

(1930) 12 CAL CK 0026

Calcutta High Court

Case No: None

Jnanchandra Dutta

APPELLANT

Vs

Mahim Chandra Das

RESPONDENT

Date of Decision: Dec. 17, 1930

Citation: AIR 1932 Cal 83

Judgement

1. Three points have been taken by the learned advocate for the appellant in this case. The suit is one for redemption of a mortgage. The plaintiff is the purchaser of the equity of redemption, In the bond the interest payable to the mortgage was stated at 12.5 per cent per mensem. The lower appellate Court has reduced it to 2 par cent par mansem on consideration of the relevant sections in the Usurious Loans Act as amended by Act 28 of 1926. The argument of the appellant is that the amended Act could have no operation whatsoever to this mortgage. In order to determine this one has got to find out exactly what the amendment is; and looking to the words of the amendment by the Act of 1926 there cannot be much doubt that the amending words are attracted to the subject-master of this mortgage. There are express words showing that the mortgage such as was executed in this case on 12th November 1923 is hit by the words used in the amending Act of 1926. It is not a question of retrospective effect at all, it is a question of what the words in the amendment mean and as stated above we do not think there is much force in the contention that the amending Act could not have any operation. We are in agreement with the conclusion arrived at by the lower appellate Court on this point and therefore this point must be negatived.

2. The second point is that interest has been allowed at the reduced rate up to the date of suit. There is no warrant for that. The mortgagor will be entitled to interest up to the date of payment by the plaintiff. Therefore the decree to that extent must be varied.

3. The third point is about costs. The learned advocate says that he ought not to be deprived of his costs. There is considerable substance in this point, but we think

having regard to the facts involved in this case the proper order as regards costs should be as was made by the trial Court that there should be no order as to costs throughout this litigation.

4. The appeal therefore will be allowed as indicated above. If there has been a final decree the directions about interest and costs must be incorporated therein. The period of redemption will be three months from date.