

(1925) 05 AHC CK 0017
In the Allahabad High Court

Sahu Banarsi Prasad and Others

APPELLANT

Vs

Kuer Manmohan Lal and Others

RESPONDENT

Date of Decision : 08-05-1925

Acts Referred:

Citation : AIR 1926 All 119

Hon'ble Judges : Sulaiman, J

Bench : Division Bench

Judgement

Sulaiman, J.—This is a decree-holders" appeal arising out of a mortgage decree for sale in execution. The claim was decreed for a sum of Rs. 16,793 with interest at six per cent. per annum. When the preliminary decree was prepared on 5th February 1919, was fixed as the date for the payment of the money, and the amount of principal, interest and costs found due to the decree-holders on 5th February 1919 was put down in the decree as being Rs. 17,918-6-9 and it was stated that the aforementioned sum should bear interest at six per cent. per annum till the date of realisation. The decree further provided that if by that day no payment was made then the property would be sold and out of the sale proceeds the amount found due to the plaintiffs as aforesaid together with subsequent interest and costs should be deducted and whatever remained as surplus would be paid over to the defendants. This decree is in perfect concurrence with the directions contained in Order 34, Rule 4, read with Rule 2 and the form attached to the Code. No money was paid in time with the result that a final decree was prepared which directed that the property should be sold and the proceeds of the sale should be applied towards the payment of rupees 17,930-14-6 together with subsequent interest and costs.

2. The judgment-debtors subsequently prevented the sale of the property by payment of Rs. 20,686-3-3. Having done so they have now applied to the Court for a refund of Rs. 285-3-3 on the ground that amount was overpaid. Their contention is based on the ground that under the decree no interest on the costs amounting to Rs. 957-7-0 should be allowed. The Court below has acceded to

this contention and ordered a refund, hence this appeal.

3. In my opinion this appeal must prevail. In the first place the decree as it stands even if it had been a wrong decree, entitles the decree-holders to interest on the aggregate amount of Rs. 17,930-14-6 at six per cent. per annum till the date of realisation even though that aggregate amount includes costs. Both the preliminary and the final decrees fixed 5th February 1919 as the day for payment and Rs. 17,930-14-6 as the amount due on that date, and directed that the amount so found due should bear interest at six per cent. per annum. The judgment-debtors therefore are not entitled to claim any deduction, I however find that not only the decree-holders are entitled to interest on the costs under the two decrees, but that the decrees themselves are in perfect concurrence with the provisions of Order 34. If one examines Order 34, Rule 2, one sees at once that a decree should order that an account is to be taken of what will be then due to the plaintiff or principal and interest on the mortgage and for his costs of the suit awarded to him on the day next referred to and that it should be declared to be the amount so due at the date of such decree. Then Rule 4 provides that in a suit for sale the Court shall pass a decree to the same effect and also directing that in default of the defendant paying as therein mentioned the property would be sold and the proceeds of the sale applied in payment of what is due to the plaintiff as aforesaid together with subsequent interest and subsequent costs (Sic) cetera. It is clear that the subsequent interest means subsequent interest on the aggregate amount so found due. As observed by their Lordships of the Privy Council in *Sunder Koer v. Rai Sham Krishen* (1907) 84 Cal 180 the intention seems to be that a general account should be taken once for all, and an aggregate amount be stated in the decree for principal, interest and costs, due on the fixed day and that after the expiration of that day if the property should not be redeemed the matter should pass from the domain of contract to that of judgment and the rights of mortgagee should thenceforth depend not on the contents of his bond but on the directions in the decree. The interest is allowed on the aggregate sum and not merely on the principal money and this is right if the mortgagee is treated as a decree-holder of judgment-creditor. This view was followed by the Madras High Court in *Venkata Chalapati Ayyar v. Thavasi Servai* (1919) 42 Mad 465 with which I agree.

4. Of course no subsequent interest on subsequent costs will be allowed.

5. The result, therefore, is, that this appeal is allowed and the decree of the Court below directing a refund of Rs. 258-3-3 with interest is set aside. The appellants will be entitled to their costs of this appeal.