(1880) 02 AHC CK 0004

Allahabad High Court

Case No: None

Chuhar Mal		APPELLANT
	Vs	
Mir and Others		RESPONDENT

Date of Decision: Feb. 24, 1880

Citation: (1880) ILR (All) 715

Hon'ble Judges: Robert Stuart, C.J; Spankie, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Robert Stuart, C.J.

It is clear that the defendants, who are the debtors under the hypothecation-bond, have been taken advantage of by their greedy and unscrupulous lender. But, if there were nothing else in the case than the mere stipulation for a high rate of interest, it might be difficult to hold that the plaintiff was not entitled to recover on that footing, the usury laws having been repealed, and parties generally in such transactions being left to their contracts. But here there appears to be a peculiarity which takes his case out of the general category to, which I have referred. As I understand, the money was lent in the first instance without interest, and, that being so, the subsequent stipulation for Rs. 3-2-0 per cent. per mensem, to be enforced on the defendant''s default in paying the instalments, appears to me to be not only penal, but really in the nature of a fraud on the main contract, and interest should be reduced to what is reasonable under all the circumstances. I agree with the lower Courts in thinking that one per cent. per mensem would be sufficient, and to this rate my colleague Mr. Justice Spankie is willing to reduce the interest. After date of decree of the first Court 6 per cent. per annum to be allowed. The judgments of the lower Courts will therefore stand and the present appeal is dismissed with costs.

Spankie, J.

2. Plaintiff-appellant sued defendants-respondents on a bond executed by Mir and Sumair on the 14th August 1868, for Rs. 400 payable by instalments without interest, and stipulating, in case of default, that the obligors would pay interest at Rs. 3-2-0 per cent. per mensem. The obligors hypothecated twenty-nine bighas of land in mauza Mirzapur, as security for the payment of the debt. One Narpat was also surety. Sumair and Narpat are both dead, leaving Khushal and others, defendants, their sons, in possession of their property.

3. Mir admitted the bond and also that he was in possession of the estate of Sumair, deceased. He contended, however, that he had only received Rs. 250 out of the Rs. 400 borrowed, as Narpat, the surety, had to take Rs. 150, and he further urged that the provision in the bond for such extortionate interest was penal. Khushal, as heir of Narpat, admitted the bond, but pleaded that the debt should be recovered from the debtors, and, if that could not be done, he was liable for the balance.

4. The only question now before us in second appeal relates to the interest. The first Court held the condition in the bond to be a penal provision and would not allow it. In appeal the Judge affirmed the decree of the first Court, holding that the rate of interest amounted to a penalty and was excessive.

5. It is contended by the plaintiff that the ruling of the Courts below as to the interest is erroneous. The property hypothecated in the bond was expressly made liable for the payment of principal and interest, and therefore the plaintiff is at liberty to recover the rate stipulated therein.

6. Looking at all the circumstances of the case, and the terms of the contract, which are much in favour of the obligee, as the property of the obligors, sufficient for the discharge of the debt, is hypothecated to him in the deed, and besides this another person became surety, I am disposed to regard the very high rate of interest imposed in case of default as being of a penal character. At the same time the money was lent in the first instance without interest, and the deed hypothecates the property both for the payment of the debt and interest; the appellant therefore may have some ground for contending that the interest named in the bond is the consideration agreed to be paid by the borrower to the lender for the use of the money. Still the rate of interest imposed by the terms of the bond is so excessively high, and specially so when the security appears to be good and the risk therefore less, that it seems impossible not to regard the clause respecting interest as a penal one, in case of default, and as there was default, I would give the plaintiff-appellant reasonable compensation, and this I think would be half the rate imposed by the bond to the date of the decree of the Court of First Instance, and after that I would allow interest at six per cent. per mensem. But if the learned Chief Justice considers that a less rate should be allowed, I am willing to reduce it to twelve per cent.