Privy Council Appeal No. 26 *of* 1917.

Lala Balla Mal and Another - - - *Appellants*

v.

Ahad Shah and Another - - - - *Respondents.*

FROM

THE CHIEF COURT OF THE PUNJAB.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 5TH JULY, 1918.

Present at the Hearing:

LORD ATKINSON.
LORD PHILLIMORE.
SIR JOHN EDGE.

[*Delivered by* LORD ATKINSON.]

This is an appeal from a judgment and decree of the Chief Court of the Punjab, dated the 13th January, 1914, varying a decree of the District Judge of Amritsar, dated the 31st July, 1911, and decreeing in part the claim of the present appellants.

The plaintiff Balla Mal is the father of the plaintiff Ibhar Das. They carry on the business of sellers of gold lace in the city of Amritsar, and are in addition money-lenders. They are members of a joint Hindu family.

The deceased defendant was a Mahomedan. He was born in the year 1863, and was therefore in the year 1892 29 years of age. At the latter date he had been employed for six years as permanent copying clerk in the office of the Divisional Judge of Amritsar at a salary of 40 rupees per mensem. The defendant's father was head man of the Kunjar or prostitute caste.

The action out of which this appeal arises was brought by the plaintiffs upon certain promissory notes admittedly drawn up and executed by the deceased defendant to recover the sum of 61,800 rupees alleged to be due for principal, and Rs. 40,489 : 3 : 0 alleged to be due for interest at the rate of 30 rupees per cent. per annum, according to the tenor of these notes. The plaint, which was filed on the 25th April, 1909, set forth the particulars of the several notes sued upon, which it is not disputed were respectively presented to the deceased defendant at maturity and payment demanded without effect.

The deceased defendant on the 15th May, 1909, filed a written statement admitting the execution of the several promissory notes sued upon, but alleging—

1. That he did not receive any consideration for the making of them;
2. That the notes sued upon and all promissory notes and acknowledgment made or given by him leading up to the making of the former were procured from him by the exercise by the plaintiffs of undue influence upon him; and
3. That the whole transaction of which the promissory notes sued upon were the outcome was an unconscionable bargain made with him as an expectant heir, and therefore liable to cancellation.

It has been decided by this Board in two cases, namely, Dhanipal Das and another *v.* Rani Maneshar Bakhsh Singh (33 I.A. 118, 127) and Rani Sundar Koer *v.* Ram Sham Kishen (34 I.A. 9), that questions such as those raised by this written statement must be decided on the provisions of the Indian Contract Act of 1872, as amended by the Indian Contract Amendment Act of 1899, and on those alone. The principles upon which English Courts of Equity deal with similar questions are therefore entirely inapplicable.

The 16th section of the Contract Act of 1872, as amended by the later Act, runs as follows:—

"1. A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

"2. In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another:—

"(*a.*) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

"(*b.*) When he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

"3. Where a person who is in a position to dominate the will of another enters into a contract with him, and the transaction appears on the face of it or on the evidence adduced to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other."

Four illustrations are given. These are to be taken as part of the statute. Two of them, namely, (*c*) and (*d*), appear to be applicable to the present case, (*c*) provides if "*A*, being in debt to *B*, the money-lender of the village, contracts a fresh loan on terms which appear to be unconscionable. It lies on *B* to prove

the contract was not induced by undue influence." (*d*) Provides that if "A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan, except at a high rate of interest, A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence." Now both Courts have held that the averment in the plaint that the deceased defendant did not receive any consideration for the making of the notes sued on was untrue, and that consideration in fact amounting to the sum of Rs. 4,471 : 5 : 9 was received by him for the making of them. The deceased defendant himself deposed that about 3,000 rupees of this sum represented money actually advanced to him by the plaintiffs.

The balance was proved to be the price of goods, such as gold lace, by the plaintiffs actually sold to him, or of clothing by them actually procured for him.

The District Judge, in delivering his judgment, most truly remarked that one "cannot avoid being struck by the fact that an original principal of Rs. 4,471 : 5 : 9 had expanded to a principal sum of no less than Rs. 61,800 . . . . and that such a result certainly impressed one at first sight as distinctly harsh and unconscionable. "But" (he continues) "I doubt whether—

"on examination it can be held really to be so, for what we have to look at, primarily at any rate, are the circumstances existing at the time of the original dealings, and not the ultimate result of these dealings, unless the intermediate stages whereby that ultimate result has been arrived at have themselves been harsh or unconscionable. In other words, the mere fact that the principal sum now claimed exceeds enormously the amount originally advanced will be no ground for holding the transaction unconscionable. It must also appear that there was something unconscionable either in the original dealings, or in the subsequent stages of the transaction."—See I.L.R. XXIII, Calcutta 15.

and he then proceeds to examine the original dealings between the parties.

