A

MEGHRAJ & ORS.

v.

MST. BAYABAI & ORS.

April 30, 1969

B

[J. C. SHAH AND G. K. MITTER, JJ.]

Mortgage—Money deposited in Court towards principal, effect of—Interest—Some mortgagee Firm's Partners migrated to Pakistan—Custodian of Evacuee Property impleaded—Effect of.

Madhya Pradesh Money Lenders Act (*Madh. Pra.* 13 *of* 1934), *s.* 9—
C *Interest whether can exceed principal.*

A preliminary decree was obtained by the mortgagee-firm for recovery of the principal, interest at 3% and costs by sale of the mortgaged property. The High Court in affirming the decree, directed payment of the decretal amount by November 10, 1946, and awarded interest at 3% from the date of suit to August 11, 1941 and thereafter at 4% till the date of satisfaction. In an application for clarification of the order the High
D Court directed that interest be paid at 3% from October 5, 1936 till August 11, 1941 on the amount decreed by the trial court and at 4% thereafter till November 10, 1946. During the pendency of an appeal by the mortgagor against the preliminary decree some of the partners of the mortgagee-firm migrated to Pakistan, and were declared evacuees. The court ordered that the Custodian of Evacuee Property be impleaded as a party respondent in the appeal. The appeal filed in this Court was
E dismissed.

Thereafter the only partner of the mortgagee-firm who had not migrated, for himself and as agent of the evacuees applied for a decree absolute for sale. The Custodian of Evacuee Property resisted the application. Ultimately the High Court ordered that the Custodian of Evacuee Property be joined as a party to the application for decree absolute for sale, observing that the respective rights of the Custodian of Evacuee Property and the
F partners of the mortgagee firm were not decided in that proceeding. The mortgagors contested the application, contending that (i) on proper accounting nothing was due against them since they had made deposits towards the principal in the Court O. 21 r. 1 C.P.C. as and in making some deposits they had informed the court that the payments were made towards the principal due; (ii) the High Court by its order clarifying the decree restored the rate of interest awarded by the trial court after November 10, 1946; (iii) the mortgagee could not be awarded as interest
G an amount exceeding the principal, because of s. 9 of the Madhya Pradesh Money Lenders Act, 1934; and (iv) the Custodian of the Evacuee Property was not entitled to the decree absolute for sale, and that the only partner, who had not migrated, could get a decree absolute in respect only of his share. Rejecting these contentions, this Court :—

HELD : (i) Unless the mortgagees were informed that the mortgagors
H had deposited the amount only towards the principal and not towards interest, and the mortgagees agreed to withdraw the money from the court accepting the conditional deposit, the normal rule that the amounts deposited in court should first be applied towards satisfaction of the interest and costs and thereafter towards the principal applied. There was no

evidence in this case, that the mortgagees were informed that the money was deposited towards principal or that the mortgagees accepted the payment made towards the principal. [526 C-D] A

Venkatadri Appa Row and Ors. v. *Parthasarathi Appa Row*, L.R. 47 I.A. 150, referred to.

(ii) By directing that interest at 4% from August 12, 1941 to November 10, 1946, it was not, and could not be, intended by the High Court that interest after November 10, 1946 was to be awarded only at the rate of 3%. No such application was made by the debtors. The High Court did not reduce the rate of interest after November 10, 1946. B

(iii) Section 9 of the Madhya Pradesh Money Lenders Act prohibited the courts from awarding interest exceeding the principal of the loan. But the prohibition of the statute was against the making of a decree for arrears of interest exceeding the amount of loan. In the present case the decree awarded interest much less than the principal. [529 B] C

(iv) The court was concerned in the present proceeding to pass a decree absolute for sale in a mortgage suit. It was not concerned to determine the respective rights of the mortgagees *inter se*. The mortgagees' interest was fully represented before the Court. Whether or not the Custodian of Evacuee Property was entitled to the money or that the evacuees had a subsisting interest was a matter which could not be decided in this appeal. That was made clear by the judgment of the High Court in the application filed by the Custodian of Evacuee Property. [529 D] D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 608 of 1965.

