

APPELLATE JURISDICTION (a)

*Civil Petition No. 217 of 1867.*KUPPA ÁYYAR.....*Petitioner.*VENKATARÁMANA ÁYYAR & 6 others.....*Counter-Petitioners.*

Where a decree does not provide for the payment of interest, it is not competent to the Court executing the decree to add to it by giving interest.

THIS was a petition against the order of the Civil Court of Chingleput, dated 1st August 1867.

Srinivasachariyar, for the Petitioner.

Manye for the Counter-Petitioners.

The facts sufficiently appear from the following

JUDGMENT:—This is an appeal from an order of the Civil Court of Chingleput, made in the course of execution of a decree, whereby the Civil Court awarded interest on the sum decreed from the date of the decree, on the ground that “from the date the decree-holder has an undoubted right to interest on the decree amount for the time he is kept out of his money.” The suit was amongst other things for the recovery of a certain sum of money on account of mesne profits. The only order on the subject of interest is to be found in the decree of the Court of First Instance and is in these words, “It is decreed that the defendants should pay the plaintiffs three-fourths of this amount (Rupees 1,999-10-0) without any interest.” The Civil Court is of opinion that the words “without any interest” refer only to interest up to the date of the decree. This is probably the right construction of the decree, though it is capable of the construction that the refusal of interest is to apply from the date of the decree as well as up to its date. But, adopting the construction put upon the decree by the Civil Court as that most favorable to the decree-holder, the question remains whether the view of the Civil Court is correct, that, where there is no provision in a decree for the payment of interest from its date, the decree-holder is nevertheless of right entitled to interest on the amount decreed to him from the date.

1868.

February 5.C. P. No. 217
of 1867.

1868.
 February 5.
 C P. No. 217
 of 1867.

There is nothing in the nature of a judgment-debt that would enable it to carry interest without any provision having been made for payment of interest by the Court whose decree constituted the debt ; and it must too be immaterial whether the original claim, which has been ascertained by the decree and become merged in the judgment-debt did or did not carry

interest. It required a special enactment * in England to enable judgment-debts to carry interest, and prior to that statute, interest on a judgment-debt was not recoverable in execution, but only through the intervention of the judicial act of some Court, as where an action was brought upon a judgment when interest might be given by way of damages, or where the circumstances permitted of a like remedy being obtained through a Court of Equity. Our Procedure Code enables a Court to provide in its decree that the debt and costs shall carry interest from the date of decree till the date of payment ; and it is obviously reasonable that where no provision has been made in the decree for the payment of interest, it should not be competent to the Court, which performs the ministerial duty of executing the decree, to add to the decree by giving interest which it was open to the Court making the decree in the exercise of its judicial discretion to give or to withhold. Further, it may be remarked that our procedure enables a decree-holder to seek at once to execute the decree, and the mere pendency of an appeal does not prevent him from so doing. It is no doubt the fact, as observed by the learned Counsel for the decree-holder, that a large majority of the Courts in the interior seem to be under the impression that a judgment-debt always carries interest and consequently never make any provision on the point in their decrees. This is probably due to the old practice which, we believe, was established by some Circular Orders of the late Sadr Court. The proper practice is that observed on the Original Side of this Court, and in a few of the up-country Courts where the question of interest is considered at the time of passing the decree and interest is allowed or withheld, and when allowed the rate is fixed as may appear right and proper; the rate usually allowed in this Court being 6 per cent.

per annum on the debt and costs from the date of decree till payment.

1868.
February 5.
C. P. No. 217
of 1867.

In the present case it is clear to us that (from whatever reason) the payment of interest on the sum decreed from the date of the decree has not been provided for in the decree, and we are of opinion that consequently it was not competent to the Civil Court, in execution of the decree, to add to the decree and allow interest from that date. The order of the Civil Court must therefore be reversed.

Order reversed.
