

*Privy Council Appeal No. 51 of 1923.*

*Patna Appeal No. 34 of 1920.*

Rai Radha Kishun and others - - - - - *Appellants*

*v.*

Jag Sahu and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

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JUDGMENT OF THE LORDS OF JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 30TH MAY, 1924.

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*Present at the Hearing :*

LORD DUNEDIN.  
LORD PHILLIMORE.  
LORD CARSON.  
SIR JOHN EDGE.

[*Delivered by* LORD DUNEDIN.]

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The present action was brought to enforce a mortgage on the family estate which had been executed by a purdanashin lady, now deceased, who had had a widow's right in the said estate. The mortgage bore to be for Rs. 775 with compound interest at 24 per cent. and half-yearly rests. The Subordinate Judge held that the mortgage was enforceable only as to Rs. 329. Necessity as to the remainder not having been proved, he decreed for Rs. 329 as principal and for interest at only 24 per cent. simple. This brought out the interest at Rs. 1178.12.9. The High Court agreed as to the principal but held that compound interest should be charged, which brought out the total sum at Rs. 18548.11.4.

The view of the learned Subordinate Judge is concisely expressed in his finding on the 5th issue. He says :—

“ *Issue No. 5.*—The amount covered by both the handnotes (Ext. 1 and 2 (a) ) carried interest at 2 per cent. per month. The bond in suit was executed only a month or so after the execution of these handnotes and

there is absolutely no evidence adduced by the plaintiff to show that pressure for repayment of the amounts due on them was so great as to compel Bachu Kuar to agree to pay compound interest at 2 per cent. with six-monthly rest. Compound interest at this rate seems to be very high and the extent of its exorbitancy can be well gauged by the fact that Rs. 775 has run to Rs. 14,500 from October, 1902, to November, 1915. To make the defendants liable for such exorbitant interest the plaintiffs were bound to prove that Bachu Kuar could not get money at a lower rate but this they have not done (6 C. L. Journal, p. 462). I would, therefore, allow simple interest at 24 per cent. per year as stipulated for by the notes (Ext. 1 and 2).

The learned Judges of the High Court reversed because, in their opinion, there was no specific statement in the defendants' pleading raising the question of the necessity for the rate of interest and that, therefore, the Subordinate Judge was wrong in going into the matter.

This point has, in their Lordships' view, been clearly decided by the Board. Turning to the pleadings in this case the defendants, in their written statement, allege as follows :—

“ The bond sued upon is entirely illegal and without passing of consideration and is without legal necessity.”

Now, in the case of *Nazir Begam v. Rao Raghunath Singh*, 46, I.A. 145, the judgment of the Board is as follows, at p. 148 :—

“ In the written statement applied on behalf of the defendants one of the points taken was that the property mortgaged was ancestral property and that there was no legal necessity to execute the document sued upon. In the view which the High Court took of this plea, a view from which their Lordships see no reason to differ, it made it open for the defendants to contend that though the necessity for borrowing the principal sum was accepted there was no necessity to borrow on the very onerous terms of this mortgage. This line of defence being thus open to the defendants the pleas laid down by this Board in *Rajah Hurrnath Roy Bahadoor v. Rundhir Singh* and in *Nand Ram v. Bhupal Singh* apply.”

This makes clear two points. First that a plea in general terms opens the defence that there was no necessity to borrow at the high rate of interest and, second, that the onus of showing there was necessity lies on the lender. But there is further and subsequent authority. In the case of *Munna Lal*, 29th July, 1919, *not reported*, the passage just cited is repeated and affirmed and lastly, in the case of *Ram Bujhawan Prosad Singh v. Nathu Ram*, 50 I.A. 14, there is this passage :—

“ It is not possible to say, after the decision of the Board in the case of *Nazir Begam* already referred to, that a plea of no legal necessity for a loan and that the property is not at all liable for the payment of the amount claimed does not open the door for a defendant to say that the rate of interest is excessive and place on the plaintiff the onus of proving that the rate of interest is not excessive, having regard to all the circumstances which prevailed when the loan was made.”

In view of these authorities their Lordships cannot consider the question as still open. A plea in general terms as here raises the question and the question being raised the onus is on the

lender to prove that the necessity included borrowing on such terms. As in all questions of onus, a certain amount of evidence may cause the onus to shift, and evidence on the lender's part that the money could not, in the circumstances, have been raised at less interest would suffice to shift the onus so that, if the defendant led no evidence to controvert that statement, the lender would prevail. But when there is no evidence and it is evident on the face of the document that the interest charged is far in excess of commercial rates, then undoubtedly the lender has not discharged his task. For these reasons their Lordships are of opinion that the judgment of the High Court cannot be supported on the grounds given.

The plaintiffs' counsel urged that if this view should prevail the judgment of the Subordinate Judge should not be restored *simpliciter* but the case should be remitted for further enquiry and he called attention to the fact that certain evidence proffered was refused by the Subordinate Judge as unnecessary and that a petition to the High Court for allowance of this evidence was not dealt with as, in view of the finding of the High Court, it became unnecessary to deal with it.

Now, the evidence in question consisted of the production of two bonds granted by the same widow borrowing at a high rate of interest and decree obtained on one of the bonds, and the tender of a witness to speak to the execution of one of the bonds. Their Lordships do not think that a remit is necessary. Evidence simply that on one other occasion the widow had borrowed at high interest is not in any way conclusive as of what she might have done on the occasion in question, and as no other evidence was tendered their Lordships think that the Subordinate Judge was justified in saying, as he did, that "there is no evidence adduced by the plaintiffs to show that pressure for repayment of the amounts due on them was so great as to compel Bachu Kuar to agree to pay compound interest at 24 per cent. with a six-monthly rest."

Their Lordships will, therefore, humbly advise His Majesty that the appeal should be allowed and the decree of the Subordinate Judge restored, the appellants to have their costs here and in the Courts below.

The petition of the respondents for the admission of further evidence will be formally dismissed with costs.

In the Privy Council.

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RAI RADHA KISHUN AND OTHERS

v.

JAG SAHU AND OTHERS.

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DELIVERED BY LORD DUNEDIN.

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