

(1925) 01 CAL CK 0003

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1626 of 1922

Nabin Chandra Saha Poddar and Others

APPELLANT

Vs

Dudu Mia and Others

RESPONDENT

Date of Decision : 17-01-1925

Acts Referred:

Citation : (1925) 01 CAL CK 0003

Final Decision : Allowed

Judgement

Mukerji, J.—This appeal arises out of a suit for rent instituted by the Plaintiff's for the years 1323 to 1326, the allegation being that the Defendants were holding under a kabuliyat executed by their predecessor-in-interest for dwelling purposes in the year 1281. The Court of first instance decreed the Plaintiffs' suit. The lower Appellate Court gave the Plaintiffs a decree for the amount of rent claimed for the years in suit together with interest at the rate of 12 per cent. per annum, the rate of interest stipulated in the kabuliyat being 75 per cent, per annum at which the suit had been decreed by the Court of first instance. The Plaintiffs appeal to this Court, and their contention is that the decision of the lower Appellate Court on the question of interest is wrong. It appears that the ground upon which the rate of interest was objected to in the Court of first instance on behalf of the Defendants was that it was penal and unconscionable. The learned Munsif held that according to the present trend of judicial decisions the Stipulation as to interest cannot be held to be either penal or unconscionable. The learned Subordinate Judge on appeal was of opinion that the question as to the rate of interest was res judicata as between the parties by reason of a previous decision in a suit for rent as between the parties, which had been marked as Ex. 7 in the case ; and inasmuch as in that decision it was held that the Stipulation was of a penal nature it disallowed the interest at the rate mentioned in the kabuliyut and gave the Plaintiffs a decree, as I have said, at the rate of 12 per cent per annum. It is contended on behalf of the Appellants that the decision in the previous suit on the question of interest cannot in law operate as res judicata. On behalf of the Respondents it is urged that the said decision

does operate as *res judicata*, and it is further contended that in any event inasmuch as the Defendants were holding over, the Plaintiffs are not entitled to interest at the rate mentioned in the *kabuliyat* but are entitled only to such interest as in the opinion of the Court is fair and reasonable. So far as the question of *res judicata* is concerned it is necessary to refer to the decision, Ex. 7, upon which the Court of Appeal below has relied. It appears that in the previous suit the issue as to interest was as to whether the Plaintiffs were entitled to get interest at the rate mentioned in the *kabuliyat* and it was decided that the interest claimed was high and was therefore penal. This decision was passed on the 30th of April 1917. Since then there have been a number of decisions on the question of penal character or otherwise of interest stipulated in contracts, of which it is necessary to mention only one case, namely, the case of *Lala Balla Mal v. Ahad Shah* (1918) 23 C. W. N. 283 (P. C.), a decision of the Judicial Committee, in which it has been laid down that in the absence of anything to prove undue influence or to show that there was an unconscionable bargain the mere high rate of interest is not to be treated either as penal or unconscionable. The law having thus been altered the question is whether the decision in the earlier suit should operate as *res judicata* in the present one. On behalf of the Appellants reliance has been placed with regard to this matter on the case of *Alimunnissa Chaudhurani v. Shama Gharan Roy* (1905) I. L. R. Cal. 749. In that case it was laid down that cases must be decided upon the law as it stands when the judgment is pronounced and not upon what the law was at the date of a previous suit and if the said law has been altered in the meantime and the effect of the law has been differently interpreted by the judicial decisions or altered by statute the decision on the question of interest in an earlier suit for rent would not operate as *res judicata* with regard to the same question in a suit for rent for subsequent years. The decision, upon which the earlier decision was based in that case, had in the meantime been overruled by a Full Bench decision that case seems to me very much the same as the present case. On behalf of the Respondents reliance has been placed upon a number of decisions, especially upon the decisions in the cases of *Rai Charan Ghose v. Kumud Mohon Dutta* (1897) 1 C. W. N. 687, *Rambehari Sarkar v. Surendra Nath Ghosh* (1913) 19 C. L. J. 34 and *Waman Hari v. Hari Vithal* (1906) I. L. R. 31 Bom. 128 for the purpose of contending that the decision upon a pure question of law, even though erroneous, may under certain circumstances operate as *res judicata*. There can be no dispute as to the proposition of law which is contended for on behalf of the Respondents. But, as I have said, the facts appearing in the present case are distinguishable from the facts appearing in the cases cited on behalf of the Respondents and I can see nothing upon which I can distinguish the case of *Alimunnissa Chaudhurani v. Shama Gharan Roy* (1905) I. L. R. Cal. 749, upon which Reliance has been placed on behalf of the Appellants. I am of opinion, therefore, that the decision in the earlier suit for rent does not operate as *res judicata*. The mere fact that 75 per cent. per annum is a rate stipulated in the *kabuliyat* does not show that the rate was a penal one nor is there anything to show nor any finding has been arrived at to the effect that the bargain was penal

and unconscionable and this is not the first instance in which interest at the rate of 75 per cent. per annum has been allowed on the basis of a stipulation in a kabuliyut. I may refer for instance to the case of Asutosh Dhar v. Joylul Sardar (1912) 17 C. L. J. 50, where in awarding interest in a suit for rent at the contrast rate which was 75 per cent. per annum this Court observed as follows :--"The rate no doubt is very high, 75 per cent. per annum, but the tenants have the remedy in their own hands. They have only to pay their rent regularly and no Interest will be chargeable." I can therefore see no reason for not awarding a decree to the Plaintiffs at the rate stipulated in the kabuliyat.

So far as the second ground is concerned a reference to the kabuliyat shows that on the face of it, it is not a kabuliyat for a period of nine years as contended for on behalf of the Respondents and there is nothing to show that as a matter of fact the Respondents were holding over after the expiry of the kabuliyat. On this ground it is not possible for us to say that the Defendants are liable to pay interest at any rate other than that mentioned in the kabuliyat. I, accordingly, think that the decision of the learned Subordinate Judge is not correct and I set it aside and restore the decision of the learned Munsif with costs in this Court and the lower Appellate Court.

Greaves, J.

I agree.