courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 31/10/2025

(1920) 07 CAL CK 0052

Calcutta High Court

Case No: None

Surendra Nath Chatterjee	APPELLANT
Vs	
Jogendra Nath Adhikari	RESPONDENT

Date of Decision: July 2, 1920

Acts Referred:
Contract Act, 1872 â€" Section 16, 74

Citation: (1920) 07 CAL CK 0052

Hon'ble Judges: Walmsley, J; Greaves, J

Bench: Division Bench

Judgement

1. This appeal arises out of a suit on a mortgage bond. The learned judge in the Court of Appeal below has given the plaintiff simple interest at the

rate provided for in the bond. The plaintiff has preferred an appeal to this Court asking for compound interest which is provided in the event of

default, and on his behalf reliance is placed upon the two recent decisions of their Lordships of the Privy Council reported as Aziz Khan v. Duni

Chand 48 Ind. Cas. 933 : 23 C.W.N. 130 : 101 P.R. 1918 : 165 P.W.R. 1918 (P.C.) and Balla Mal v. Ahad Shah 48 Ind. Cas. 1 : 23 C.W.N.

233 : 35 M.L.J. 614 : 16 A.L.J. 905 : 124 P.R. 1918 : 25 M.L.T. 55 : 180 P.W.R. 1918 : 29 C.L.J. 165 : 1 U.P.L.R. (P.C.) 25 : 21 Bom. L.R.

558 (P.C.) respectively. The learned Judge quotes those decisions and he says: ""These oases, however, were decisions with reference to the

application of Section 16 of the Contract Act, and do not deal with the law relating to cases where Section 74 is applicable.

2. The learned Vakil who appears for the respondent has adopted the same argument.

3. This line of reasoning seems to ma very like an attempt to whittle away the effect of the decisions to which the learned Judge refers.

4. In the case of Balla Mal v. Ahad Shah 48 Ind. Cas. 1 : 23 C.W.N. 233 : 35 M.L.J. 614 : 16 A.L.J. 905 : 124 P.R. 1918 : 25 M.L.T. 55 : 180

P.W.R. 1918 : 29 C.L.J. 165 : 1 U.P.L.R. (P.C.) 25 : 21 Bom. L.R. 558 (P.C.) their Lordships said: ""It is not enough--indeed it is misleading--to

look at the result alone."" Then they pointed out how continued default on a debtor''s part to pay interest as it falls due will lead to results that look

oppressive even where the terms are reasonable, and they refer to the practice of Bankers in regard to overdrawn current accounts It is quite

clear, therefore, that the results arising from an agreement to pay compound interest as affecting the terms of a loan ware under consideration.

5. The learned Judge, however, is right in saying that those decisions do not deprive a debtor of his right to the benefit of Section 74 of the

Contract Act, but the debtor must show that there is a term in the contract which brings the case within the provisions of that section. The learned

Judge says that ""in the circumstances the stipulation for compound interest in addition with two monthly rests was undoubtedly a stipulation by way

of penalty,"" In reaching this conclusion he has fallen into the error condemned by the Privy Council; he has looked at the results and found them

oppressive: and he has picked out the agreement to pay compound interest as the cause that has contributed most to the rapid growth of the debt,

and on that ground he has held it to be a stipulation by way of penalty. The real question was whether an agreement to pay compound interest is in

itself a stipulation by way of penalty independently of the results.

6. I think, therefore, that the appeal must be allowed; the Judge''s decision is reversed, and the decree of the first Court restored, with costs in all

Courts.