

(1929) 06 CAL CK 0004**Calcutta High Court****Case No:** None

Sheikh Abdul Rabbani and
Another

APPELLANT**Vs**

Shyam Lal Thapa and Others

RESPONDENT**Date of Decision:** June 7, 1929**Citation:** 128 Ind. Cas. 194**Hon'ble Judges:** Mukerji, J**Bench:** Single Bench**Judgement**

Mukerji, J.

The petitioners who have obtained this Rule were the defendants in a suit for recovery of a sum of Rs. 475-10-0, Rs. 364 being the amount of principal and the remainder of the interest due at the rate of one anna per rupee per mensem. On account of the loan there was a promissory note which was not properly stamped and so not admissible in evidence. The defence was that only Rs. 64 had been taken as loan on the aforesaid rate of interest. The suit having been decreed in plaintiffs' favour the defendants have obtained this Rule.

2. Two of the grounds on which the Rule was issued contain allegation as to refusal on the part of the learned Judge to receive evidence that was tendered by the petitioner. The allegations have been denied by the learned Judge and are false. In such circumstances the petitioners can no longer legitimately expect that this Court would exercise its revisional jurisdiction, even if the decision of the trial Court be not strictly in accordance with law.

3. As, however, a pure point of law has been argued under cover of the other two grounds of the Rule, I proceed to express my view on it. It is said that as the promissory note was inadmissible on the ground that it was not duly stamped no oral evidence could be given of the transaction and so the suit should have been dismissed. It is said also that even if the suit is held to be maintainable upon the basis of a contract independently of the promissory note, the plaintiffs were not

entitled to recover any interest.

4. In support of the contentions urged as aforesaid two cases of this Court have been most relied on. One is the case of Sheikh Akbar v. Sheikh Khan 7 C. 256 : 8 C.L.J. 533 and the other, the case of Dula Meoh Vs. Moulavi Abdul Rahaman. The former of these authorities, on a first reading, does support the petitioners' contention, but its true import has been explained by Petheram, C.J., in the case of Pramatha Nath Sandal v. Dwarka Nath Dey 23 C. 851, by Jenkins, C.J., in the case of Krishnaji Narain v. Rajmal Manik Chand 24 B. 360, by Richards, C.J., in the Full Bench case of Ram Sarup v. Jaseda Kunwar 13 Ind. Cas. 138 : 34 A. 158 : 9 A.L.J. 72 and by Twomey, C.J., in the Full Bench case of Maung Kyi v. Ma Ma Gale 54 Ind. Cas. 84 : 12 Bur. L.T. 137 : 10 L.B.R. 54. It is true that a different view still prevails in some Courts but so far as the majority of the Courts is concerned and our Court in particular, it has been almost consistently held that where there is a loan independently of the note the creditor is not debarred from suing on the original cause of action by the fact that the cause of action arose out of the same transaction in the course of which the promissory note was executed. The case, Dula Meoh Vs. Moulavi Abdul Rahaman, was a very different case in which no contract independent of the bond could be proved and there were no materials on which such a contract could be established. The plaintiffs in the present case have proved the transaction and the contract quite apart from the bond.

5. As regards interest there is the evidence on the plaintiffs' side that the rate at which the interest has been claimed is the rate that was agreed upon, and in addition to it there is the defendants' admission that it was the same rate which was fixed and this lends support to the plaintiffs' version.

6. The Rule is discharged with costs--two gold mohurs.