

Rama Reddi Vs. Appaji Reddi and ors.

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Court : Chennai

Decided On : Aug-28-1894

Reported in : (1894)ILR18Mad248

Judge : Arthur J.H. Collins, C.J. and ;Parker, J.

Appellant : Rama Reddi

Respondent : Appaji Reddi and ors.

Judgement :

1. The District Judge has dismissed the appeal under Section 551, Civil Procedure Code, on the ground that post diem interest cannot be given. The terms of Exhibit I are not very clear, and it is possible that they may mean only that 12 per cent, interest is chargeable instead of 9 per cent, from the date of the bond to the date fixed for the repayment of the principal, and that in case of default the mortgagee should at once proceed to recover the principal and interest at the enhanced rate.

2. But, though we are not able to hold that the interpretation put upon the bond, Exhibit I, by the Courts below is incorrect, we may point out that under the Interest Act XXXII of 1839, the Court has power to give interest upon mortgage money, as it is money payable at a certain time and under a written instrument. Interest post diem may, therefore, be awarded at such rate as is reasonable, if not always at the rate mentioned in the contract. The joint effect of the Interest Act and of Section 88 of the Transfer of Property Act is in favour of the award of interest post diem as interest till date of payment, at a reasonable rate and as a charge upon the mortgaged property *Bikramjit Tewari v. Durga Dyal Tewari* I.L.R. 21 Cal. 274.

3. As the District Judge has disposed of the appeal upon this point only, and without hearing the respondents, we must reverse the decree and remand the appeal for disposal. The costs in this appeal will abide and follow the result.