

1888

APRIL 12.

APPEL-
LATE
CIVIL.

12 B. 555.

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APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice
Nanabhai Haridas.

JOSHI KALIDAS (*Plaintiff*) v. KOLI DADA ABHESANG (*Defendant*).*
[12th April, 1888.]

Bond—Penalty—Stipulation to pay double the amount of debt on default of payment of any instalment.

A stipulation by which, on default of payment of one instalment, double the entire amount of the debt due under an instalment bond was to become at once payable, held to be in the nature of a penalty.

THIS was a reference by Rav Saheb Ranchodlal K. Dessai, Subordinate Judge of Umreth, under s. 617 of the Civil Procedure Code (Act XIV of 1882).

The facts of the case were stated as follows :—

“The defendant in this suit executed the bond sued on in favour of the plaintiff on the 5th July, 1885, for Rs. 26 Babashai, equal to British currency Rs. 22-12-0, promising to pay the same [556] by two equal instalments, the first instalment to be payable, on the 4th August, 1885, and the second on the 22nd November, 1885. They agreed to pay jointly a severally double the amount of the said bond, i.e., Rs. 52 in British currency, on their failure to pay the instalments on the first instalment regularly on the dates or date specified in the said bond. The obligors did not pay the instalments on the specified dates, but they paid Rs. 17 Babashai equal to British currency Rs. 14-14-0, on the 16th July, 1886. Hence the plaintiff brought this suit to recover Rs. 37-2-0 in British currency.”

The Subordinate Judge referred the following question to the High Court for its decision :—

Whether the condition in a bond that if the sum of Babashai rupees, for which it was passed, be not paid on the dates specified therein, double the amount thereof in British currency rupees shall be payable by the obligor to the obligee is a penalty? and if so, can it be enforced?

The Subordinate Judge was of opinion, that the condition was a penalty, and that it could not be enforced.

Gokuldās Kahandas, for the plaintiff, contended that the stipulation was not in the nature of a penalty, and cited *Baij Nath Singh v. Shah Ali Hosain* (1).

Vishnu Krishna Bhatvadekar, for the defendant :—The stipulation amounts to a penalty, and should not be allowed—*The Protector Endowment Loan and Annuity Company v. Grice* (2). A *vadhi didhi* clause was held to be a penal clause—*Kanji Kamlakar v. Gopinath* (3). Here the stipulation goes higher than *vadhi didhi*, and must be disallowed.

JUDGMENT.

SARGENT, C.J.—We think the Subordinate Judge was right in holding that the stipulation, by which on default of payment of one instalment

* Civil Reference No. 52 of 1887.

(1) 14 C. 248.

(2) 5 Q.B. D. 592.

(3) Printed Judgments for 1875, p. 104.

double the entire amount of the debt was to become at once payable, was in the nature of a penalty. The mere acceleration of payment of the debt would not have that effect, but the enhancing the amount of the debt (in this case [557] amounting to more than 100 per cent.) ought, we think, to be so regarded, as shown by the remarks of the Court in *Sterne v. Beck* (1) and *The Protector Endowment Loan and Annuity Company v. Grice* (2).

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Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

KESHAV GOVIND JOSHI (*Plaintiff*) v. JAMSETJI CURSETJI
(*Defendant*).* [23rd April, 1888.]

Pleader and client, costs between—Act I of 1846, s. 6—Quantum meruit.

In a suit brought by R. in *forma pauperis* against the defendant he had engaged the services of the plaintiff as his pleader, but no express agreement for the remuneration of the plaintiff was made. The suit was numbered, and, after the evidence on either side had been gone into, the trying Court made an order dispaupering R. On an application by R., who offered to pay the Court-fees, the High Court under its extraordinary jurisdiction made an order directing the lower Court to receive the fees and to proceed with the suit. R. paid the fees, but the suit was compromised. The plaintiff did not attend to the suit after remand. The plaintiff having sued the defendant for his fees, the Subordinate Judge was of opinion that one-fourth fee under s. 6 of Act I of 1846 should be awarded to the plaintiff. On reference to the High Court.

Held, that the plaintiff was entitled to a *quantum meruit*, which was to be determined with reference to all the circumstances of the case—there being no express agreement in the case.

THIS was a reference by Rav Bahadur Chunilal Maneklal, First Class Subordinate Judge of Thana, under s. 617 of the Civil Procedure Code (Act XIV of 1882).

The facts of the case were stated as follows :—

"The plaintiff brought this suit in the First Class Subordinate Judge's Court at Thana, to recover his fees in suit No. 388 of 1885, which was brought in the same Court in *forma pauperis* by one Ratanbai against the present defendant, who had engaged the plaintiff as a pleader in that suit. No express agreement for the plaintiff's remuneration was alleged to have been made. [558] The said suit, No. 388 of 1885, was numbered and registered as a regular suit. Evidence on both sides had been gone into, but the final decision of the Court was under s. 414, Civil Procedure Code, and the plaintiff was ordered to be dispaupered. The plaintiff then applied to the High Court under its extraordinary jurisdiction, and offered to pay the requisite Court-fees. The High Court reversed the order of the Subordinate Court and remanded the case, with directions to levy the requisite Court-fees. The plaintiff paid the Court-fees, but the suit ended in a *razinama*. The present plaintiff had not attended to the case after the remand.

*Civil Reference No. 1 of 1888.

(1) 1 De G. J. & S. 595.

(2) 5 Q.B. D. 592.