

(1927) 11 PRI CK 0003

In the Privy Council

Case No : Privy Council Appeal No. 75 of 1925

P. C. Muthu Chettiar

APPELLANT

Vs

K. V. Meenakshisundaram Ayyar and others

RESPONDENT

Date of Decision : 29-11-1927

Acts Referred:

Citation : (1928) AIR(PC) 35

Hon'ble Judges : Lancelot Sanderson, John Wallis, Sinha, Atkinson, Viscount Sumner, JJ.

Advocate : Shephard, Chapman Walker, Dold, Douglas Grant, K. Brown, K. V. L. Narasimham, L. De Gruyther, for the Appearing Parties.

Judgement

Lord Atkinson, J.

This is an appeal against a decree of the High Court of Judicature at Madras, dated 18th January 1924, allowing an appeal from the judgment of the Subordinate Judge of Dindigul dated 30th October 1920. The suit was brought by the assignee of a mortgage dated the 28th January 1911, for a mortgage decree for Rs. 21,532-8-6. During the pendency of the suit the defendants paid into Court Rs. 12,500. The Subordinate Judge made a decree for a further sum of Rs. 12,301-9-6, but on appeal the High Court held that by the payment into Court the mortgage was discharged, and made a decree accordingly dismissing the suit. Against the lastmentioned decree the plaintiff (hereinafter referred to as the appellant) has preferred this appeal, and the question in it is the rate of interest due under the mortgage

It is essential to examine closely the provisions of the two instruments upon which the appellant's title to relief purports to be based. The first of these is a hypothecation bond dated 28th January 1911, by which Subramania Ayyar (the father of the respondents) purchased a house therein described for the sum of Rs. 20,000 from one Padmanabha Nayudu, of which sum it was by the said bond provided that the sum of Rs. 10,000 should remain outstanding on mortgage of the properties so purchased. On 27th July 1912, Padmanabha Nayudu, by

written instrument, assigned his aforesaid mortgage to the present appellant. It is stated in this instrument and apparently not disputed that the mortgagor had, on 9th April 1912, paid in part discharge of the mortgage debt a sum of Rs. 1,000, and that the interest which had accrued on the mortgage debt up to the end of May 1912, had been duly paid by or on behalf of the mortgagor. On the 11th February 1917, a sum of Rs. 12,500 was tendered to the mortgagee in discharge of the mortgage. It is not disputed now that this sum was, upon the construction of the mortgage deed adopted by the High Court, sufficient to discharge the mortgage debt due up to that date, but the appellant refused to receive it stating that it was insufficient. On the 21st August 1919, the appellant instituted a suit against the mortgagor and his son, alleging amongst other things, that, according to the terms of the deed of assignment and according to law, defendant 1 was bound to pay the interest accruing on the mortgage debt at the rate of 8 annas per month, and that on default in paying this interest the defendant was bound to pay the entire balance of the mortgage debt due at the date of this default with compound interest thereon at the rate of Re. 1 per cent per mensem from the date of default up to the date of payment, which liability, up to the date of the plaint, was, he alleged, found to be Rs. 21,532-8-6. In respect of this debt he prayed for the usual decree for this amount with subsequent interest thereon and costs.

On the 28th November 1919 the said defendant filed a statement of defence in which he alleged, inter alia, that the plaintiff's construction of the clause in the deed of assignment providing that on default of payment of interest due at any time the appellant was entitled to compound interest at 1 per cent. with monthly rests, was preposterous and penal, that the tender made by him was adequate and proper, that the plaintiff was not entitled to further interest after the date of the tender, and that he, the respondent, was prepared to pay the sum of Rs. 12,500 if the plaintiff would accept it in full discharge of his claim. On the 30th October 1920, the learned Subordinate Judge of Dindigul delivered judgment in the case, holding that on the proper construction of the vernacular words used in the document (i e., the deed of transfer) it was clear that compound interest at 12 per cent. was agreed upon, that the rate of interest, payable under the suit bond in default of payment of interest every month, was 12 per cent, compound interest. He also held that there was an attempt to tender some amount on the 11th February 1917, but that Rs. 12,500 was not actually before the plaintiff, and that the tender was neither legal nor valid and he accordingly allowed the plaintiff's claim. A formal decree was drawn up for the amount claimed by the plaintiff with further interest and costs less the sum of Rs. 12,500 paid into Court by the defendant 1, and on the 4th July 1920, drawn out by him. Their Lordships, for reasons to be presently stated, are quite unable to take the same view as the learned Subordinate Judge took as to the proper construction of this suit deed, as it is styled - this deed of assignment.

