

(1930) 10 MAD CK 0028
In the Madras High Court

Ediga Chagapuram Pedda Nagappa

APPELLANT

Vs

Paramala Venkatarami Reddi

RESPONDENT

Date of Decision : 08-10-1930

Acts Referred:

Citation : AIR 1931 Mad 137 : (1931) 33 LW 540

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—The only question raised in this appeal is the matter of interest which the lower Court has decreed on the mortgage bond on which the suit was based. The plaintiff is the appellant and he claims that the lower Court was wrong in disallowing enhanced interest on default in the payment of the mortgage amount under the bond. The bond provided that on failure to pay the principal and interest under it by one year from the date of the bond the mortgagor was to pay on "the said aggregate amount interest at the rate of Re. 1-8-0 per cent per month," that is, 18 per cent was the default rate, 15 per cent was the original rate. The lower Court has found that this is a clause under which interest at the default rate is payable from the date of the bond, and on that understanding it has held that the clause is a penal clause and cannot be enforced at all. The plaintiff here argues that the interpretation of the bond by the lower Court was under a misapprehension of the meaning of the words. But although the actual construction of the words in the bond by the lower Court may be rather strained, we cannot say that the meaning attributed to the words by the lower Court is an impossible one. And when we find that the plaintiff itself adopted that interpretation and the defendant in his written statement also adopted it, we are unable to hold that it was anything else but the intention of the parties that that should be the meaning put on the bond. It is evident that the plaintiff in the lower Court also stood upon this interpretation of the bond because he did not there ask to amend his plaint. But now that the lower Court has decided that that interpretation involves that the clause is a, penal clause, he has before us put in a, petition to amend his plaint. The object of that petition is

clear. We can see no reason therefore for rejecting the interpretation put upon this clause in the bond by the parties themselves and by the lower Court, and we are not prepared to disagree from the decision of the lower Court that, so interpreted, the clause was" a penal clause.

2. The lower Court however has not awarded any interest at all as a penalty for default, or granted any compensation for the defendant's failure to pay; and the reasons it gives for that are that the original rate, 15 per cent, itself is very-high, and that the security was presumably ample. It does not give any reasons for holding that the original rate of 15 per cent is very high. A Court ought to give reasons for refusing to award compensation on default of payment on the proper date. We think as an ordinary rule that compensation for default ought to be given, and it is within the discretion of the Court to fix a figure for that default. In this case we think it will be sufficient if we fix a rate of 16 per cent. payable on the principal amount from the date of default; and this will be the compensation for default. The lower Court's decree will be amended accordingly and each party will bear his own costs in this appeal.