
(1929) 05 PRI CK 0001

In the Privy Council

Case No : Privy Council Appeal No. 151 of 1927

Hiralal Sahu and others

APPELLANT

Vs

Lachhmi Prasad Narain Singh

RESPONDENT

Date of Decision : 14-05-1929

Acts Referred:

Citation : (1929) AIR(PC) 176

Hon'ble Judges : Lancelot Sanderson, Carson, Shaw, JJ.

Advocate : Watkins and Hunter, Hy. S.L. Polak, B. Dube, A. M. Dunne, for the Appearing Parties.

Judgement

Sir Lancelot Sanderson, J.

This is an appeal by the plaintiffs against a judgment and decree, dated 22nd December 1926, of the High Court of Judicature at Patna, which affirmed a judgment and decree of the Subordinate Judge of Motihari, dated 6th March 1923.

The plaintiffs are members of a joint family, and they carried on a money-lending business which was supervised by plaintiff 1 who was karta of the family.

The defendant began to borrow money from the plaintiffs on 20th Pous 1310 Fasli (i.e., January 1903), when a sum of Rs. 300 was advanced and after the expiration of 15 months 11 days interest was debited to the account. Further sums were advanced from time to time, and the accounts were adjusted periodically, the last adjustment having taken place on 25th Jeth 1324, corresponding to May 1917, so that the account between the parties was running for about 14 years. Simple interest was charged upon each advance from the date of such advance until the date when the principal sum and interest were carried into a separate column of the account. The periods during which the interest was charged varied. The account was then adjusted and interest calculated on the total amount found due, so that compound interest was charged. During the time the accounts were running they were submitted to the

defendant and on nine occasions he signed the accounts, the first occasion being 10th Magh 1312 and the last occasion being 25th Jeth 1324 Fasli.

The accounts submitted by the plaintiffs to the defendant and signed by him as above mentioned showed the compound interest, the dates at which the adjustments respectively were made, the periods during which and the rate at which the compound interest was charged.

There is no dispute in this appeal as to the advances which were made or as to the simple interest charged thereon.

The only question argued before the High Court of Patna and before this Board was whether the plaintiffs are entitled to recover the compound interest charged in the accounts. Both the Courts in India decided this question against the plaintiffs, and the decree which the plaintiffs obtained was confined to the advances made and simple interest at the rate of 12 per cent, per annum from the date of the advance of each item in the accounts up to the date of the institution of the suit ; a further direction as to interest at the rate of six per cent until realization was made.

The learned Judges of the High Court held that the plaintiffs' case as to compound interest was not made but ; they stated that compound interest had undoubtedly been charged in the accounts, but not according to the case of the plaintiffs.

The learned Judges referred to the plaintiffs' case as disclosed in the plaint, and drew attention to the allegation therein that it was the practice of the plaintiffs firm to charge interest with annual rests ; they then pointed out that annual rests had not been made in the accounts, which no doubt is the fact.

They held that in order to succeed the plaintiffs were bound to establish that the defendant agreed to pay the interest with annual rests, and finding that such agreement was not proved they disallowed the compound interest and dismissed the appeal.

Mr. Dass, J., in his judgment, said as follows :

"I quite agree that if the accounts which were signed by the defendant supported the case of the plaintiff I would have considerable difficulty in accepting the defendant's case. But those accounts, in my opinion, do not support the specific case as made by the plaintiff."

The specific case there referred to is that there was an agreement that interest should be charged with annual rests, and the ground of decision is that as that specific case was not proved, the plaintiffs' claim to compound interest must fail.

With respect to the learned Judges, their Lordships are of opinion that too narrow a view of the plaintiffs' case was adopted.

The plaint set out the facts in detail with regard to the submission of the

accounts by the plaintiffs to the defendant, the dates on which they were submitted and the amounts claimed to be due to the plaintiffs at the various times when the accounts were presented ; it was therein alleged that the defendant affixed his signature to the accounts when they were submitted to him, and reference was made to the last account which the defendant signed on 25th Jeth 1324 Fasli and which showed an amount due of Rs. 1,02,706-6-3. The accounts thus referred to included the items of compound interest claimed by the plaintiffs.

It is true that it was alleged in para. 16 of the plaint that the plaintiffs' practice was to charge interest with annual rests, but there is also a specific allegation that the defendant was informed of the claim to interest and compound interest and he accepted the claim.

In view of these allegations in the plaint their Lordships are of opinion that the plaintiffs are entitled to rely on the course of dealing between the parties as showing an agreement by the defendant to pay the compound interest which was in fact charged by the plaintiffs in the accounts submitted to him.

Their Lordships have no doubt that in fact the defendant did so agree.

The course of dealing continued for about 14 years : the accounts were periodically submitted to the defendant ; when submitted he signed them, the accounts undoubtedly showed in detail the advances made, the interest charged, and the periods at which the rests were made, and no objection was made at any time during the abovementioned period. There was no doubt good consideration for the abovementioned agreement, because, as the learned Subordinate Judge pointed out, if the defendant had objected to the compound interest being charged he would not have been able to obtain the further advances from the plaintiffs, which he desired, and which in fact he did obtain.

Their Lordships therefore are of opinion that the pleadings alleged an agreement by the defendant to pay the compound interest charged in the accounts which were submitted to and accepted by him, and that such agreement was proved.

The amount acknowledged by the defendant to be due in the account signed by him and dated 25th Jeth 1324 Fasli was Rs. 1,02,706-6-3. The transactions between the parties then ceased. Three items of compound interest for three periods after 25th Jeth 1324 were included in the plaint making a total of Rs. 1,43,865-15-3. No agreement by the defendant to pay these items has been proved.

Their Lordships, therefore, are of opinion that there should be a decree in favour of the plaintiffs for the said sum of Rs. 1,02,706-6-3 with interest thereon at the rate of 12 per cent per annum from 26th Jeth 1324 Fasli corresponding to 2nd June 1917 until the date of the institution of the suit : and that the total amount of the said sum and the said interest should carry interest at the rate of six per cent per annum from 6th March 1923 (the date of the Subordinate Judge's

decree) until the date of realization.

The appeal therefore should be allowed, the decrees of the learned Subordinate Judge and of the High Court at Patna should be set aside, and a decree should be made in favour of the plaintiffs in the abovementioned terms. The defendant should pay the plaintiffs the costs of this appeal and of the proceedings in both Courts in India, and their Lordships will humbly advise His Majesty accordingly.