

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Beaman.

1907.

March 21.

NATHU LAXMAN (ORIGINAL PLAINTIFF), APPELLANT, v. VAZIR VALAD
BHAU AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

*Dekkhan Agriculturists' Relief Act (XVII of 1879), sub-section (1), section
15B—Suit on mortgage—Decree—Payment of interest not compulsory—
Discretion in Court.*

The terms of sub-section (1) of section 15B⁽¹⁾ of the Dekkhan Agriculturists' Relief Act (XVII of 1879) do not make it compulsory on the Court to award interest. There is a discretion in the Court as to whether or not interest should be allowed.

SECOND appeal from the decision of E. M. Pratt, District Judge of Khândesh, varying the order of V. V. Kamat, Subordinate Judge of Erandol, in an execution proceeding.

The plaintiff sued in the year 1903 to recover from the defendants Rs. 1,560 due on an instalment hypothecation bond dated the 14th December 1898. He alleged that Rs. 1,275 had become due to him on account of five instalments under the bond, and Rs. 285 on account of interest on the instalments, and prayed that "this sum (namely, Rs. 1,560) and costs and further interest at the rate of one rupee per mensem per centum should be caused to be paid to him (by the defendants) by the sale of the mortgaged properties . . . and in case of deficiency, the amount of deficiency should be caused to be paid by the defendants (personally)."

* Second Appeal No. 225 of 1906.

(1) Sub-section (1) of section 15B of the Dekkhan Agriculturists' Relief Act (XVII of 1879) runs as follows :—

15B. (1) The Court may in its discretion in passing a decree for redemption, foreclosure or sale in any suit of the descriptions mentioned in section 3, clause (y) or clause (z), or in the course of any proceedings under a decree for redemption, foreclosure or sale passed in any such suit, whether before or after this Act comes into force, direct that any amount payable by the mortgagor under that decree shall be payable in such instalments, on such dates and on such terms as to the payment of interest, and, where the mortgagee is in possession, as to the appropriation of the profits and accounting therefor, as it thinks fit.

The Subordinate Judge (Sadashiv Bapu Gadgil) passed a decree in the following terms:—

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It is ordered that the defendants (1) Vazir *valad* Bhau Pátíl and (2) Supdu *valad* Bhau Pátíl do pay to the plaintiff Nathu Laxman the total sum of Rs. 1,674, namely, sixteen hundred and seventy-four, made up of the principal and interest, plus costs, within six months from this day's date, and in case the defendants fail to do so, the plaintiff Nathu Laxman do realize the aforesaid sum by the sale of the mortgaged property referred to in the plaint, and in case of deficiency, the plaintiff do recover the amount of deficiency from defendants 1 and 2, namely, Vazir and Supdu *valad* Bhau.

Subsequently the plaintiff having applied for the execution of the decree, the execution proceedings were transferred to the Collector and while the proceedings were pending the defendants presented an application for payment of the decretal amount by instalments under the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879). The Subordinate Judge, on the 11th September 1905, passed the following order:—

As the decree is a mortgage one I cannot grant the instalments prayed for. I, however, grant them time till the 31st December next. Sale to be postponed till then.

On appeal by the defendants the Judge varied the said order as follows:—

The present decree is for five instalments out of nine in the mortgage bond. There is *sawai* in the bond and the respondent has included in his decree interest on overdue instalments of the bond. I allow no further interest but think it only right to order that the whole amount should be recoverable on default of one instalment so as not to encourage the appellants in further procrastination.

I, therefore, vary the order of the lower Court and direct that the decretal amount be paid by five equal instalments payable on the 1st February each year beginning with 1st February 1906, the whole to become due on default of any one instalment.

The plaintiff preferred a second appeal.

P. B. Shingne appeared for the appellant (plaintiff):—We contend that the Judge should have granted us interest. Under section 15B of the Dekkhan Agriculturists' Relief Act it is compulsory on the Court to grant interest. The general tendency of the Indian Legislature is to give to the Court discretion

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in the matter of interest in suits for money when the debt is not secured by mortgage, but when the debt is a mortgage debt it is otherwise (sections 86 and 88 of the Transfer of Property Act; section 210 of the Civil Procedure Code). The rulings of the Privy Council also recognize this distinction and award interest in suits on mortgages upto the date of the realization of the mortgage debt.

This principle should be adopted in construing section 15B of the Dekkhan Agriculturists' Relief Act and the Legislature had this principle in view in framing clauses 3 and 4 of the section which should be compared with section 20 of the Act. Clause 1 of section 15B should be construed so as to harmonize it with clauses 3 and 4 and then it will be clear that the Court has no discretion in the matter of interest. Moreover, the absence of the word "otherwise" in clause 1 of section 15B, which is to be found in section 210 of paragraph 2 of the Civil Procedure Code, is significant.

S. S. Patkar appeared for the respondents (defendants):—The Court has discretion to allow interest under section 15B of the Dekkhan Agriculturists' Relief Act. Clauses 3 and 4 of the section deal with a particular kind of mortgage and they should not control the scope of the first clause. The expression "as it thinks fit" gives abundant discretion to the Court.

JENKINS, C. J.:—The terms of sub-section (1) of section 15B of the Dekkhan Agriculturists' Relief Act in relation to the payment of interest are certainly not clear. Mr. Shingne's argument has been that it is compulsory on the Court to award interest by reason of the expression contained in that sub-section, but we think that the words used do not require that view. We think that there is a discretion in the Court as to whether or not interest should be allowed, and coming to that conclusion we certainly do not in the circumstances of this case consider that there is any reason to interfere.

We must, therefore, confirm the decree with costs.

Decree confirmed.

G. B. H.