The learned Judge has, in their Lordships' view, in this passage laid down the true principle upon which this extreme augmentation of the deceased defendant's indebtedness should be regarded and dealt with. It is not enough—indeed, it is misleading—to look at the result alone.

This is, in their Lordships' view, the error into which the Chief Court, have to some degree apparently, fallen. A borrower who obtains a loan secured by a promissory note on quite reasonable terms, by neglecting to pay the note at maturity, further neglecting to pay the accruing interest for the several years following, and then giving a renewal note for the original debt plus the capitalised interest, could produce a result which might at first sight appear oppressive, and yet there would be nothing harsh or unconscionable in the creditor's demand, since the added interest only accumulated while he forebore to enforce the payment of the sums from time to time due to him.

On the other hand, it would be quite possible for a money-lender, by making loans for short periods on apparently fair terms, and then insisting on capitalising the interest immediately on its becoming payable, to pile up compound interest on the initial debt at such a rate as would make the result after a few years most oppressive and unconscionable. But there is nothing inherently wrong or oppressive in a lender's securing for himself compound interest after the borrower has for a considerable time neglected to pay the debt he owes or the interest accruing due upon it which he has contracted to pay. The borrower cannot acquire merit simply by breaking his contract. Bankers are, in fact, in this country in the habit, in the ordinary course of their business, of capitalising the interest accruing on overdrawn current accounts every six months, as long as a debit balance against the customer remains due. (*Yourell* v. *Hibernian Bank, Limited*, 1918, A.C. 372.)

The District Judge examined exhaustively and with the greatest care all the dealings which took place between the plaintiffs and the deceased defendant from their initiation in the year 1892 down to the making of the notes sued upon, tracing backwards from the latter to their first beginnings. And at the end of his judgment will be found under his hand a genealogical tree, as it were, of these several groups of hundis. The Chief Court did not suggest that there was any inaccuracy in the dates and figures so set out. It differed merely as to the conclusions to be drawn from them. The first transaction between the parties took place on the 18th November, 1892. On that day the deceased defendant purchased on credit in the shop of Balla Mal, from the munib in charge, lace at the price of Rs. 252 : 10 : 9. The details of this purchase have been entered in the plaintiff's books by the deceased defendant, and by the latter signed. On the 29th of the same month he purchased from the plaintiffs goods of various character at the price of Rs. 627 : 15 : 0, which together with the earlier purchase brought his indebtedness to the plaintiffs up to the sum of Rs. 880 : 9 : 9.

As on the previous occasion the particulars of this transaction were entered by the purchaser in the appellants' books and the entries duly signed by him. From the 3rd to the 27th December, 1892, the deceased defendant purchased in the like manner from the plaintiffs clothes and other articles, raising his indebtedness to them to the sum of Rs. 1,653 : 14 : 3. This account is signed by him on the 28th January, 1893. No interest whatever appears up to this to have been charged upon it. On the 30th January, two days after the correctness of the account was thus acknowledged, two bonds were executed by the deceased defendant in favour of Lala Balla Mal. The first for a sum of Rs. 1,753 : 14 : 5, stated to be due under a bahi account entered in the deceased handwriting on leaves Nos. 215 to 281, commencing from the 18th November, 1892, to the 28th January, 1893, the deceased

agreeing to pay this sum on the 1st August following with interest at the rate of 2 rupees per cent. (per mensem presumably), and in default of payment on that date interest to be charged at Rs. 2 : 8 : 0 per mensem, *i.e.*, 30 per cent. per annum.

The second bond contained a recital that the obligor had received from Lala Balla Mal 450 rupees in cash, and also a clause agreeing to pay this money with interest at the rate of Rs. 2 : 8 : 0 per cent. (per mensem presumably) on the 1st September then following. The bond then sets forth the fact that he had on that day executed another bond for Rs. 1,753 : 14 : 3, and provides that on the deceased's default in paying both bonds the creditor was authorised to recover in any way he liked the entire money due with interest from the obligor's personal property. In the plaintiffs' books under date the 30th January, 1892, appear two entries signed by deceased defendant setting forth accurately these two transactions.

There is not a particle of evidence in the case to show that the plaintiffs ever made any threat to or put any pressure upon the deceased defendant to induce him to execute these securities or either of them.

