

PRIVY COUNCIL

Kusum Kumari

Vs.

Debi Prosad Dhandhanian

Privy Council Appeal No.70 of 1933
(Lords Alness Roche and Sir George Lowndes JJ.)

28.11.1935

JUDGMENT

SIR GEORGE LOWNDES J.

1. The suit out of which these consolidated appeals arise was filed before the Settlement Officer of the Sonthal Parganas praying for the enforcement of a mortgage dated 27th February 1911. The plaintiffs were in effect the mortgagees, and the principal defendant the representative of the mortgagor. A number of other parties were joined as interested, or possibly interested, in the mortgage, but none of them seem to have taken part in the proceedings in India nor are they represented before the Board. The suit was duly transferred for trial to the Court of the Subordinate Judge of Bhagalpur, who passed a preliminary mortgage decree, dated 20th June 1927, in the usual form. He assessed the mortgage debt including costs payable at the expiry of six months from the above date at Rs. 4,12,662-13, and allowed the mortgagees further interest on this sum at the rate of six per cent. per annum until realisation. It is not disputed that the suit fell to be determined in accordance with the provisions of Section 6 Sonthal Parganas Settlement Regulation 3 of 1872, which restricts the allowance of interest in such cases. The section, upon the construction of which the decision of these appeals mainly turns, is as follows

6. All Courts having jurisdiction in the Sonthal Parganas shall observe the following rules relating to usury, namely :

(a) interest on any debt or liability for a period exceeding one year shall not be decreed at a higher rate than two per cent. per mensem, notwithstanding any agreement to the contrary, and no compound interest arising from any intermediate adjustment of account shall be decreed.

(b)The total interest decreed on any loan or debt shall never exceed one-fourth of the principal sum, if the period be not more than one year, and shall not in any other case exceed the principal of the original debt or loan.

2. The learned Subordinate Judge applying these provisions found that the original advances by the mortgagees totaled Rs. 3,34,153-2-9, and that the interest recoverable must, therefore, be limited to that amount. From the result and total he deducted repayments made from time to time by the representative of the mortgagor which left Rs. 4,02,595-6-9, still due, and which, with the costs allowed, made up the sum first above stated-to be referred to hereafter for convenience as the decretal amount. This decree was confirmed on appeal by the Patna High Court. Leave to appeal to His Majesty in Council was refused, but special leave was granted in England to both parties by an Order in Council, dated 17th March 1932, the appeals to be confined to questions relating to interest after the date of the institution of the suit.

3. On this matter both parties have grievances which are embodied in the present appeals. The principal defendant in the suit, the representative of the mortgagor, complains of the allowance of interest on the decretal amount at 6 per cent. until realisation. The plaintiffs, the mortgagees, while seeking to uphold this part of the decree, complain that they have not been allowed interest pendente lite, i. e., between the dates of institution and final decree. These are the only points upon which their Lordships' judgment is sought. The matter is dealt with by the learned Subordinate Judge in the following terms :

4. Then there remains only one matter more for my consideration and that is : Whether this Court ought to and can allow interest after the date of the decree and also pendente lite. As regards pendants lite interest, the matter lie within the domain of contract and so I think Section 6 is applicable and more than double cannot be allowed in respect of all claims up to the time of grace fixed by the Court. But after that, the matter comes to the domain of judgment and Section 6 has no application and the Court has power under section 34, Civil Procedure Code, to allow interest, on the decretal amount at 6 per cent. per annum.

5. The High Court on appeal came to the same conclusion. Jwala Prasad, J., by whom the judgment of the Court was delivered, said :

"It is well considered that the rule of Damdupat" (in which term he obviously included the provisions of Section 6 of the Regulation) "applies only during the contractual relation of debtor and creditor. It does not apply when the

contractual relation has come to an end by a reason of a decree. . . . In mortgage suits the contract is effective until the expiry of the period of grace and it is only after that date that the matter passes from the domain of contract to the domain of judgment. . . the effect of the rule of Damdupat is exhausted when the matter passes into the domain of judgment; and there is no reason why interest at the Court rate should not be decreed on the amount due under the mortgage from the expiry of the date of grace. In their Lordships' opinion the view taken by the Courts in India upon both questions is correct. Mr. Dunne for the mortgagor appellant contended that Section 34 Civil Procedure Code, upon which the Subordinate Judge relied had no application to mortgage decrees which were dealt with under Order 34 of Sch.1 to that Act; and that at the date of the Subordinate Judge's decree there was no provision in this order for the granting of interest upon the decretal amount, though such a provision now appears there by a subsequent amendment of the Act. Their Lordships, however, think it clear from the judgment of the Board in *Sourendra Mohan v. Hari Prasad*, AIR 1925 PC 280=91 IC 1033=52 IA 418=5 Pat 135 (PC) that Section 34 does apply, and that it authorises the allowance complained of. Nor can their Lordships agree that Order 34 in the Schedule in any way excludes the discretion of the Court to allow interest on the decree. Order 34, Rule 4 (1) as in force at the date of the decree provided inter alia for the payment of "subsequent interest" out of the sale proceeds, and it would seem that the only "subsequent interest" could be interest on the decretal amount if awarded under section 34. Their Lordships also agree with the note to Order 34, R. (11) in the latest edition of Sir Dinshah Mulla's Code. See Chitaley's Civil Procedure Code, Vol 3 (second edn.) Page 2463-(Ed) which states that the present rule specifically allowing "subsequent interest up to the date of realisation" only gives effect to previous judicial decisions. This their Lordships think to be clear on a reference to the judgments of the Board in *Maharajah of Bharatpur v. Ram Kanno Dei*, (1901) 23 All 181=28 IA 35=7 Sar 792 (PC) and 34 IA 9. It was also contended that the allowance of interest on the decretal amount contravened the provisions of the Regulation of 1872 in that by it the mortgagees got more interest than the Regulation allowed. Their Lordships cannot accept this contention. section 6 of the Regulation only lays down that in a case such as the present the interest decreed on the loan or debt is not to exceed the principal. When once a decree has been passed the loan or debt as the subject of enforcement no longer exists ; it is in effect merged in the decree, and the allowance of interest on the decree is

not the allowance of additional interest on the loan or debt. That this is the effect of the decree is clear on the judgment of the Board in the case last cited where Lord Davey says, p. 21.

6. Their Lordships think that the scheme and intention of the Transfer of Property Act (now the corresponding provisions of the Civil Procedure Code) was that a general account should be taken once for all, and an aggregate amount be stated in the decree for principal, interest, and costs due on a fixed day; and that after the expiration of that day, if the property should not be redeemed, the matter should pass from the domain of contract to that of judgment and the rights of the mortgagee should thenceforth depend, not on the contents of his bond, but on the directions in the decree.

7. Their Lordships also think that the passage quoted above from Lord Davey's judgment is decisive of the mortgages, appeal. Up to the date fixed for redemption the matter between the parties is one of their contract, and what the Court has to consider is how much does the law allow them to recover under it. This is determined by the Regulation and is limited to twice the amount of the principal. If that limit had been reached before the institution of the suit, no further interest could be allowed between that date and the date fixed for redemption.

8. A number of other authorities were referred to in the argument, but their Lordships do not think that they throw any doubt on the correctness of the judgments delivered in India, and that a further discussion of them is unnecessary. For the reasons above stated their Lordships will humbly advise His Majesty that both these appeals should be dismissed. There will be no order as to costs.

Appeals dismissed.