
(1970) 09 KAR CK 0008
In the Karnataka High Court
Case No : Second Appeal No. 136 of 1966

Venkataramanaswamy Permanent Bhandar Ltd.

APPELLANT

Vs

Fatima Bi and Others

RESPONDENT

Date of Decision : 10-09-1970

Acts Referred:

Contract Act, 1872 — Section 74

Citation : AIR 1971 Kar 250 : (1970) 2 MysLJ 475

Hon'ble Judges : Jagannatha Shetty, J

Bench : Single Bench

Advocate : Suresh S. Joshi, for the Appellant; T. Venkanna, for the Respondent

Final Decision : Allowed

Judgement

Jagannatha Shetty, J.—This appeal arises out of a suit brought by the appellant for recovery of money due on a mortgage bond dated 4-4-1958, effected by the husband of respondent No. 1 and father of respondents 2 to 6.

2. The bond provided for the payment of interest at 6 1/4 per cent, per annum and further stipulated that if a default was made in the payment of the prescribed installments, the rate of Interest would be 9%. There is a further stipulation that the rate of interest could be charged at a penal rate of 12% of failure to pay the recurring deposit.

3. The question for consideration in this appeal is whether the enhanced rate of interest at 9% payable on default is penal or excessive. The trial Court has awarded interest for the whole period at 6% till the date of realisation, whereas the appellate Court has awarded at 6 1/4 per cent from 1-7-1959 to 15-4-1964 and also for the period from the date of the suit till the date of the decree with future interest at the rate of 6 per cent.

4. Shri Suresh Joshi, the learned counsel for the appellant, submits that the default clause in the bond cannot be construed penal in nature so as to attract the explanation to Section 74 of the Indian Contract Act. If that is not penal

interest, then, he is entitled to collect 9 per cent by way of interest from the defaulting defendants.

5. As per explanation to Section 74 of the Indian Contract Act, a stipulation of increased interest from the date of default may be a stipulation by way of penalty. Circumstances of each case have to be taken into consideration in determining whether the particular covenant for payment of enhanced interest is excessive as to bring it within the meaning of penalty. (See *Abbakke Heggadthi v. Krishnamma Shetty* (1906) ILR 29 Mad 491 ; *D.K. Aswathanarayanaiah Vs. Nallapula Sanjeeviah*, Such enhanced interest may be allowed as a reasonable compensation towards the loss on the delayed payment. It may also be in the nature of *terrorem* for the performance of the contract, A case of the latter category would be regarded as a penalty. In the instant case, the ordinary rate of interest is 6 1/4 per cent. But the promisor could commit default in making payment and the period in default carries an interest at the rate of nine per cent. It is perhaps to compensate the society for the delay in the recovery and reinvestment of the amount. Since there is also a further stipulation to charge penal interest at the rate of 12 per cent, I am of the opinion that nine per cent interest on default, cannot be said to be penal,

6. The default clause in the bond does not say from what date the interest to the rate of nine per cent is chargeable. In the absence of specific provision to the contrary, the parties must have intended that the enhanced rate would be chargeable from the date of default and not from the date of the deed. (See *Kandhi v. Hussain Bibi* 77 Ind Cas 768 : AIE 1923 Oudh 158 .) If that enhanced rate of interest is to be charged from the date of the bond and not with effect from the date of default, it would be a circumstance to hold that it is in the nature of penalty. (See *Ramjidas Vs. Baburam*,

7. I would, therefore, hold that the plaintiff is entitled to interest at the rate of nine per cent from the date of default, that is, 1-7-1959 to the date of suit, that is, 15-4-1964 and at six per cent thereafter.

8. In the result, this appeal is allowed, setting aside the judgment and decree of the lower Courts. The plaintiff's suit is decreed with interest at the rate of nine per cent from 1-7-1959 to 15-4-1964 and at six per cent from the date of suit till realisation.

9. As the respondents are all minors, there will be no cost throughout.