Appeal by special leave from the order dated November 30, 1964 of the Bombay High Court, Nagpur Bench in First Appeal No. 80 of 1964. E

G. L. Sanghi and *J. B. Dadachanji*, for the appellants.

W. S. Barlingay, R. Mahalingier and *Ganpat Rai*, for respondent No. 6. F

B. D. Sharma and *S. P. Nayar*, for respondent No. 11.

The Judgment of the Court was delivered by

Shah, J. Seth Haroon and Sons a firm had ten partners. The Hindu undivided family of Jethamal Ramkaran mortgaged a house belonging to it to Seth Haroon and Sons to secure repayment of Rs. 40,000 due at the foot of an account. Seth Haroon and Sons filed suit No. 12-A of 1936 for recovery of their dues by sale of the mortgaged house. On December 28, 1940, a decree was passed in the suit by the Additional District Judge. The case was carried in appeal to the High Court of Nagpur. But the appeal was dismissed subject to a slight modification to be presently noticed. An appeal was carried against the decree to this Court. During the pendency of the appeal to this Court, nine out of ten members of Seth Haroon and Sons migrated to G H

A Pakistan and were declared evacuees. By an order passed by this Court on March 28, 1958, the Custodian of Evacuee Property was impleaded as a party respondent in the appeal filed by the mortgagors. This Court dismissed the appeal on August 8, 1958. Thereafter the 6th plaintiff Mohammad Ayyub—the only member of the firm who had not migrated, for himself and as B agent of the evacuees under a general power of attorney applied for a decree absolute for sale. The Custodian of Evacuee Property resisted the application filed by Mohammad Ayyub. Ultimately by the order passed by the High Court of Bombay the Custodian of Evacuee Property was joined as a party to the application. The Court however observed that the respective rights of the Custodian of Evacuee Property and the partners of Seth C Haroon and Sons were not decided in that proceeding.

Diverse contentions were raised by the mortgagors; they contended, *inter alia* that on proper account being taken nothing was due by them on the mortgage, that interest was wrongly calculated at the rate of 4% per annum, that the claim for recovery costs D was barred by the law of limitation and that interest could not be awarded on costs. The learned Trial Judge substantially rejected the contentions raised by the mortgagors and passed a decree for Rs. 34,612-81 being the aggregate of Rs. 33,866-51 as principal and Rs. 746-30 as interest. An appeal filed against that order was summarily dismissed by the High Court. With E special leave, this appeal is preferred by the mortgagors.

Counsel for the mortgagors contended that on a proper account of the monies paid by them in satisfaction of the dues under the mortgage decree, this mortgage was satisfied and the mortgagees were overpaid. Counsel contended that from time to F time payments were made by the mortgagors with specific directions that the amounts paid were to be credited towards the principal and not towards interest and if the amounts so paid were in the first instance credited towards the principal, it would be found that the mortgage dues had been overpaid. Now, the learned Trial Judge observed that Exts. 44 to 55 relied upon by the mortgagors were silent as to any specific directions that the G amounts paid in Court were to be appropriated only towards the principal. Counsel for the appellant has invited our attention to certain applications made at the time of making deposits in Court, in which it was recited that the amounts were being deposited towards the principal. Relying upon these recitals it was urged that the Trial Court was in error in holding that there were no H directions for appropriation of payments towards the principal. We have not thought it necessary to ascertain the total number of applications in which recitals were made by the mortgagors at the time of making part payments towards the principal, because on

the view we take, these recitals, without more, do not assist the claim of the mortgagors. A

