(1910) 07 MAD CK 0009

In the Madras High Court

Lal Batcha Sahib APPELLANT

Vs

Arcot Narainaswami Mudaliyar RESPONDENT

Date of Decision : 18-07-1910

Acts Referred:

Citation : (1911) ILR (Mad) 320

Hon'ble Judges : Arnold White, C.J;Ayling, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arnold White, C.J.—The main question raised in this appeal is as to the interest payable by the defendant to the representatives of the late

Pinavelu on money due by the defendant to Pinavelu on the death of the latter.

2. Mr. Sundara Ayyar on behalf of the defendant contended that the effect of exhibit IV, a letter dated 4th November 1901, from the defendant to

Pinavelu''s brother was to stop interest running as against the defendant from the date of that letter. He contended, in the alternative, that at any rate

exhibit VII, a letter dated 7th January 1902 from the defendant to Pinavelu''a widow relieved the defendant from any obligation to pay interest as

from the date of that letter.

3. It is not necessary to consider whether the taking out of a succession certificate was necessary for the recovery of the debt. For the purposes of

my judgment, I assume that the defendant was entitled to decline to pay until a succession certificate had been taken out, though as a matter of fact

no succession certificate was ever taken out and a suit was ultimately brought and a decree obtained by the guardians of Pinavelu''s adopted son.

4. As Wallis, J., points out in his judgment in Original Suit No. 53 of 1907, at

Common Law when interest is payable by the terms of the contract (this is admitted in the present case) it runs ordinarily up to the date of payment or legal tender.

5. I cannot find either in exhibit IV or in exhibit VII an unconditional offer by the defendant to pay a specific and ascertained sum. In exhibit IV he expressly guards himself from admitting that any amount is due. In exhibit VII ha says that according to his accounts Pinavelu was credited with a certain sum and that the statement of the amount due in the demand for payment is wrong. Ha goes on to say that if the widow would execute and register an indemnity bond (which he will accept if it is in accordance with law) he would pay the amount due on the comparison of the two accounts.

6. I do not think exhibit VII read as a whole amounts to an admission by the defendant of liability to pay the amount which appeared to be due on his own account and an unqualified offer to pay this amount. A valid tender which has been improperly refused stop a the running of interest; but there was certainly no tender in this case. Mr Sundara Ayyar contended that the letters referred to or one of them amounted to an agreement by the brother or the widow to waive tender. But assuming it was open to the brother or the widow to agree to waive tender there cannot be a tender or an agreement to waive tender of an unascertained sum. In Garuda Reddi v. Gudi Janahayyd Garu (1862) 1 M.H.C.R. 124 and Pandurang Krishnaji and Ors. v. Dadabhoy Nowroji and Ors. ILR (1902) Bom. 643 it would seem that the amount of the defendant''s liability was an ascertained and specific sum. I think these cases are distinguishable on this ground. I also think the case before Wallis, J., to which I have referred is distinguishable on the same ground.

7. The judgment would seem to direct that interest should be payable on the principal and interest due on 4th November 1901. The plaintiffs are only entitled to simple interest on the amount due subsequent to the settlement of 27th November 1900- The decree must be modified accordingly.

Otherwise the appeal is dismissed. The respondent is not represented.

Ayling, J.

8. I concur.