Chandra Mitter* with him), for the appellant, contended that the plaintiff was entitled to claim compound interest at the rate [235] stipulated in the bond ; that the lower Court was wrong in holding

(1) (1874) 21 W. R. 352.
(2) (1878) I. L. R. 4 Cal. 137.
(3) (1890) I. L. R. 20 Cal. 366.
(4) (1892) I. L. R. 20 Cal. 360.
(5) (1901) 2 K. B. 110.
(6) (1867) 1 B. L. R.(O.C.) 31 (Note)
(7) (1881) I. L. R. 7 Cal. 245 ; L. R. 8 I. A. 39.
(8) (1899) I. L. R. 26 Cal. 891, 918.
(9) (1901) 5 C. W. N. 505.
(10) (1885) I. L. R. 12 Cal. 225; L. R. 12 I. A. 215.
(11) (1875) L. R. 10 Ch. 389.

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that the bargain as to interest was a hard and unconscionable one; and referred to *Zebonnissa* v. *Brojendro Coomar Roy Chowdhry* (1), *Mackintosh* v. *Wingrove* (2), *Wilton & Co.* v. *Osborn* (3), *Mangniram Marwari* v. *Rajpati Koeri* (4), *Deno Nath Santh* v. *Nibaran Chandra Chuckerbutty* (5), *Satish Chunder Giri* v. *Hem Chunder Mookhopadhya* (6), *Abdul Gani* v. *Nandlal* (7) and *Madho Singh* v. *Kashi Ram* (8).

Babu *Nilmadhab Bose* (Babu *Kishory Lal Sarkar* and Babu *Debendra Nath Bagchi* with him), for the respondents, referred to *Bansidhar* v. *Bu Ali Khan* (9), *Kanai Lal Jowhari* v. *Kamini Debi* (10), *Nistarini Dassi* v. *Nundo Lall Bose* (11), *Sudisht Lal* v. *Sheobarat Koer* (12), *Khas Mehal* v. *The Administrator-General of Bengal* (13), *Kamini Sundari Chaodhrani* v. *Kali Prosunno Ghose* (14), and Act VI of 1899, s. 2.

Cur. adv. vult.

BRETT AND MITRA, JJ. The plaintiff in this case brought a suit on a mortgage bond dated 9th Chaitro 1294 B. S. to recover from the defendants the sum of Rs. 19,749. The original mortgage debt was Rs. 1,999, but by means of compound interest and interest it had swelled up to the sum claimed by the 23rd Sravan 1307, the date on which the suit was instituted. The due date under the bond was the month of Aswin 1295 B. S.

The defendants pleaded that the claim of the plaintiff for interest was unjust, excessive and illegal; that they had never agreed to pay compound interest, and that the plaintiff could only recover the principal due under the bond with simple interest thereon up to date.

[236] By the bond the defendant stipulated to pay interest at Re. 1-12 per cent. per mensem, and as security for the repayment of the loan they mortgaged lot Balahai, towji No. 199, in the Dinajpur Collectorate. The bond further contained the following clause—" and so long as the said amount is not wholly repaid we shall pay interest at the said rate, and if we do not pay the amount of interest within the year, then from 1st Bysack of the next year that amount of interest shall be considered as principal, and upon that interest shall run at that rate."

The Subordinate Judge held that the plaintiff was right in contending that this clause amounted to a stipulation to pay compound interest, but at the same time he came to the conclusion that the bargain was hard and unconscionable for the following reasons:—The money was borrowed to pay the Government revenue which was due two days after the loan was taken, and he held that the plaintiff took advantage of the defendant's necessity to demand not only interest at 21 per cent. on the loan, although the estate was mortgaged as security, but also compound interest; and judging from the fact that no suit was brought by the plaintiff till nearly 12 years after the due date, *viz.*, Aswin 1295, he further concluded that it was the intention of the plaintiff that compound interest should accumulate to an exorbitant amount. The suit was brought for a sum nearly ten times the amount of the original debt. He was further of opinion that those of the defendants who were

(1) (1874) 21 W. R. 352.
(2) (1878) I. L. R. 4 Cal. 137.
(3) (1901) 2 K. B. 110.
(4) (1890) I. L. R. 20 Cal. 366.
(5) (1899) I. L. R. 27 Cal. 421.
(6) (1902) I. L. R. 29 Cal. 823.
(7) (1902) I. L. R. 30 Cal. 15.
(8) (1887) I. L. R. 9 All. 228.
(9) (1880) I. L. R. 3 All. 260.
(10) (1867) 1 B. L. R. (O. C.) 31 (Note).
(11) (1899) I. L. R. 26 Cal. 891, 918.
(12) (1881) I. L. R. 7 Cal. 245; L. R. 8 I. A. 39.
(13) (1901) 5 C. W. N. 505.
(14) (1885) I. L. R. 12 Cal. 225; L. R. 12 I. A. 215.

females did not understand the nature of the contract as to interest, and that it was not proved that the terms of the deed had been read and fully explained to them.

