Before Mr. Justice Banerjee and Mr. Justice Pratt.

SATISH CHUNDER GIRI

v.

HEM CHUNDER MOOKHOPADHYA.*

1902
June 24.

Interest—Interest Act (XXVIII of 1855) s. 2—Exorbitant rate of interest.

B borrowed money from *A* on a promissory note at an exorbitant rate of interest. Upon a suit brought on the said note at the rate agreed upon, the defence was that the bargain being an unconscionable one, interest was not recoverable at that high rate.

Held, that there being no fiduciary relation between the parties, and that there being no finding that the terms of the contract were of a nature such that the reasonable inference must be that the defendant did not either understand what he was about or was the victim of some imposition, the plaintiff was entitled to a decree at the rate agreed upon.

THE plaintiff Satish Chunder Giri appealed to the High Court.

This appeal arose out of a suit brought by the plaintiff on the basis of a promissory note executed by defendant No. 1 in favour of defendant No. 2, servant of the plaintiff; the sum advanced was Rs. 175, and the rate of interest stipulated was Re. 1 per diem. The defendant No. 1 admitted the execution of the promissory note, but denied the liability, stating that the money was borrowed by him to pay the *putni* rent of *taluk* Lalpore, which belonged to his maternal grandmother, Judumoni Devi, and that one Uma Churn Roy, a servant of Khetter Pal Singh, who was the *mahajan* of his (the defendant No. 1's) grandmother, promised to pay the money, but being short of funds requested defendant No. 2 to advance the money and undertook to repay it. The defendant No. 1 further stated that the interest claimed was exorbitant, and, as such, it was not recoverable. The Court of first instance gave the plaintiff a modified decree, allowing

* Appeal from Appellate Decree No. 2099 of 1899, against the decree of J. H. Temple, District Judge of Hooghly, dated the 26th July 1899, affirming the decree of Babu Radha Kristo Sen, Subordinate Judge of that district, dated the 20th of January 1899.

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interest at the rate of 12 per cent. per annum. The material portion of his judgment was as follows:—

"The defendant No. 1 appears to be a young man, who had not much worldly experience and sound discretion. He appears to have come to Hooghly on behalf of his grandmother to pay the rent of *taluq* Lalpore, which had been advertised for sale under Regulation VIII of 1819. He had no money with him, and asked Uma Churn Roy, in the first instance, to lend the amount required for paying off the rent due. Uma Churn Roy was, however, short of funds, and referred him to defendant No. 2, who lent him Rs. 175. The money was taken to meet a pressing necessity, and it is pretty clear that the defendant No. 2 took undue advantage of the position of defendant No. 1 and compelled him to enter into the nauseous bargain for payment of interest at the exorbitant rate of Re. 1 per diem. Such a bargain is unconscionable, and a Court of Equity would not give effect to it."

On appeal by the plaintiff, the District Judge of Hooghly, Mr. J. H. Temple, affirmed the decision of the first Court. In his judgment he remarked:—

"I quite agree that the bargain was unconscionable. The rate of interest is so exorbitant as to be ridiculous. No Court of Equity would enforce such a bargain: respondent was forced into the agreement by unavoidable stress of circumstances."

Dr. Ashutosh Mookerjee and *Babu Aghore Nath Seal* for the appellant.

No one appeared for the respondent.

BANERJEE AND PRATT JJ. This appeal arises out of a suit brought by the plaintiff appellant to recover a certain sum of money due on a promissory note. The defence was that the interest claimed was exorbitant, and was not therefore recoverable. The only question upon which the parties went to trial was whether the plaintiff was entitled to the interest claimed.

The first Court held that the plaintiff was not entitled to the interest claimed, as the defendant appeared to be "a young man who had not much worldly experience and sound discretion," and it was "pretty clear that the defendant No. 2 took undue advantage of the position of the defendant No. 1" and compelled him to enter into the transaction in question."

On appeal the Lower Appellate Court has affirmed that decision, but solely on the ground that the bargain was an unconscionable one, as "the rate of interest was so exorbitant as to be ridiculous."

