

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ramanund Koondoo and another v. Chowdhry Soonder Narain Sarungy and others, from the High Court of Judicature at Fort William in Bengal; delivered 15th November 1878.

Present:

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS is an Appeal from a decision of the High Court of Calcutta affirming an order made by the Judge of the zillah of Midnapore with respect to the execution of a decree made on the 5th July 1866 in a suit instituted by Ramanund Koondoo and Ramnidhi Koondoo, against Srimatya Manika, a widow, Beer Narain, and two persons who may be designated by the name of Sarungy. The decree recites that the Defendants, together with the late husband of the widow Manika, had become indebted, in respect of goods supplied, to the Plaintiffs in a sum of about Rs. 53,000, and that the debtors filed a solehnama. Each of them filed a separate solehnama in precisely the same terms, with the necessary alterations in respect to names; that of Manika (the first recited) stated that "the sum
" of Rs. 56,500 was the debt claimed by the
" Plaintiffs, including costs; that the Defendant
" was liable for Rs. 14,125, being one fourth of
" that amount; and that being unable to pay
" that money in cash, she, according to the
" kistbundi given below, had recorded the
" following conditions of payment, viz.—that

“ interest should run on the entire amount due
“ at the rate of 12 annas per cent. per month
“ from this date ; that the Defendant should pay to
“ the Plaintiffs the principal amount according to
“ the kistbundi,” (appended to this solehnama,)
“ together with interest on the entire amount
“ at the above rate, and cause the payments
“ to be endorsed on the decree passed accord-
“ ing to the present kistbundi solehnama ; that
“ no plea of payment should be admitted other
“ than the endorsements of the payments on
“ the decree ; that if in breach of these con-
“ ditions there should be default in the payment
“ of the entire amount or any part of the
“ amount of any one instalment, the Plaintiffs
“ should at once realize from the Defendant
“ the amount of all the instalments, together
“ with interest at the rate of Rs. 2 per cent.
“ per month from this date, by executing the
“ decree passed on the basis of the kistbundi in
“ this solehnama ; that if the other three co-
“ sharers of the Defendant who have made
“ separate kistbundis should neglect to pay the
“ monies respectively due by them, and the entire
“ amount should not be realized by the sale of
“ their property, then the Defendant and her
“ three co-sharers should all be liable for the
“ amount remaining due ; that the talooks in
“ the possession of the Defendant, and described
“ in the second schedule, should remain hy-
“ pothecated until the entire amount due to the
“ Plaintiffs was realized in the manner above-
“ mentioned ; that as long as the amount due
“ to the Plaintiffs remained unpaid she should
“ not be able to make an alienation of this
“ property by gift, sale, &c., to anybody, or
“ encumber the same by mortgage or ijara, &c. ;
“ that in case of non-payment of the money, it
“ should be realized by the sale of that property
“ and other moveable and immoveable properties

“ of the Defendant's husband, whether held in
 “ his own name or bename; and that when the
 “ entire amount of this kistbundi was paid, the
 “ kistbundi should be returned.” Then there
 follows a list of the days on which the instal-
 ments are payable, and their amount. The second
 schedule gives the names, together with the
 government revenue of six mouzahs, in each of
 which each of the Defendants held a share of
 3 annas, and 4 gundas.

The combined effect of the four documents is
 that each of the debtors is liable, as a principal,
 to one fourth of the whole debt, viz., Rs. 14,125 ;
 that upon default being made by any one of the
 debtors, and all the property of that debtor
 having been taken and sold for the purpose of
 making good that default, then the other debtors
 shall be liable for the whole amount remaining
 due.

In 1873 an application was made by the
 Plaintiffs against the two Sarungys, who had
 admittedly paid up the whole of their share of
 the debt, with proper interest, to make them liable,
 by an execution against them, in respect of the
 default of the other two debtors, Beer Narain and
 Manika; the whole sum remaining due is alleged
 to have amounted, with interest, to Rs. 65,000.
 The default was not denied, and the Plaintiffs
 endeavoured to prove that the whole property of
 Beer Narain had been sold. No evidence seems
 to have been given that the whole of the property
 of Manika was sold, and there is no finding upon
 that subject.