On the authority then of the decision in the case of *Madho Singh* v. *Kashiram* (1), in which the Allahabad High Court followed the principle laid down by the Privy Council in the case of *Kamini Sundari Chaodhrani* v. *Kali Prosunno Ghose* (2), he held that the bargain was hard and unconscionable, and disallowed the claim for compound interest. He accordingly gave the plaintiff a decree for the principal due on the bond with simple interest, at 21 per cent. per annum up to the date of suit and thereafter up to the date of payment. Plaintiff has appealed.

[237] The only question for determination is whether the bargain between the parties was in this case a hard and unconscionable one, or was otherwise such that a Court of Equity would give relief. If the bargain was of that description, there can be no doubt that the Courts of Law in this country have ample power to give relief. In support of the appeal it has been argued generally that the Subordinate Judge has misapplied the principles to be followed in cases of this nature, while for the respondents it has been contended that the decision is correct and is supported by the authorities. After hearing the learned pleaders on both sides we are of opinion that the judgment and decree of the Subordinate Judge cannot be maintained.

The mortgage bond was executed by nine persons, five of whom were men and four were ladies. They all appear to have been of full age, and not to have been under any disability to enter into the agreement. The mortgagee was one Saroda Sundari Dassi, and the negotiations were carried on through her husband who was a mukhtear. The money was borrowed on the 9th Chaitra 1294 B. S. (21st March, 1888) to pay the Government revenue due on mehal lot Balahar, towji No. 199, in the Dinajpur Collectorate, on account of which the estate was advertised, for sale by auction on the 23rd March. The mortgagors were undoubtedly in urgent need of the money. * They seem to have applied to the plaintiff for the loan and to have taken it on the terms stated in the bond. There is no evidence to prove that they were overreached, tricked, or deceived, or that the plaintiff took unfair advantage of their necessity. The term, as to interest on which the money was lent appear to be high judged by the standard of Western Nations; but the monthly rate of interest is not higher than is often paid in this country, and the provision as to yearly rests and compound interest is not unusual. It would seem as though the Subordinate Judge in coming to his conclusion that the bargain was hard and unconscionable was to some extent influenced by the fact that there had been a delay of nearly 12 years in bringing the suit, and he seems to have thought that the object of the delay was that the interest should accumulate to an extravagant amount. No doubt the decision of the Allahabad High Court in the case [238] of *Madho Singh* v. *Kashiram* (1) goes to support the view which he has taken. There is, however, so far as we are aware, no authority for the principle that a bargain which in itself is not open to objection as hard and unconscionable can be held to have assumed that character in consequence of the delay on the part of the creditor in suing on the bond. There is, moreover, nothing beyond surmise, so far as we can

(1) (1887) I. L. R. 9 All. 228.
(2) (1885) I. L. R. 12 Cal. 225 ; L. R 12 I. A. 215.

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find from the record, to support the conclusion that the delay was wilful on the part of the mortgagee, or that there was any intention that the interest should accumulate. It is not unusual for a mortgagee to delay suing on the bond in consequence of the solicitation of the mortgagors themselves. There was also nothing to prevent the mortgagors from making arrangements to pay off the debt before the interest had accumulated.