The learned Judges in the High Court fortunately, their Lordships think, took an entirely different view from that of the learned Subordinate Judge. They held that

the proper construction of the clause in the suit bond, on which the question in controversy was treated as turning, was to this effect, that when each amount of monthly interest became overdue it should carry interest at 12 per cent, up to payment, there being no further rests; that it was conceded by the parties that the amount tendered, Rs. 12,500, was enough to cover the sum due at the date of tender, and that the plaintiff was not entitled to any further sums; that it was admitted before them that the sum of Rs. 12,500 deposited in Court had been drawn out by the plaintiff.

They accordingly set aside the decree of the Court below and held that the plaintiff was not entitled to any further decree. Their Lordships think that the conclusion at which the learned Judges of the High Courts arrived was sound and right, but on the question of the proper mode of construing the suit bond there are some important considerations which were not fully dealt with by either Court.

When default is once made on the occasion of the first rest, the debtor thenceforth pays interest not merely on the original debt he owed, but upon a composite debt including the original debt plus the added interest. Now in the present case the loan of Rs.10,000 is made for three years with interest at 2 Re. per cent. per mensem. This interest is to be paid before the 10th of every month, and a receipt obtained, but if default should be made in payment in this manner, or in getting a receipt, the rate of interest is doubled. But on what is it to be paid? If it be as compound interest the arrear has sunk into the principal, and the 12 per cent, must be paid on this composite sum. If, on the contrary, interest is only to be paid on the interest in arrear and there is no such sinking, then the rate of interest on the original debt remains unchanged at 2 Re. percent. and is not doubled. Moreover, if the unpaid interest sinks into the principal debt, the debtor loses all right to have it separated again from that debt and dealt with independently. He must, therefore, pay interest on the composite sum at double the rate reserved upon the principal sum for the whole three years. From the date of default 4 Re. per cent. per mensem could no longer be paid on anything.

It is scarcely possible, their Lordships think, to conceive that men of ordinary intelligence should put themselves in such a hopeless position, and a construction of the document which brings out these results must, they think, be erroneous.

Again, it appears to their Lordships that the Subordinate Judge allowed his mind to be concentrated too much on the words "pay interest on interest" used in the sentence. "If he fails to pay in that manner he shall pay" interest on interest" at the rate of 1 per cent." These words fairly enough refer to interest to be borne by a sum in arrear, if that sum was payable as interest.

But it has been long ago, and many times, decided that written documents must be construed as a whole; that each provision they contain must receive attention; and from their several provisions the true intentions of the parties to

them is to be ascertained.

In *Barton v. Fitzgerald* 15 East. 530 : 13 R. R. 519. Lord Ellenborough said :

It is a true rule of construction that the sense and meaning of the parties in any particular part of an instrument may be collected *ex ante cedentibus et consequentibus*; every part of it may be brought into action in order to collect from the whole one uniform and consistent sense.

Again, in *Sicklemore v. Thistleton* 6 M. and S. 9 : 18 R. R. 280. Lord Ellenborough again said :

According to the authority of *Browning v. Wright* covenants ought to be construed with due regard to the intention of the parties as it is to be collected from the whole context of the instrument so as to make one entire and consistent construction of the whole.

In the case of *Elderslie Steamship Co. Ltd. v. Borthwick* 1905 A. C. 93 : 74 L. J. K. B. 338 : 21 T. L. R. 277 : 10 Asp. M. C. 24 : 53 W. R. 401 : 92 L. T. 274 : 1C Com. Cas. 109. Lord Halsbury said:

My Lords, I do not think it is necessary to quote any authority in this case. Construing the instrument (i. e., the bill of lading) and applying to it the ordinary canons of construction, I must merely move your Lordships that the appeal be dismissed. It seems to me that if what has been called the large print had stood alone, I should not have had the slightest doubt that it would have carried the shipowner the whole way. I can give no other construction to it than that which the words express : but the difficulty in his way is that he thought proper to include an instrument which has two different sets of phrases in it, and one rule of construction which must prevail is that you must give effect to every part of a document if you can. You must read it as a whole. Mr. Carver has ingeniously spoken of independent contracts and independent paragraphs and so on, but we must remember that this is one contract, and each of the parts must be read so as to give effect to the whole, if it can.

Applying these principles of construction to the present case, their Lordships do not think that such dominating force and meaning can be given to the ambiguous phrase "interest on interest" as would lead to results, which clash with the plain and clear objects and meaning of the natural and unambiguous provisions of the document.

Their Lordships will, therefore, humbly advise "His Majesty that the appeal must be dismissed. The appellant must pay the costs.