The deceased defendant himself never so stated, and Balla Mal, who was examined as a witness on his opponent's behalf, stated that he never made any complaint to the father of Nasir-ud-Din ; that the latter was in debt to him and had omitted to pay ; that he, the witness, looked upon Nasir-ud-Din as an honourable man ; that the things the latter bought in his shops were for Nasir-ud-Din's family purposes, as was also the cash he borrowed ; that he, the witness, never practised any fraud or undue influence upon the deceased defendant ; that every time the latter executed a hundi he was in the habit of going through the accounts carefully ; that all the hundis were in the deceased's own handwriting ; and that whenever a hundi was renewed Nasir-ud-Din used to note on the back of the old one the fact of renewal, &c. The deceased defendant relied much in this action on his own dissolute and licentious habits, which were probably exaggerated to suit the case ; but if this evidence of the plaintiff be true, and it is practically uncontradicted, he was one of the most careful, accurate, and business-like drunkards and debauchees that could be well imagined. The principal plaintiff frankly admitted that he refrained from pressing the deceased defendant for payment of the hundis given him from time to time by the latter in order that his interest might accumulate. If the deceased was solvent, or nearly solvent, and the payment of his debt was at all secure, it was a good investment of the plaintiffs' capital. There does not to their Lordships appear to have been anything rapacious or exacting in the plaintiffs procuring the execution of these bonds on the 30th January, 1893, to secure the repayment of his shop debt and the sum of 450 rupees money advanced, unless it is to be found in the rate of interest, charged, 30 per cent. per annum,

2½ rupees per mensem. Well, the interest allowed by the Chief Court in the decree is 18 rupees per cent. per annum, 1½ rupees per mensem. It only exceeds that rate by 1 rupee per mensem; 2 rupees per mensem is by no means an unusual rate of interest in cases from India coming before this Board. And their Lordships think that Mr. De Gruyther was fully justified in contending that if a suit had been brought immediately or some months after the 30th January, 1893, to have these bonds of that date set aside on any of the grounds mentioned in the above-mentioned written statement it would have failed.

Now, as appears from the table at the end of the judgment of the District Judge and from the documents in the case, neither the principal nor interest secured by these bonds was ever paid; but on the 23rd May, 1896, two years and nine months after the day by it named for payment, the 1st August, 1893, the arrears of interest then due were capitalised, and a new bond as of that date for the sum of Rs. 362 : 9 : 3, bearing interest at the same rate, was executed by the deceased.

Similarly nothing was paid on foot of either the principal or interest secured by the second bond of the 30th January, 1893, till the 31st July, 1896. Two years and ten months after the day named for payment the interest then due, amounting to Rs. 472 : 8 : 0, was capitalised, added to the principal, and a new bond executed by Nasir-ud-Din to the principal debt, 450 rupees and interest, making together Rs. 922 : 8 : 0, bearing interest at the same rate, Rs. 2 : 8 : 0 per cent. per mensem. This affords a fair illustration of the manner in which interest was capitalised and the debt augmented. The District Judge has found that taking the various groups of hundi as he has grouped them, that after the initial hundi for 1,000 rupees, dated the 24th January, 1897, due on a book account then, first renewal was not given till the 3rd May, 1900, three and a quarter years, and the second renewal now in suit was not given till the 7th October, 1904, nearly four and a half years after its predecessor became due, when no doubt the overdue interest was capitalised.

The correctness of the table framed by the District Judge cannot be questioned. The documents in the case establish its correctness. It clearly shows that, so far from hundis being renewed with undue frequency, they were frequently allowed to remain overdue for periods of from two and a half to four and a half years, before a renewal was taken and the overdue interest capitalised. In some instances the period of limitation of suits on hundis was allowed to run out before any renewal was given, the debtor being thus in a position, if disposed, to refuse to renew. The District Judge having regard to these facts found that the numerous transactions which took place between the plaintiff and the deceased defendant, including the making of the notes sued on, were not on the face of them

unconscionable contracts within the meaning of section 16, sub-section (3), of the Indian Contract Act of 1872 as amended. Their Lordships concur with the learned District Judge in that conclusion. In their opinion neither the rate of interest reserved, 30 per cent. per annum, nor the capitalisation of overdue interest at intervals so lengthy as those proved by the dates of the securities themselves, nor the two combined, are sufficient to lead to a contrary conclusion.

