

## CALCUTTA HIGH COURT

Nirode Barani Debya

Vs

Sisir Kumar Mukherjee

(Henderson, J.)

20.08.1942

### ORDER

#### **Henderson, J.**

1. This rule has been obtained by the judgment-debtor and it is directed against an order rejecting her application under Section 86(b), Bengal Money-Lenders Act. Unfortunately it is not possible for me to make a final order here. There is no longer any dispute as to the facts. The original debt was incurred by the petitioners' husband and father. It was for Rs. 90 and represented the balance of the purchase money due by him to the decree-holder on the sale of land. The purchase money was discharged partly in cash and partly by a hand-note; This hand-note was renewed by another hand-note in the year 1928. This hand-note in its turn was renewed by another hand-note executed by the petitioners themselves and is the basis for the present claim. The contention of the opposite party was that the hand-note was not a loan within the meaning of the Act. He relied on the decision in Saradindu Sekhar Banerjee v. Lalit Mohan Mazumdar . The learned Judges there had to deal with a bond which was for unpaid purchase money and they held that such a transaction was not in substance a loan. The present case appears to me to be quite different in nature. Apart from the fact that it is concerned with a renewed hand-note, there is the provision of interest. Mr. Das Gupta contended that other persons besides money-lenders can charge interest. I am bound to say that I have not known anybody other than money-lender charging interest at the rate of 37 1/2 per cent. The real nature of the present transaction was that the purchase money was paid partly in cash and partly by the hand-note. If the real cause of action in the present case were merely the unpaid purchase money with a reasonable rate of interest it would have been paid off long ago. It is not the case of the seller being willing to take part-payment but the case of a seller insisting upon full payment partly in cash and partly in something else. I am therefore of opinion that this transaction was in substance a loan.

2. All the transactions are within a year of the date of the suit and the petitioners are entitled to go back to the original transaction. In view of the fact that the third bond was only for Rs. 93-6-0 it seems to me to be incredible that the opposite party did not realise a great deal more than Rs. 90 as interest between the dates of the two bonds. Mr. Das Gupta however says that this requires to be cleared up. The opposite party will therefore be entitled to Rs. 90 as interest less anything which was paid before the suit by the original debtors. This will have to be investigated by the learned Munsif. The opposite party will also be entitled to costs of the suit, execution case and

the present application. The rule is accordingly made absolute, the order of the Munsif is set aside and he is directed to pass a new decree in accordance with law as indicated above. The petitioners will get their costs in this rule, the hearing-fee being assessed at two gold mohurs.