
(1961) 08 KL CK 0022
In the High Court Of Kerala
Case No : Second Appeal No. 186 of 1958

Subramonia Iyer

APPELLANT

Vs

Janardhanan

RESPONDENT

Date of Decision : 29-08-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144

Citation : AIR 1962 Ker 297

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : K.N. Narayanan Nair, for the Appellant; T.S. Krishnamurthy Iyer, for the Respondent

Final Decision : Dismissed

Judgement

S. Velu Pillai, J.—The short question for decision in this Second Appeal is, whether in proceedings" u/s 144 of the Civil Procedure Code, the appellant, decree-holder, who had withdrawn a certain sum of money deposited in Court by the respondent-judgment-debtor, pursuant to a decree which had afterwards been modified, is not liable also for interest thereon in making restitution. It was contended for the appellant, that no claim for Interest can be made against him, being outside the provisions of the Interest Act. In my view, the claim is well founded and falls squarely within the terms of Section 144, Civil Procedure Code, the relevant part of which reads:--

"and, for this purpose, the Court may make any order, including orders.....for the payment of interest.....which are properly consequential on such variation or reversal."

This power is untrammelled by anything in the Interest Act, being founded upon a wholly different principle, that, it is one of the highest duties of the Court to see that "its act does no injury to any of the suitors." In stating the principle, I cannot do better than extract the following passage from the judgment of the

Privy Council fn Rodger v. Comptoir D' Escompte De Paris (1871) LR 3 PC 465.

"It is contended, on the part of the Respondents here, that the principal sum being restored to the present petitioners, they have no right to recover from them any interest. It is obvious that, if that is so, injury, and very grave injury, will be done to the Petitioners.....So far, therefore, as principle is concerned, their Lordships have no doubt or hesitation in saying that injustice will be done to the Petitioners, and that the perfect judicial determination which it must be the object of all Courts to arrive at, will not have been arrived, at unless the persons who have had their money improperly taken from them have the money restored to them, with interest, during the time that the money has been withheld."

In AIR 1935 12 (Privy Council) , the privy Council observed, that the above decision "seems rightly to have grounded the practice in India in such cases."

2. On the above principle, the appellant was rightly held liable for interest. He has been made so liable only for interest that had accrued from the date on which notice was given to him of the deposit made; no exception whatever can be taken to this. The Second Appeal is dismissed with costs.