They also concur with the learned District Judge in the second conclusion at which he has arrived, namely, that the evidence does not establish that these contracts were of an unconscionable character. The deceased defendant was undoubtedly a spendthrift of depraved and licentious habits. He undoubtedly became heavily indebted to several creditors during the years covered by the transactions dealt with in this appeal. It was legitimate to prove these facts in order to establish that he was a person of weak and debauched character, unable to resist the pressure of creditors if applied, or to resist the temptation to borrow money recklessly to gratify his lusts; but it was wholly illegitimate to give any evidence as to the terms on which he succeeded in compromising with creditors other than the plaintiffs. From what appears, it may well have been that these other creditors were rather tricked into making easy settlements by their belief in the representations made that the father of the deceased was either a less wealthy man than, in fact, he was, or that he had disposed of his property, as he was entitled to do, by gift *inter vivos*. The plaintiff, Balla Mal, heard that the defendant's father had done this, but he considered that it was a mere fictitious thing, done to defraud creditors, and paid no attention to it.

It has already been pointed out that there is no evidence whatever that the plaintiffs ever sought, by threat or otherwise, to induce or coerce the deceased defendant to give them any of the securities which he actually gave. Nor is there any satisfactory proof that, though the deceased defendant may have been extravagant and have spent more than he should have done, he was in necessitous circumstances when he commenced dealing with the plaintiff Balla Mal, or that he was in pecuniary distress in consequence of the importunities or pressure of creditors, or that it was to meet the claims of such creditors he borrowed money or bought goods on credit from the plaintiff. On the contrary, it would rather appear from the deceased defendant's own evidence that he borrowed this money from, and incurred these debts to, the plaintiff in order to procure the means of feeding his own vices.

The learned District Judge accordingly held that, even on the assumption that the plaintiff Balla Mal was in a position to dominate the will of the deceased defendant, he did not, to use the words of section 16 of the Contract Act as amended, use that position to obtain an unfair advantage over the deceased by extorting from him unconscionable bargains or otherwise, and

that the deceased defendant had utterly failed to prove, as he was bound to do, that the plaintiff Balla Mal had in fact exercised undue influence upon him in any of the transactions out of which his liability for the debt sued for ultimately resulted.

Their Lordships concur with the learned District Judge as to all these conclusions, and therefore it is for the purpose of this appeal unnecessary for them to determine whether the plaintiff Balla Mal in fact occupied a position to dominate the will of the deceased defendant at all within the meaning of the statute. The District Judge did not hold that the plaintiff had acquired that position by reason of his being the latter's creditor to a large amount, holding various negotiable securities given by the defendant which almost at any time he might have put in suit. On the contrary, the learned Judge expressly held that there was nothing to suggest that the plaintiff Balla Mal and the deceased defendant as to all the aforesaid transactions did not in this regard contract with one another on perfectly equal terms, in which latter conclusion their Lordships concur. But the learned Judge went on to decide—

1. That the deceased defendant was in the position of an expectant heir within the meaning of the decision in *Chesterfield* v. *Janssen* (2 Ves. Sen. 124) and the authorities following it;
2. That the said plaintiff dealt with him on the strength of that expectancy;
3. That a person so doing would be in a position to dominate the will of the expectant heir within the meaning of section 16, sub-section 1, of the Indian Contract Act of 1872 as amended; and
4. As their Lordships understand his judgment, that the burden is by this statute thrown upon the person occupying this position to show that he has not used it to obtain an unfair advantage over the expectant heir with whom he so deals.

The Chief Court concur with the learned District Judge on each of these points. Where they differ from him is apparently in this: that while he holds that the plaintiff Balla Mal has discharged this burden, else he should have pronounced a decree against the plaintiff's claim instead of in its favour as he has done, the Chief Court hold that Balla Mal has failed to discharge the burden. That Court, however, appears to base its decision mainly, if not entirely, on the high rate of the interest received by the notes, 30 per cent., coupled with the great augmentation of the deceased defendant's debt due to the capitalisation of interest. For the reasons already given, their Lordships disagree with the conclusion of the Chief Court on this latter point, and concur with the District Judge. So that whether their Lordships concur with the District Judge on these points (1), (2), and (3), or not, since they concur with him upon point (4), the result of the appeal would be the same.

On the whole, therefore, their Lordships are of opinion, for the reasons already given, that the judgment appealed from was erroneous, and should be reversed, that the judgment of the Judge of the District Court was right and should be restored, and that this appeal should be allowed, and they will humbly advise His Majesty accordingly. The respondents must pay the costs of the appellants in the Chief Court, and the costs of this appeal.

In the Privy Council.

LALA BALLA MAL AND ANOTHER

v.

AHAD SHAH AND ANOTHER.

DELIVERED BY LORD ATKINSON.

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