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(1896) 09 CAL CK 0007

In the Calcutta High Court

Case No : No. 521 of 1896

Marshall — APPELLANT

Vs

The Bengal Spinning and Weaving Company — RESPONDENT

Date of Decision : 03-09-1896

Acts Referred:

Citation : (1896) 09 CAL CK 0007

Judgement

Sale, J.—The only question which has been discussed in this case is as to whether the Plaintiffs who are the trustees for the debenture holders of the Defendant Company are entitled to recover from the Company interest in respect of two sums due respectively on the 1st January 1896 and 1st July 1896, upon the debentures. The debentures are in this form. "The Company will in the meantime pay to such registered holder interest thereon at the rate of seven per cent. sterling per annum computed from the first day of January 1895, by equal half yearly payments on the first day of January, and the first day of July in each year; the first two of such half-yearly payments to be made together on the first day of January 1896," and then by paragraph 17 of the first deed, under which the Plaintiffs were appointed trustees for the debenture holders, it is provided as follows : --"The Company do hereby covenant with the Trustees that the Company will duly pay the principal moneys and interest secured by the debentures in accordance with the tenor thereof respectively and will duly observe and perform the several conditions endorsed thereon respectively." It is not disputed that default was made by the Company both in respect of the instalment due on the 1st July 1896. It appears that the instalment due on the 1st January 1896, was paid by the Company before the institution of this suit but not the instalment due on the first July 1896, which was not paid until after the suit, viz., on the 17th August 1896, so that what the Plaintiffs seek to recover is, first, the interest upon the instalment payable on the 1st January 1896, for the period between the 1st January 1896, and the date of payment, and secondly, to recover the amount of the instalment due on the 1st July 1896 with interest for the period from the date on which such instalment was payable up to the date of payment. It is not alleged that this claim so far as it relates to interest can be based upon any agreement by the Company to pay interest on the instalments payable under the debenture bond. Neither can it be said under the circumstances any express right has been created in favor of the bond holders by statutory enactment, but it is contented by the Plaintiffs that having regard to the circumstances the Court ought under the provisions of the Interest Act 32 of 1839, to allow the interest claimed. Now it is to be observed in the first place that the Act upon which reliance is placed on the part of the Plaintiffs is only an enabling Act by which the Court is vested with a discretion to grant interest under certain circumstances, upon debts or sum certain, payable at a certain time. There is nothing in the Act which creates a right to interest in favor of creditors which of itself could be made the subject-matter of a suit and this observation is, I think, sufficient to dispose of the claim as regards the interest in respect of the instalment which was paid before suit. The claim in respect of interest upon the instalment paid after the institution of this suit stands somewhat on a different footing. The question, however, still remains as to whether the Act does or was intended to give the Court jurisdiction to allow what in effect would be compound interest upon a debt. I have very great doubt as to whether the Court possesses that jurisdiction under the Act, and there is authority to show that there is ground for entertaining such doubt. The Indian Interest Act is in substance the same as the English Interest Act and in respect of the latter Act Lord Abinger in the case of Attwood v. Taylor 1 M. & G. 279 expressed the opinion that the Act did not apply to a case where the contract itself was a contract for payment of interest. This opinion will be found repeated in the Vol. 1 of Manning and Granger''s Reports, p. 300. But even if the Court had jurisdiction, there can, I think, be no doubt that it would be exercising a sound discretion in not allowing compound interest except in cases where compound interest is expressly provided for by the agreement. The Plaintiff''s claim therefore fails, but the Plaintiffs are entitled to their costs of suit up to date of payment of the instalment sued for, and having regard to the undoubted facts that the Company was in default both in respect of the earlier and latter instalments. I think as to the subsequent costs that the proper order is that each party do pay his own costs to be taxed on scale No. 2.

