

(1895) 07 PRI CK 0005

In the Privy Council

Lala Chhajmal Das

APPELLANT

Vs

Brijbhukan Lal and another

RESPONDENT

Date of Decision : 20-07-1895

Acts Referred:

Citation : (1895) 22 IndApp 199

Hon'ble Judges : Hobhouse, Morris, Davey, Richard Couch, JJ.

Judgement

Morris, J. 1. This appeal has been argued before their Lordships ex parte. The Appellant Lata Chhajmal Das brought a suit in the Court of the Subordinate Judge of Mainpuri, on a bond dated the 20th of March, 1873, executed by Banhe Lal deceased. The Respondents represent Banke Lal's estate. 2. The bond is as follows:---"I Banks Lal...do declare:---That I owe Rs. 5000, half of which is Rs. 2500, on account of former and present loans as detailed at foot, to Chhajmal Das...and that, admitting the said debt, I promise that I shall pay the said money, with interest at the rate of Rs. 1.4 per cent, per mensem in two years: that interest shall be paid six-monthly; that in case of default in payment of interest on the expiry of any six months, it will be treated as principal, and being included in the principal, shall bear interest at the said rate; that the compound interest shall also be added six-monthly to the principal; that all payments will be noted on the back of the bond and if not so noted, no plea of payment, oral or supported by a receipt or acquittance, &c., shall be valid; that until payment of this money the zemindari property in the villages specified below, belonging to me and pledged by me formerly with some other properties, shall continue pledged and hypothecated for this money, and shall not be transferred to any one in any manner; and that if a transfer is made, it would be invalid, and this money, principal and interest, be preferentially realisable. I have received back the former bonds, and except this bond no bond is held by, and no money is due to, the said creditor up to this day." 3. The Appellant by his plaint, dated the 18th of March, 1887, alleged that according to the terms of the bond there was then due for principal and interest the sum of Rs. 26,605; but that as the property of the debtor was insufficient to satisfy that amount he only claimed the

sum of Rs. 16,000, and relinquished the residue. Various questions were raised, and were determined by the Subordinate Judge, and, upon appeal, by the High Court; but the only question upon which this appeal has been brought is the decision on the 8th issue. This issue was as follows: "Is plaintiff entitled to receive compound interest and interest for the period subsequent to the date promised for payment, or not?" The Subordinate Judge was of opinion that the Plaintiff was entitled to receive compound interest as claimed. The High Court on appeal reversed that judgment, and held that according to the true construction of the bond no interest was payable after the period of two years therein stated as the period fixed for the payment of principal and interest, and accordingly ordered that the Respondents should only pay to the Plaintiff the sum of Rs. 5000, being the principal sum secured by the bond. Their Lordships are not prepared to dissent from the construction placed by the High Court on the bond in respect of there being no covenant by Banke Lal to pay interest after the fixed period of two years from the date of the bond, although it is difficult to suppose that this was the intention of the parties to the bond. But even on that construction the Plaintiff would be entitled, on default being made in the payment, to recover interest technically as damages, and the rate would prima facie be the same as that provided by the bond during the two years, although there is no rule of law making that rate necessarily the measure of the damages. 4. Their Lordships are of opinion that the decrees of the Subordinate Judge and the High Court should be discharged; that an account ought to be directed by the High Court to ascertain what is due to the Plaintiff on the bond up to the 20th of March, 1875, adding interest to principal as provided by the bond; that it ought to be declared that on the amount so ascertained the Plaintiff is entitled to simple interest up to the date of the plaint at the rate of 15 per cent, per annum, and to simple interest at the rate of 6 per cent, per annum from the date of the plaint to the date of payment; and that accounts should be taken under the direction of the High Court on this basis; and that the amount found to be due in the result to the Plaintiff should be decreed to him by the High Court accordingly, but that the amount so decreed should not in any event exceed the sum of Rs. 16,000 claimed by the Plaintiff. The Defendants should pay to the Plaintiff his costs incurred in the Court of the Subordinate Judge in proportion to the amount recovered by him. There should be no costs of the appeal to the High Court. The Respondents must pay the costs of this appeal. Their Lordships will humbly advise Her Majesty accordingly.