The question dealt with by both Courts was
 whether it was proved that the whole of the
 property of Beer Narain had been exhausted.
 This question reduces itself to a comparatively
 small point,—in their Lordships' view, not attended
 with much difficulty. It may be assumed to
 have been proved that the whole of the property

of Beer Narain had been sold excepting his share of mouza Tudrooi, mentioned in the second schedule of the solehnama, and thereby hypothecated to the Plaintiffs.

It appeared that one Bykunt Nath in 1868 bought the right, title, and interest of Beer Narain in this mouzah at an execution sale under a decree recovered by one Soonder Mull in respect of a simple money claim which had accrued a considerable time after the date of the solehnama. He also paid off a mortgage debt due to one Golap Dé, to whom the mouzah had been mortgaged before the solehnama, and who had obtained a decree under which it had been advertised for sale. Therefore Bykunt Nath obtained the interest of the judgment debtor, which was subject to both mortgages; he also obtained the interest of the first mortgagee, but he did not obtain the interest of the Plaintiffs who were the second mortgagees, and that interest, which must be assumed to be of some value, in the absence of evidence that it is worthless, has not been sold. That is the finding of both Courts, in which their Lordships concur. It therefore appears to them that the Plaintiffs were not, at the time they applied for it, in a condition to issue execution against the two Defendants as sureties for the debt of Beer Narain.

Only one further question remains in the case. The subordinate Judge has intimated that if the Plaintiffs sell what remains of Beer Narain's property they may be in a position to issue execution against the Defendants (a subject upon which, as there is no cross appeal, their Lordships are not in a condition to give any opinion), but that they can only obtain interest up to the 11th of April 1867, when the estate was first ordered to be put up for sale. It has been contended that they are entitled to claim interest beyond that time. The learned Judge's finding is,—that the

decree holders have allowed additional time to the defaulting debtors for the purpose of increasing their own amount of interest, the effect of postponing the payment being that, instead of interest at 9 per cent., they obtain what may be termed penal interest at the rate of 24 per cent. Undoubtedly it appears to their Lordships that there has been a great deal of delay, and apparently unnecessary delay, in putting up the property for sale under the execution. Applications have been from time to time made by the defaulting debtors for time to postpone the sale. That time has been granted and agreed to by the Plaintiffs; and it would appear that in some cases the Plaintiffs have themselves desired the postponement. The result has been that the sale has been put off for a number of years. Private sales have indeed been made, but no compulsory sale of any portion of the property seems to have taken place till many years after the first order for sale in April 1867.

Under these circumstances, and considering the finding of the learned Judge that the Plaintiffs have consented to and indeed desired this postponement for the purpose of increasing the interest to which they are entitled, and thereby laying an additional burden upon the sureties,—their Lordships are of opinion that the subordinate Judge is justified in ordering that the Plaintiffs shall not be entitled to interest after the time when they might and ought to have put up the property for sale, and when possibly it might have realised the whole of the debt then due.

For these reasons their Lordships think that the decision of the High Court affirming that of the Lower Court is right, and they will humbly advise Her Majesty that that decision be affirmed, and that this Appeal be dismissed with costs.

1870
The first of the year
was a very successful one
and the business was
very good. The
profits were very
large and the
expenses were very
small. The
year was a very
good one and the
business was very
successful.

The second of the year
was also a very successful
one and the business was
very good. The profits
were very large and the
expenses were very small.
The year was a very
good one and the
business was very
successful.

The third of the year
was also a very successful
one and the business was
very good. The profits
were very large and the
expenses were very small.
The year was a very
good one and the
business was very
successful.

The fourth of the year
was also a very successful
one and the business was
very good. The profits
were very large and the
expenses were very small.
The year was a very
good one and the
business was very
successful.

The fifth of the year
was also a very successful
one and the business was
very good. The profits
were very large and the
expenses were very small.
The year was a very
good one and the
business was very
successful.

The sixth of the year
was also a very successful
one and the business was
very good. The profits
were very large and the
expenses were very small.
The year was a very
good one and the
business was very
successful.

The seventh of the year
was also a very successful
one and the business was
very good. The profits
were very large and the
expenses were very small.
The year was a very
good one and the
business was very
successful.