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(1942) 03 PAT CK 0009

In the Patna High Court

Prayag Lal and Others APPELLANT

Vs

Palakdeo Narain Singh and Others RESPONDENT

Date of Decision : 11-03-1942

Acts Referred:

Bihar Money Lenders (Regulation of Transactions) Act, 1939 — Section 8

Citation : AIR 1942 Patna 419

Hon'ble Judges : Harries, C.J;Fazl Ali, J

Bench : Full Bench

Judgement

Harries, C.J.—This is an appeal by the defendants from a decree of the learned District Judge of Gaya passed in a mortgage suit. A suit was instituted in the Court of first instance on the basis of two mortgage bonds. The rate of interest stipulated in the bonds was Rs. 1-8-0 per cent per mensem compoundable annually. The plaintiffs, however, waived their claim to compound interest and claimed simple interest at the rate stipulated for. The principal sum was Rs. 2200 and the interest due up to the date of the institution of the suit was Rupees 1829-6-6. It should be observed that the first of the mortgages was dated 3rd June 1933, and the seoond 1st August 1935.

2. The present appellants were puisne mortgagees and were impleaded in the suit. The trial Court passed a mortgage decree as prayed for in the suit, and an appeal was preferred to the Court of the learned District Judge. In that Court a number of points were taken under the Bihar Money-Lenders (Regulation of Transactions) Act, 1939, which had just come into force.

3. In the first place, the learned Judge was asked to hold that interest under these mortgages should not be allowed at a higher rate than 9 per cent, per annum simple. It was contended that the Bihar Money-Lenders act had provided that for mortgages executed after the Act came into force 9 per cent simple was the maximum rate of interest allowed. That being so, it was said that the Court should reopen the transaction u/s 8 of the Act and reduce the interest to 9 per cent, per annum simple. The learned District Judge pointed out that the rate of

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interest in future mortgages had been controlled by statute, though that was no reason for holding that 18 per cent, per annum simple was an excessive rate having regard to the fact that such a rate was the usual rate in the district when this mortgage was executed.

4. It is to be observed that these mortgages were not in place of an earlier indebtedness which consisted largely of interest. These were fresh loans bearing interest. Frequently we find that a small sum has been advanced and interest has been allowed to accumulate for years and then a fresh bond executed. Such a bond is in the main for interest, and it is then provided that the total should carry interest at a heavy rate. Frequently a third bond is executed in respect of the old indebtedness and sometimes a fourth or a fifth. In such cases obviously the greater portion of the indebtedness is interest which has been bearing interest on itself. In such cases the Court is often prepared to reopen the transactions and reduce the rate of interest. The present is not such a case.

5. It is to be observed that the appellants are puisne mortgagees and are money-lenders themselves. The act is intended to give relief to needy debtors as against the money-lenders. It is true that these money-lenders are judgment-debtors in this case, but they are not amongst the people who were intended to be benefited by this legislation. In any event, having regard to the rates prevailing when this mortgage was executed, I am wholly unable to say in second appeal that the learned District Judge was wrong in refusing to exercise his discretion. He considered the relevant matters, and I cannot see how a point of law can arise.

6. For the reasons which I have given, I can see no ground for interfering with the decree passed by the lower appellate Court, and that being so, this appeal is dismissed with costs.

Fazl Ali, J.

I agree.

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