

(1941) 12 CAL CK 0032
In the Calcutta High Court

Asrab Ali Sirkar and Others

APPELLANT

Vs

Pioneer Bank, Ltd. and Another

RESPONDENT

Date of Decision : 18-12-1941

Acts Referred:

Bengal Money Lenders Act, 1940 — Section 30

Citation : AIR 1942 Cal 228

Hon'ble Judges : Sen, J;B.K. Mukherjea, J

Bench : Full Bench

Judgement

Sen, J.—This rule arises out of an application under the Bengal Money-lenders Act. The petitioners were the executants of a promissory note for Rs. 1500. The interest payable on the promissory note was 10 1/2 per cent. per annum with six monthly rests. A decree was passed against the petitioners for the amount of the hand note with interest as stipulated therein. The petitioners have now applied for relief under the Bengal Money-lenders Act on the ground that the interest decreed exceeds the limits prescribed by Section 30, Bengal Money-lenders Act. The Court below finds that the amount of interest is in excess of the limits prescribed by the Act. The learned Judge however said that as the difference was very negligible he refused to grant relief under the Act, This reason, in our opinion, is unsound. When the interest decreed is in excess of the limits prescribed by Section 30 of the Act, the Court is bound to grant relief whether the excess is slight or not. We accordingly set aside the order of the learned Judge and direct that he make a decree in accordance with the provisions of the Bengal Money-lenders Act.

2. It is argued on behalf of the opposite party that the loan was a commercial loan. This question has not been dealt with at all by the learned Judge. It appears from the affidavit that the question was raised and that evidence was adduced on the point. The learned Judge will, therefore, consider the point as to whether the loan was a commercial loan or not. If he finds that it was a commercial loan, then he will not interfere with the decree passed. On the other

hand, if he finds that the loan was not a commercial loan, he will grant relief to the petitioners in the light of the observations made above. There will be no order for costs in the rule.

B.K. Mukherjea, J.

3. I agree.