It is true that four out of the nine mortgagors were ladies, but we are unable to hold that there is anything on the record to support the view taken by the Subordinate Judge that they did not understand the nature of the contract as to interest, or that the terms of the deed were not read over and fully explained to them. The clause as to interest is perfectly clear, and we think that the conclusion to which the Subordinate Judge came that it stipulated for the payment of compound interest was the only one possible. The ladies went to execute the bond with their male relatives who were interested in the transaction in the same way as they were: so far as we can judge, the ladies had full opportunity of taking the best advice available, and it is impossible to believe that the terms of the deed were not read over and explained to them by their relations. This appears to us to be the only natural conclusion, and we can see no reason for adopting the view taken by the Subordinate Judge. The cases relied on by the respondents, *viz.*, *Kanai Lal Jowhari* v. *Kamini Debi* (1), *Nistarini Dassi* v. *Nundo Lall Bose* (2), *Sudisht Lal* v. *Sheobarat Koer* (3) and *Khas Mehal* v. *The Administrator-General of Bengal* (4), can hardly therefore be held to apply, as there, **[239]** appear to us to be no grounds for supposing that the ladies were under undue influence from the mortgagee, or that they had not the benefit of legal advice, or that the deed was not read and explained to them. This ground for impugning the stipulation therefore fails.

It remains to consider the sufficiency of the grounds on which the Subordinate Judge has held that the bargain was hard and unconscionable, and that the stipulation as to compound interest cannot be allowed to have effect. The authorities both in India and England are clear that it is not in every case in which the interest charged is very high that the Court will interfere when, as in the present case, the debtors who contracted the loan were *sui juris* and there is no proof of unfair dealing. In the case of *Zebonnissa* v. *Brojendro Coomar Roy Chowdhry* (5), Couch, C. J. refused to disallow a stipulation for interest at 75 per cent. per annum in the absence of any confidential relation between the parties, or of any imposition, misrepresentation, or want of capacity. In the case of *Mackintosh* v. *Wingrove* (6), it was laid down that the Court will afford no protection to persons who wilfully and knowingly enter into extortionate and unreasonable bargains. It is only when a person has entered into an extortionate bargain and it is shown that it was in ignorance of the unfair nature of the transaction that the Court is justified in interfering; and in the case of *Mangniram Marwari* v. *Rajpati Koeri* (7), which was followed in the case of *Surya Narayan Singh* v. *Jogendra Narain Roy Chowdhry* (8), it was held that where there is no question of fraud or oppression, improper dealing, exorbitant

(1) (1867) 1 B. L. R. (O. C.) 31, (Note).
(2) (1899) I. L. R. 26 Cal. 891, 918.
(3) (1881) I. L. R. 7 Cal. 245; L. R. 8 I. A. 39.
(4) (1901) 5 C. W. N. 505.
(5) (1874) 21 W. R. 352.
(6) (1878) I. L. R 4 Cal. 137.
(7) (1890) I. L. R. 20 Cal. 366.
(8) (1892) I. L. R. 20 Cal. 360.

amount, dealing with an ignorant person, or any such consideration, the stipulation as to interest must be enforced.

The equitable doctrine applicable in England to cases like the present has been clearly laid down by Ridley, J. in the case of *Wilton & Co.* v. *Osborn* (1), as follows:—"It appears to be established by a series of decisions that a Court of Equity will not grant relief in such cases merely because the charges of interest are excessive. Every case has, indeed, to be judged [240] by its own circumstances; but unless the borrower be of the class known as expectant heirs (which requires distinct consideration) the rule is that, assuming him to be of full capacity, relief will not be granted unless it can be shown that he has been overreached, tricked, or deceived, and that the money-lender has taken an unfair and undue advantage of his weakness and necessities." Later on in the judgment he says: "The general rule is that neither excess of interest nor exorbitance of charge will suffice unless the element of unfair dealing is found to have existed;" and he states that the principle to be followed is not to save persons from the consequences of their own folly, but that it is right and expedient to save them from being victimised by other people.

Now applying those principles to the present case, we can find no proof of unfair dealing or undue pressure exercised on behalf of the creditor. The mere fact that a person is in urgent need of money is not sufficient in itself to raise the presumption that the persons to whom he applies for the loan will take unfair advantage of his necessity. In this case there appears to have been no reason why if the defendants objected to the terms demanded by the plaintiffs they should not have borrowed the money elsewhere, and there is no proof that the plaintiff used any pressure whatever to induce them to take the loan from her. Undue influence or unfair dealing must, we think, be proved before such a presumption can arise. The terms on which the loan was given, though high, were not so excessive as to be unusual in this country, and we are unable to hold that the bargain in itself was hard or unconscionable. Further, we find it impossible to hold that a bargain not in itself hard and unconscionable can be held to have become so by reason of delay on the part of the creditor in suing to recover the debt, and with all due respect to the Judges of the Allahabad High Court who decided the case of *Madho Singh* v. *Kashiram* (2), we are unable to agree with their decision in that case. In our opinion that decision goes far beyond the principle laid down by the Privy Council in the case of *Kamini Sundari Chaodhrani* v. *Kali Prosunno Ghose* (3). That was the case of a loan to a *pardanashin* lady by her own mukhtear at [241] an exorbitant rate of interest, the security being ample, and the Privy Council held that it might be a hard and unconscionable bargain on which the contract for such interest should not be enforced, and the case of *Beynon* v. *Cook* (4), which they followed, was the case of a reversioner or remainderman, that is to say, one of the class of expectant heirs to which Mr. Justice Ridley refers in his judgment.