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In second appeal it is contended on behalf of the plaintiff appellant that the decision of the Lower Appellate Court is wrong in law, and that the mere fact of the rate of interest being exorbitant was not sufficient to disentitle the plaintiff to the interest claimed in the absence of any circumstances, such as want of sufficient capacity in the defendant to understand the nature of the transaction or the existence of any fiduciary relation between the parties; and in support of this contention the cases of *Zebonnissa* v. *Brojendro Coomar Roy Chowdhry* (1), *Mackintosh* v. *Wingrove* (2), and *Appa Rau* v. *Suryanarayana* (3) are relied upon. We are of opinion that the contention of the learned vakil for the appellant is correct. It is true that the rate of interest in this case is exorbitant, but that alone would not be sufficient to entitle the defendant to exemption from liability. By s. 2 of Act XXVIII of 1855 it is enacted that, where interest is recoverable, Courts should decree interest at the rate agreed upon. The question, then, is whether interest is recoverable in this case. That question must be answered in the affirmative. That being so, unless the defendant can claim exemption upon equitable principles, interest must be decreed at the rate agreed upon. No doubt there is the principle of equity, which has been recognised in many cases, that where the terms of a contract are so extortionate as to involve the conclusion that the party did not understand what he was about or was the victim of severe imposition, such a contract is not enforced by Courts of Justice. Here it cannot be said from the mere terms of this contract, irrespective of other considerations, that they are of a nature such that the reasonable inference must be that the defendant either did not understand what he was about or was the victim of some imposition. The terms of the contract are of the simplest character, not involving even any arithmetical calculation. The rate is the rate of one rupee *per diem* on the entire amount. But of course if there existed any fiduciary relation between the parties, or if the defendant, though of age, was, by reason of his extreme youth or inaptitude for business shown to be unable to understand the nature of the transactio like ordinary men, the Court might have inferred from t

(1) (1874) 21 W. R. 352. (2) (1878) I. L. R. 4 Calc. 1
(3) (1887) I. L. R. 10 Mad. 203.

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circumstance, coupled with the exorbitant rate of interest, that the bargain was an unconscionable one such as ought not to be enforced. Although the first Court in its judgment appears to have taken that view of the matter, the Lower Appellate Court does not go into any of the circumstances noticed above, but comes to the conclusion that the bargain is not enforceable merely by reason of the rate of interest being so exorbitant as to be ridiculous. That view cannot, we think, be held to be correct. In the first of the cases cited by the appellant, namely, the case of *Zebonnissa* v. *Brojendra Coomar Roy Chowdhry* (1), Sir Richard Couch in delivering the judgment of the Court observes:—

"Then the question is, ought we, in the absence of any of the facts to which I have alluded, in the absence of any confidential relation between the parties, of any imposition or misrepresentation or any want of capacity to say that this contract is of so hard or unreasonable a character that the Courts ought not to enforce it. There may be cases (they are few) in which a Court of Equity has refused to enforce a contract or has set it aside on that ground. In the words of Lord Westbury in *Tennent* v. *Tennents* (2), there is an equity which may be founded on gross inadequacy of consideration, but it can only be when the inadequacy is such as to involve the conclusion that the party either did not understand what he was about or was the victim of some imposition. The question then resolves itself into this, can this Court say a contract to pay interest at the rate of 75 per cent. per annum or to give a security for a loan which was considered as possibly of so much value that the plaintiff ought to be paid 75 per cent. interest, if he did not get it, is one which the Court ought to decline to enforce? If we were to say that, it would be in effect to say that the Courts will not enforce a contract to pay interest beyond a certain rate. I am unable to say what rate should be fixed. Looking at the risk in lending money, at the many circumstances which in different cases may induce a person about to borrow money to agree to give a very high rate of interest, benefits which he thinks he may obtain by borrowing the money in a particular quarter,—considering all possible circumstances, I do not think the Court can undertake to say a contract to pay

(1) (1874) 21 W. R. 352. (2) (1870) L. R. 2 Scotch App. 6 (8).

interest at this rate is, without other facts being shown, so hard or unreasonable that it should be declared to be invalid."

The same view was taken by this Court in the case of *Mackintosh* v. *Wingrove* (1), and also in *Deno Nath Santh* v. *Nibaran Chandra Chuckerbutty* (2), and by the Madras High Court in the case of *Appa Rau* v. *Suryanarayana* (3).

There is another important circumstance which may be noticed in this connection and that is that there was no security for the loan in this case such as there was in the case of *Kamini Sundari Chaodhrani* v. *Kali Prossunno Ghose*, (4). As for the two cases decided by the Allahabad High Court, which are referred to in the judgment of the first Court, namely, the cases of *Bansidhar* v. *Bu Ali Khan* (5) and *Madho Singh* v. *Kashi Ram* (6), they are inapplicable to this case—the *first*, because the question there was, whether the higher rate of interest was in the nature of a penalty, and the second, because there was then ample security for the loan.

For these reasons we are of opinion that the decree of the Lower Appellate Court must be set aside. But as the first Court referred to certain facts which may have the effect of disentitling the plaintiff to a decree for interest at the rate claimed, and as the Lower Appellate Court has pronounced no opinion on those facts, we think the case ought to go back to the Lower Appellate Court in order that it may dispose of the appeal in accordance with the directions contained in this judgment.

The costs will abide the result.

Appeal allowed. Case remanded.

(1) (1878) I. L. R. 4 Calc. 137.
(2) (1899) I. L. R. 27 Calc. 421.
(3) (1887) I. L. R. 10 Mad. 203.
(4) (1885) I. L. R. 12 Calc. 225.
(5) (1880) I. L. R. 3 All. 260.
(6) (1887) I. L. R. 9 All. 228.