
(1878) 05 CAL CK 0018

Calcutta High Court

Case No: None

Protab Chunder Dass

APPELLANT

Vs

Gour Chunder Roy

RESPONDENT

Date of Decision: May 16, 1878

Citation: (1879) ILR (Cal) 132

Hon'ble Judges: Richard Garth, C.J; McDonell, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

This is a suit brought by the plaintiff Protap Chunder Dass to recover from the defendants the sum of Its. 20,740 for principal and interest due upon two hundis each dated the 17th of September 1875, payable ninety days after date, drawn by Mr. Pogose, the second defendant, in favour of the third defendant, and accepted by Gour Chunder Roy, the first defendant.

2. The lower Court has held that the last-named defendant is not liable, and the only question in this appeal is whether ho is liable or not.

3. It is an admitted fact in the case that the only person for whose benefit those hundis were drawn and negotiated is the drawer, the second defendant, and that the other defendants were his sureties; and the defence which is set up by Gour Chunder is that after the bills became due, the plaintiff gave time to Mr. Pogose, the principal debtor, without his (the defendant's) consent, by accepting from him a sum of Rs. 1,860 by way of interest in advance, and that this discharged the first defendant from liability.

4. There is no doubt as to the fact of these advances for interest having been received; and the questions which we have to decide are:

1st.--Whether the effect of those advances was to give time to the principal debtor; and

2ndly.--Whether the defendant No. 1 was aware of, and consented to, those advances.

5. (1) The first of these, having regard to the authorities upon the subject, appears to be a mixed question of law and fact. It has been held, both here and in England, that, under certain circumstances, the receipt of advance interest by the creditor does not create a binding contract by him with the principal debtor not to sue him during the time for which the advance interest is paid. [See the cases of *Punchanun Ghoose v. Daly* (15 B.L.R. 331) and *Dwarkanath Mitter v. Daly* (15 B.L.R. 338 note), decided by Phear, J., in this Court, and the case of *Rayner v. Fussey* (28 L.J. Exch. 132)].

6. But a long current of authorities in England [which will be found collected in the notes to *Rees v. Berrington* (2 W.H. & T.L.C. 5th Ed. 992) and the case of *Kali Prasanna Roy v. Ambica Charan Bose*, (9 B.L.R. 261 : 18 W.R. 416) decided in this Court, by Couch C.J., and Markby, J., in which all the leading authorities are reviewed] clearly show that, as a general rule, the acceptance of interest in advance by the creditor does operate as a giving of time to the principal debtor, and consequently as a discharge to the surety.

7. In this case we think it clear that the arrangement with regard to batta, or advance interest, operated to prevent the plaintiff from suing Mr. Pogose during the time for which the advance was made.

8. The witness Monohur Shah, who made the arrangement, and who is called by the first defendant, distinctly says that his avowed and express object in paying the advance interest was to obtain further time for payment of the bills till Mr. Pogose returned to Dacca. The only object and consideration on Mr. Pogose's part was to stay the plaintiff from taking proceedings; and if proceedings had been taken in the teeth of that arrangement, any Court ought, undoubtedly, to have restrained the plaintiff from prosecuting his suit.

9. That being so, the legal position of the, first defendant was undoubtedly changed. He had a right, at any time after the hundis became due, to insist upon proceedings being at once taken against Mr. Pogose, and any binding arrangement between the plaintiff and Mr. Pogose, which prevented the former from suing the latter, deprived the defendant No. 1 of that right.

10. The taking of advance interest did therefore discharge the first defendant, unless he consented to the transaction.

11. (II) This brings us to the second, and, as we consider, the only real question in the case, viz., did the defendant No. 1 know of, and consent to, the advance interest being taken?

12. This point has been fully argued on both sides; and having carefully considered the evidence, we are of opinion that he did consent to it.