These were cases in which advantage had been taken by the creditors, in the first of the fiduciary relations which existed between him and the lady, and in the second of the youth and ignorance of the debtor. These were special classes of cases, and are entirely distinct from the

(1) (1901) 2 K. B. 110.
(2) (1887) I. L. R. 9 All. 228
(3) (1885) I. L. R. 12 Cal. 225; L. R. 12 I. A. 215.
(4) (1875) L. R. 10 Ch. 389.

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case of a person of full age and subject to no disability who knowingly enters into a contract without being subjected to any undue pressure or influence. We are unable to hold that their Lordships of the Privy Council intended to apply the broad principle, which was laid down in the case of *Beynon* v. *Cook* (1) as applicable to expectant heirs, to cases of the class to which the case before us belongs.

We are unable therefore to agree with the Subordinate Judge that in this case the bargain was a hard and unconscionable one, and that on that account the stipulation as to compound interest should not be enforced. We accordingly allow the appeal and order that the decree of the Subordinate Judge be modified by directing that an account be taken of what will be due to the plaintiff for principal and interest at compound interest as provided in the mortgage bond up to the end of the six months running from the 12th April 1901, the date of the disposal of the case in the Court of the Subordinate Judge, and, for his costs of the suit in the lower Court and in this Court of Appeal, and that interest shall run on the amount so found to be due at 6 per cent. per annum from those dates up to realization.

Appeal allowed.

31 C. 242.

[242] APPELLATE CIVIL.

Before Mr. Justice Brett and Mr. Justice Mitra.

JAGADINDRA NATH ROY *v.* CHANDRA NATH PODDAR.*
[5th August, 1903].

Principal and surety—Contract of guarantee—Surety bond—Consideration—Forbearance of claim—Continuing guarantee—Contract Act (IX of 1872), s. 129.

The forbearance of a claim against a third person is a sufficient consideration for a surety bond, although there may be no express contract by the obligee to forbear.

Callisher v. *Bischoffsheim* (2) and *Crears* v. *Hunter* (3), followed.

Lloyd's v. *Harper* (4) *Balfour* v. *Grace* (5), *Burges* v. *Eve* (6), and *Raj Narain Mookerjee* v. *Ful Kumari Debi* (7), referred to.

APPEAL by the plaintiff, Maharaja Jagadindra Nath Roy.

One Shasti Charan Chakravarti, the defendant No. 1, obtained from the plaintiff an ijara lease of some forest lands for four years, from 1301 to 1304 B. S. One Madan Mohan Poddar stood surety for the defendant No. 1, and executed a surety bond dated the 20th Bhadra 1301 B. S., corresponding to the 4th September 1894. On the death of Madan Mohan, the defendant No. 2, Chandra Nath Poddar, executed a surety bond in favour of the plaintiff on the 17th Kartic 1303 B. S., corresponding to the 1st November 1896, standing surety for the defendant No. 1 to the extent of Rs. 5,000. The bond recited; " One Madan Mohan Poddar, of Madhpur, now dead, had stood surety for him (Shasti Charan Chakravarti) for payment of the said amount of money. The said Poddar having died, and the said Shasti Charan Chakravarti having been called upon to furnish fresh security to

* Appeal from Original Decree, No. 108 of 1902, against the decree of Har Prosad Das, Subordinate Judge of Mymensingh, dated Jan. 2, 1902.

(1) (1875) L. R 10 Ch. 389.
(2) (1870) L. R. 5 Q. B 449.
(3) (1887) L. R. 19 Q. B. 341.
(4) (1880) L. R. 16 Ch. D. 290.
(5) (1902) 1 Ch. 733.
(6) (1872) L. R. 13 Eq. 450.
(7) (1901) I. L R. 29 Cal. 68.