
(1873) 01 CAL CK 0001

Calcutta High Court

Case No: Special Appeal No. 615 of 1872

Bistoo Chunder
Banerjee

APPELLANT

Vs

Nithore Monee Dabee
and Another

RESPONDENT

Date of Decision: Jan. 24, 1873

Judgement

Glover, J.

The plaintiff in this suit was the purchaser of a right of action in a contribution suit against certain parties. He brought the suit and was successful in getting a decree against the defendants for certain sums to be paid by them severally. The present special appeal is preferred on the subject of interest. The Subordinate Judge refused interest on two grounds: first, because by act XXXII of 1839 no interest could be allowed, inasmuch as no written demand had been served on the debtor; and, secondly, because the decree-holder had allowed five years to elapse before making this demand for interest. The first reason given by the Subordinate Judge is no doubt wrong, Act XXXII of 1839 not applying to contribution suits. This point has been ruled in the case of Golam Ahmed Shah v. Behary Loll Marsh. Rep., 239 and in the case of Luleet Biswas v. Prosonomoyee Dossee Ante, p. 353 But the Judge has given another reason which we consider a reasonable one, namely, that the decree-holder slept over his rights for no less than five years before making his demand for contribution, and we do not see any error in law which would justify our interfering with his order. There was no contract between the parties to pay interest, and there is no rule of law by which, in the absence of such contract, an award of interest is mode compulsory. It was within the discretion of the Court below either to give or to withhold interest, and there is no ground for our interfering with his order.

2. The special appeal is dismissed with costs.

¹ "Upon all debts or sums certain payable at a certain time or otherwise, the Court before which Bitch debts or suits may be recovered, may, if it shall think fit allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable if such debt or sums be payable by virtue of some written instrument at a certain time, or if payable other wise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debt or that interest will be claimed from the date of such demand until the term of payment; provided that interest shall be payable in all cases in which it is now payable by law."

² Before Mr. Justice L.S. Jackson and Mr. Justice Glover.

Lulleet Biswas (One of The Defendants) v. Prosonomoyee Dossee (Plaintiff) & Another (Defendant)*

The 1st February 1872.

Suit for Contribution--Interest.

Baboo Bungsse Dhur Sein for the appellant.

Baboo Umbika Charn Bose for the respondent.

The judgment of the Court was delivered by

Jackson, J.--This was a suit for contribution. Two objection were raised in special appeal; the one being that interest has been allowed, although no demand had been made; the second is that the separate liabilities of the defendants have not been set out in the decree. On the first point, the respondent adduces as authority the case of Golam Ahmed Shah v. Behary Loll Marsh. Rep., 239, which shows that it is usual to allow interest in such cases because such interest was accustomed to be given by the common law before the passing of the interest law.

As to the extent of the shares, the respondent has no objection to the modification of the decree of the Court below in that particular. The defendant's liability, therefore, will be according to the shares stated, that is to say, the present special appellant and the joint owners with him of the six annas share, will be declared liable for their six annas, and the other defendant for his four annas share.

This is an alteration of the decree-which might well have been made by the lower Appellate Court on application to it for that purpose, and, therefore, I think the respondent should get his costs of this Court.

Glover, J.--I concur.

* Special Appeal No. 1057 of 1871, from a decree of the Additional Judge of Jeasore, dated the 20th May 1871, reversing a decree of the sudder Munsif of that district, dated the 28th June 1870.