Under the preliminary decree an amount of Rs. 42,430-2-6 was declared due upto June 23, 1941 towards principal and interest. The mortgagors made no payments under the decree directly to the mortgagees. But from time to time they claim to have made deposits in the Court under O. 21 r. 1 of the Code of Civil Procedure, and in depositing some of the amounts they stated that the payments were towards the principal due. But there is no evidence on the record that the mortgagees were informed that the amounts were deposited towards the principal due, nor is there evidence that the mortgagees accepted the amounts towards the principal. For quite a long time the mortgagees did not withdraw the amount lying in Court. Unless the mortgagees were informed that the mortgagors had deposited the amount only towards the principal and not towards the interest, and the mortgagees agreed to withdraw the money from the Court accepting the conditional deposit, the normal rule that the amounts deposited in Court should first be applied towards satisfaction of the interest and costs and thereafter towards the principal would apply. B C D

In *Venkatadri Appa Row and Others* v. *Parthasarathi Appa Row*[1] the Judicial Committee of the Privy Council observed that upon taking an account of prinicipal and interest due, the ordinary rule with regard to payments by the debtor unappropriated either to principal or interest is that they are first to be applied to the discharge of interest. Lord Buchmaster delivering the judgment of the Board observed : E

> "There is a debt due that carries interest. There are moneys that are received without a definite appropriation on the one side or on the other, and the rule which is well established in ordinary cases is that in those circumstances the money is first applied in payment of interest and then when that is satisfied in payment of the capital. That rule is referred to by Rigby, L. J., in the case of *Parr's Barking Co.* v. *Yates*—[(1898 2 Q.B. 460] in these words : "The defendant's counsel relied on the old rule that does, no doubt, apply to many cases, namely, that, where both principal and interest are due, the sums paid on account must be applied first to interest. That rule, where it is applicable, is only common justice. To apply the sums paid to principal where interest has accrued upon the debt, and is not paid, would be depriving the creditor of the benefit to which he is entitled under his contract." F G H

(1) L.R. 47 I.A. 150.

A Counsel for the appellant contended that in *Venkatadri Appa Row's*(1) case there was no specific appropriation by the debtor, whereas in the present case there is specific direction by the debtor. But the normal rule is that in the case of a debt due with interest any payment made by the debtor is in the first instance to be applied towards satisfaction of interest and thereafter to the prin-
B cipal. It was for the mortgagors to plead and prove an agreement—that the amounts which were deposited in Court by the mortgagors were accepted by the mortgagees subject to a condition imposed by the mortgagors. In the present case there is no evidence which supports the contention raised by counsel for the appellant.

C Counsel urged that, in any event, when an account was finally submitted by the mortgagees they were aware of the fact that certain amounts were paid in Court and they knew that those amounts were paid conditionally and when the mortgagees withdrew the amounts deposited in Court they must be deemed to have accepted the conditions subject to which the amounts were deposited. But
D the account submitted by the mortgagees shows clearly that they had given credit for the amounts deposited towards the interest and costs in the first instance and the balance only towards the principal. The account submitted by the mortgagees clearly negatives the plea of the mortgagors.

An argument somewhat faintly suggested before us that it is
E the privilege of the debtor to impose conditions subject to which any payment is to be made by the mortgagor, and the mortgagee is bound to accept the condition needs no serious consideration.

It was next urged that the decree was passed by the Trial Court awarding interest at the rate of 3% per annum and the
F order of the High Court in appeal modifying the original decree by awarding interest at the rate of 4% was erroneous. Under the decree of the Trial Court interest was awarded at 3%. In appeal interest was awarded by the High Court at 4%. Thereafter by a modification in an application for correction of the decree interest at 4% per annum was awarded from August 12, 1941 to November 10, 1946. It was urged, relying upon the
G order modifying the rate of interest, that from November 11, 1946 the mortgagees were entitled only to interest at the rate of 3%. There is no substance in that contention also. The High Court by order dated August 10, 1946, observed :

> "A preliminary decree for sale shall be drawn
H accordingly and the defendants (the appellants) are given three months time from today to pay off the decretal amount. The amount shall carry interest at

(1) L.R. 47 I.A. 150.

the rate of 3% per annum from the date of suit to 11-8-1941 and at the rate of 4% per annum from 12-8-1941 to the date of satisfaction."

