

Present : Garvin and Driberg JJ.

1928.

BANDARA v. ATTYGALLE.

4—D. C. (Inty.) Ratnapura, 4,371.

Deposit—Money brought into Court—Presence of plaintiff's proctor on date of deposit—Notice to plaintiff—Civil Procedure Code, ss. 409, 410, 411.

Where the defendant, in filing answer, deposited in Court a sum of money in satisfaction of the plaintiff's claim and the plaintiff's proctor was present in Court when the money was tendered,—

Held, that the plaintiff must be deemed to have had notice of the deposit and that the plaintiff was not entitled to interest on the sum tendered from the date of deposit.

The sum deposited must be applied in the first place as a payment against interest.

A PPEAL from an order of the District Judge of Ratnapura.

Navaratnam, for defendant, appellant.

June 30, 1928. GARVIN J.—

The facts material to this appeal are as follows : The plaintiff on October 14, 1925, sued upon a mortgage bond claiming that up to that date there was due to him thereon a sum of Rs. 2,500

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as principal and Rs. 2,400 by way of interest, two sums aggregating to Rs. 4,900. The defendant filed answer on December 10, 1925, and with his answer brought into Court a sum of Rs. 2,500, which he alleged was the full amount due to the plaintiff in consequence of an arrangement to waive interest which he pleaded. Decree was eventually entered on August 27, 1926, for the full amount claimed. After decree the defendant deposited a further sum of Rs. 2,717·02, which he said was made up as follows : Rs. 2,400 being interest due on the original principal sum of Rs. 2,500 and Rs. 317·02 being costs. He then moved that satisfaction of judgment be entered up claiming that his obligations under the judgment had been fully discharged by the payment just referred to and the deposit of Rs. 2,500 made, when his answer was filed. This motion was resisted and the principal contest at the hearing related to the interest.

The plaintiff contended that he was entitled to interest from October 14, 1925, that date being the date of the action upon the aggregate sum of Rs. 4,900, whereas the defendant contended that as and from December 10, 1925, no interest was recoverable for the sum of Rs. 2,500 deposited by him.

Section 409 of the Civil Procedure Code and the sections which follow thereon provide for the case of payment of money into Court. A defendant is permitted, when filing answer, to deposit in Court such sum of money as he considers to be a satisfaction in full of the plaintiff's claim. Section 410 contemplates that notice in writing of the deposit should be given to the plaintiff and makes provision enabling the plaintiff to claim the sum so deposited.

We are principally concerned with the provision of section 411, which states that no interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of receipt of such notice, whether the sum deposited be in full settlement of the claim or falls short thereof. The only question we have left for consideration is whether the defendant had notice of this deposit and, if so, on what date such notice was received by him. We are not aware whether a separate and formal notice in writing of the deposit was given to the plaintiff. No objection on any such ground was taken at the hearing of this motion. But on the day fixed for the filing of the answer his proctor was present in Court ; the answer was filed ; a sum of Rs. 2,500 was tendered with it to Court in the presence of the parties. The Court made order accepting the answer and the deposit. Thereafter the plaintiff filed a replication. The plaintiff therefore had notice on that day of the answers which expressly stated that the money was being brought into Court and that this answer was accepted by the Court ; he was also aware that the deposit was made.

Section 414 of this chapter requires that an answer in which it is pleaded that the defendant professes to pay money into Court or sets up a tender of any sum shall be rejected unless the sum of money so professed to be paid into Court or is alleged to have been tendered is actually paid into Court. But as I observed in this case, we have the circumstance that the plaintiff's proctor was present when this order was made and was aware of it. Under these circumstances it seems to me that the defendant is entitled to the concession he asks for as and from the date of the filing of the answer, that is to say, December 10, 1925. On that date there was due from him the sum of Rs. 4,900 plus a further sum of Rs. 68·60 being interest which accrued thereon at the date of the filing of the plaint up to the date of the answer. The sum of Rs. 2,500 must I think be treated as a payment made against that debt and, in accordance with the ordinary rule, should be applied in the first place as a payment against interest. If it is so treated there remained at that date a balance sum of Rs. 2,468·60 due from the defendant to the plaintiff. The defendant is therefore entitled to contend that the interest which the plaintiff is entitled should be calculated upon the sum of Rs. 2,468·60 and not on the total sum of Rs. 4,900. He will thus be entitled to have satisfaction of judgment entered up on satisfying the Court that he has paid a sum of Rs. 2,468·60 with interest thereon up to the date of decree together with interest on the aggregate sum composed of Rs. 2,468·60 and interest from the decree up to the date of payment and the costs of suits, apart from and in addition to the sum of Rs. 2,500 brought into Court with his answer. It is interesting to find in the record a statement by plaintiff's proctor dated November 4, 1926, in which the amount due from the defendant is computed on the basis indicated. As to the technical difficulty caused by the terms of the decree we accede to the prayer of the appellant of which the respondent has had notice and in revision direct that it be modified in accordance with this judgment.

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We make no order as to costs.

DRIEBERG J.—I agree.

Decree varied.