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**(1927) 02 MAD CK 0043**  
**In the Madras High Court**

Kamarazu Raja Rao

APPELLANT

Vs

Kamarazu Veeraraju and Others

RESPONDENT

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**Date of Decision :** 23-02-1927

**Acts Referred:**

Contract Act, 1872 — Section 74

**Citation :** AIR 1927 Mad 1143

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**Judgement**

1. These two Letters Patent Appeals arise out of two original suits, O. S. No. 24 of 1920 & O. S. No. 823 of 1918 on the file of the Court of the

District Munsif of Kovur. Both suits were tried together. The plaintiffs sued to recover principal and interest on two mortgage bonds executed in

their favour. The mortgage bonds are couched more or less in the same language. The principal amounts are made payable in various instalments

with interest at 18 per cent per annum. Then the documents contain further a stipulation that:

If payments are not made for 1-2 instalments according to the prescribed time, and if any default is made, we shall pay the same with compound

interest at the said rate on the whole amount of principal and interest due on the date of default (see Ex. B in O. S. No. 823 of 18).

2. Default having been made in the payment at the end of the first instalment, the plaintiffs claimed to enforce the stipulation for the payment of the

compound interest contained in the bonds. The only question argued before us is whether the stipulation for payment of compound interest in these

circumstances is penal u/s 74, Indian Contract Act. The learned Judge, Phillips, J., was of opinion that the stipulation is penal.

3. On behalf of the plaintiffs-appellants it is argued that the opinion of the learned Judge is wrong and that the stipulation in the documents only

amounts to a provision to pay compound interest from the date of default at the same rate as the simple interest and it does not amount to a penalty

within the meaning of Section 74, Indian Contract Act. We must accept this argument. The provisions in the documents, reinterest are for the

payment of compound interest at the same rate as the simple interest and take effect only from the dates of default and not from the dates of the

bonds. It has been held in a series of cases in this Court and also in the Privy Council that such stipulations are not penal and can be enforced: see

Malli Chettiar v. Veeranna Thevan A. I. R. 1921 Mad. 378 Ananjaperumal Konar v. Pichamuthu Nadar A. I. R. 1925 Mad. 332 Ramalinga

Chettiar v. Subramania Chettiar A. I. R. 1927 Mad. 620 and Sundar Koer v. Rai Sham Kishar (1907) 34 Cal. 150 The fact that in the event of

the non-payment of the first instalment the remaining instalments of the principal amount also fall due at once, and this is the only feature which

distinguishes these cases from the ordinary cases of payment of compound interest at the same rate as the simple interest from the date of default,

does not in our opinion, make any difference as regards the application of the principle we have referred to. Section 74, Indian Contract Act,

makes it clear that where money is payable in instalments with a stipulation that,

in default of payment of any instalment, the whole shall become due, the stipulation is not by way of penalty and the contract may be enforced

according to its term: see illustration (f):

4. We think therefore that the provisions in these documents regarding payment of principal and interest only amount to payment of compound

interest at the same rate as the simple interest on the total amount due under the documents in the event of default of payment of any instalment, the

payments of such compound interest starting only from the dates of default and not from the dates of the bonds. In this view the stipulations are not

penal.

5. In our opinion, the amount of 18 per cent compound interest is not a high percentage of interest considering the state of the money market.

Higher rates have been allowed by the Privy Council. Even if the stipulations are penal, we have no hesitation in awarding the same rate by way of

compensation u/s 74, Indian Contract Act. In this connexion we may point out that the defendants pleaded discharge and produced receipts,

which have been found to be false by the lower Courts.

6. In the result we must modify the judgments and decrees passed by the learned Judge by allowing the plaintiffs compound interest as prayed for in the plaint with costs throughout.