(1912) 07 AHC CK 0048

In the Allahabad High Court

Kalika Prasad Tewari and Others APPELLANT

Vs

Inayat Husain and Others RESPONDENT

Date of Decision : 10-07-1912

Acts Referred:

Citation : 16 Ind. Cas. 216

Hon'ble Judges : Rafique, J;Piggott, J

Bench : Division Bench

Judgement

1. The only question in issue in this appeal is whether the plaintiffs are entitled to post diem interest. This was decreed by the Court of first instance but refused by the learned District Judge on appeal. The deed in suit is a mortgage by conditional sale, dated the 18th of August 1884. It commences with the recital that the mortgagor has received from the mortgagees a loan of Rs. 800, and with a general covenant to pay interest at 3 annas in the rupee per annum on the said loan. Then comes the further covenant that, as a consideration for this loan, the mortgagor undertakes to re-pay principal and interest on April the 29th, 1885, and mortgages by conditional sale certain specified property, the condition being that in the event of the mortgagor''s failure to pay on due date, the deed shall take effect as a sale out and out from the above mentioned date of April 29th, 1885. The case has been fully argued before us and we have been referred to a number of rulings commencing with the decision of their Lordships of the Privy Council in Mathura Das v. Raja Narindur Bahadur 23 I.A. 138 : 1 C.W.N. 52 which is the foundation of the modern case-law on the subject. The general principle is that the Court is bound to consider the terms of the contract entered into between the parties as a whole without laying undue stress on any one particular portion of the contract and having due regard, as their Lordships of the Privy Council remark to the ordinary expectations of persons entering into a mortgage transaction. We have to consider the fact that the covenant was one to pay interest at an annual rate, the shortness of the period fixed for payment and the presumption that the parties were aware of the law applicable to such documents. The mortgagees would not have been able to obtain possession of

the property on a suit for foreclosure without the mortgagor being also wed at least six months'' further time within which to redeem. In view also of the absence of any words expressly limiting the contract as to interest to the period from August 18th, 1884, to April 29th, 1835, we think that the intention of the parties was that interest at the stipulated rate should continue to run until actual payment. We accordingly set aside the decree of the lower Appellate Court and restore that of the Court of first instance, allowing, however, a further period of six months from the date of this decree within which payment may be made by the defendants. The appellants will get their costs in this and in the lower Appellate Court, costs in this Court will include fees on the higher scale.