Apparently the decree drawn up by the High Court was not consistent with the directions given in the judgment, and an application was made to rectify certain mistakes in the decree. One of the grounds urged in support of the application was that interest should have been computed only on the principal out of the total of Rs. 35,299-1-6. The Court rejected the application holding that the Trial Court had decreed the claim of the mortgagees and that interest was payable on Rs. 35,299-1-6 and the High Court had confirmed the decree holding that the amount of Rs. 35,299-1-6 was principal. The High Court observed that it was not relevant to consider whether that decision was right, because there was no application for review of judgment. They then directed that "the interest will accordingly be calculated on Rs. 35,299-1-6 at 3% from October 5, 1936 till August 11, 1941 and at 4% from August 12, 1941 till November 10, 1946. This comes to Rs. 50,810-4-6. The decree will be amended accordingly." Relying upon this direction, counsel for the appellants contended that the High Court by order dated March 31, 1947, restored for the period after November 10, 1946, the rate of interest as originally awarded by the Court of First Instance. We are unable to hold that the direction is capable of that interpretation. By directing that interest at the rate of 4% from August 12, 1941 to November 10, 1946, shall be calculated on Rs. 35,299-1-6, it was not, and could not be, intended by the High Court that interest after November 10, 1946, was to be awarded only at the rate of 3%. No such application was made by the debtors. It was apparently contended that the amount of Rs. 35,299-1-6 as claimed by the plaintiffs in the original suit included interest, and interest could be computed on the amount which formed the principal. The High Court, in view of the decree passed by the Trial Court and confirmed by it declined to enter into that controversy and indicated the manner in which the interest was to be calculated between October 5, 1936 and November 10, 1946. The High Court did not reduce the rate of interest for the period after November 10, 1946, *i.e.* the date fixed for redemption of mortgage under the decree of the High Court.

Counsel then urged that in any event the mortgagees are not entitled to interest exceeding the principal. Reliance in this connection was placed upon the Madhya Pradesh Money Lenders Act 13 of 1934. Section 9 of that Act provides :

"Notwithstanding anything contained in any other enactment for the time being in force, no court original or appellate shall decree, in respect of any loan made

A before this Act comes into force, on account of arrears of interest, a sum greater than the principal of such loan."

The section prohibits the Courts from awarding interest exceeding the principal of the loan. Counsel for the appellants contends B that if all the amounts deposited from time to time by the debtors be aggregated, it will appear that an amount exceeding the loan was paid. But the prohibition of the statute is against the making of a decree for arrears of interest exceeding the amount of loan. In the present case the decree awards interest amounting to Rs. 746-30, whereas the principal is Rs. 33,866-51.

C Finally, it was contended that the Custodian of Evacuee Property is not entitled to claim a decree absolute for sale, and only Mohammad Ayyub—one of the partners in the firm of Seth Haroon and Sons—may alone be given a decree absolute in respect of his share. That contention is futile. The Court is concerned at this stage to pass a decree absolute for sale in a mortgage suit. It is not concerned to determine the respective rights D of the mortgagees *inter se*. The mortgagees' interest is fully represented before the Court. Whether or not the Custodian of Evacuee Property is entitled to the money or that the evacuees have a subsisting interest is a matter which cannot be decided in this appeal. That was made clear by the judgment of the High Court in the application filed by the Custodian of Evacuee Pro- E perty by order dated November 12, 1962, when the High Court observed :

> "Time has not come yet to determine this question and it is not necessary at this stage to decide what are the respective rights of the evacuees in the property F which is before the Court as between the evacuee-plaintiffs and the Custodian."

The appeal fails and is dismissed with costs.

Y.P. *Appeal dismissed.*