

(1929) 01 AHC CK 0002
In the Allahabad High Court

Sheo Narain Dube

APPELLANT

Vs

Raj Kumar Rai and Others

RESPONDENT

Date of Decision : 25-01-1929

Acts Referred:

Contract Act, 1872 — Section 24

Citation : 116 Ind. Cas. 17

Hon'ble Judges : Dalal, J

Bench : Single Bench

Judgement

Dalal, J.—There is nothing to distinguish this case from the ruling in the case of Her Prasad Tewari v. Sheo Gobind Tewari 67 Ind. Cas. 793 : 20 A.L.J. 318 : 44 A. 486; AIR 1922 All. 134. The learned Counsel for the applicant quoted the ruling in the case of Jarbandhan v. Badri 83 Ind. Cas. 19 : 45 A. 621 : AIR 1924 All. 80 : 21 A.L.J. 480. The distinction between the cases is very clear. If a mortgage prohibited by law comes into existence on the money being borrowed, the entire contract of mortgage is void u/s 24 of the Indian Contract Act, and that being so the personal covenant in the mortgage also falls along with the contract of mortgage. If, however, the mortgage was to come into existence on the breach of a personal covenant and first of all a personal covenant to pay was entered into, the failure of the mortgage would not lead to the failure of the personal covenant. In the present case the mortgage was secured for the money borrowed and there was no personal covenant for the payment prior to the recital of the mortgage. It is not stated in the bond that a mortgage will come into existence on non-payment of the money on the basis of the personal covenant. I dismiss this application with costs.