

(1935) 01 CAL CK 0027
In the Calcutta High Court

Jyotindra Mohan Choudhury

APPELLANT

Vs

Bridhideyee Bibi

RESPONDENT

Date of Decision : 14-01-1935

Acts Referred:

Bengal Patni Taluks Regulation, 1819 — Section 14A
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89, Order 21 Rule 89(3)

Citation : 163 Ind. Cas. 400

Hon'ble Judges : R.C. Mitter, J

Bench : Single Bench

Judgement

R.C. Mitter, J.—This Rule has been obtained by the defaulting patnidars whose application to set aside the patni sale u/s 14-A of the Patni Regulation has been rejected, the learned Munsif holding that the sum of money which was deposited within thirty days of the sale has fallen short of the requisite amount by about Rs. 5-8-0.

2. The petitioners held a patni taluk under the Maharaja of Burdwan (opposite party No. 2.) They having failed to pay the rent and cess in time, the Maharaja applied for sale of the patni under Regulation VIII of 1819. The sale was held on November 17, 1933, corresponding to the Augrahyayan 1, 1340 B.S. and the Opposite party No. 1 purchased the patni for Rs. 550. The amount for which the patni was put up for sale was Rs. 501-9-0. The said amount is made up of the following items:

Rs. a. p. (a) Rent due up to Assin 1340 ... 452 4 3 (b) Interest on do up to Assin 1340 ... 9 14 2 (c) Cess due upto Assin 1340 ... 32 12 9 Interest on do up to Assin 1340 ... 0 11 4 Costs ... 5 14 6 ----- Total Rs. 501 9 0

3. On December 13, 1933, corresponding to Augrahyayan 27,1340, the petitioners deposited in the Collectorate the sum of Rs. 512 and two further sums of Rs. 5-8-0 and Rs. 27-8-0, the sum of Rs. 5-8-0 representing the sum payable to the credit of the Government u/s 14-A, Clause (a) and Rs. 27-80-0, the

compensation payable to the auction-purchaser u/s 14-A, Clause (c). On January 24, 1934, they deposited a further sum of Rs. 5-8-0. The last-mentioned deposit has to be disregarded as it was put in more than thirty days after the sale.

4. The question in this Rule is whether the sum of Rs. 512 deposited on December 13, covers the sum which has to be deposited u/s 14-A, Clause (b).

5. The Maharaja of Burdwan did not oppose the petitioners' application, but the auction-purchaser having opposed, the Collector referred the matter of the sufficiency of the deposit to the Munsif, Second Court, Katwa, under the provisions of Sub-section 5 of Section 14-A. The learned Munsif has held that the amount deposited has fallen short and has accordingly refused to set aside the sale.

6. The reference to the Munsif was disposed of on April 7, 1934. The Munsif, however, does not seem to have required the defaulting patnidars to deposit in Court six months' rent in advance although they were allowed to remain in possession. No Receiver was appointed either. The result was that to protect the patni taluk from sale for arrears accruing during the pendency of the proceedings before the Munsif and thereafter, the auction-purchaser had to pay a considerable amount to the zemindar. In the counter affidavit it is stated that the auction-purchaser had to pay for such purposes the sum of Rs. 1,154-11-9. The sum of Rs. 512 deposited by the petitioners is made up thus:

(i) Amount for which, the patni was Rs. a. p. put up for sale ...	501	9	0
(ii) Interest for Kartiek 1 to Kartick 30, 1340	5	0	10
(iii) Costs	4	7	9
Total Rs.	511	1	7

7. The auction-purchaser contended successfully before the Munsif that the deposit made on December 13, 1933, had fallen short of the requisite amount inasmuch as the interest due from Augrahyan 1, 1340. up to the date of deposit, i.e., up to Augrahyan 27, 1340, had not been deposited.

8. The question depends upon the interpretation of Clause (b) of Section 14-A. The relevant portion of that clause provides that "a sum equal to the amount on account of which the sale has been made together with interest" shall have to be deposited within 30 days of the date of sale. Other sums have to be deposited also within the said time under the provisions of Section 14-A, but as to, them there is no controversy in this case. The clause according to its plain meaning implies that a deposit only of the amount for which the sale was held would not be sufficient but something more by way of interest has also to be deposited. A comparison of this clause with Order XXI, Rule 89 of the CPC leads to the conclusion that, the Legislature in enacting Section 14-A, Clause (b) intended to depart from the rule laid down for setting aside a sale held by a Civil Court by deposit and to give the zemindar complete relief. He is not to be relegated to a suit in respect of his further claims to interest due in respect of the arrears for which the sale is held and for costs incurred by him after publication of the notice u/s 8 up to the sale. This follows from the fact that there is no reservation in

favour of the zemindar, such as is contained in Order XXI, Rule 89(3). But Section 14-A, Clause (b) does not specify the date up to which the interest has to be calculated or the rate at which it is to be calculated. On the principle that a zemindari is not to be relegated to a suit for claims arising on the arrears for which the sale is held, interest mentioned in the said clause must be calculated up to the date of the deposit and according to the terms of the engagement between the zemindar and patnidar. In my judgment the defaulting patnidars were bound to deposit the sum of Rs. 501-9-0 together with interest on the sums of Rs. 452-4-3 (arrears of rent and Rs. 32-12-9 (arrears, of cess) up to Augrahayan 27,1340, at "the rate provided for in the patni potia, and also the sum of Rs. 4-7-9 shown as costs in challan dated November 17, 1933. The patni potta or kabuliyat is not on the record, and so it is not possible to make the calculations. It is, therefore, necessary to make a remand to the learned Munsif. He will call for the patni potta and if according to the directions given above he finds that the sum of Rs.512 deposited on November 17, 1933, is sufficient, he will set aside the sale, but before doing so he must call upon the petitioners to make the deposit of six months" rent u/s 14-A sub-s. 5. If the sale is set aside the last mentioned sum is to be paid to the auction purchaser who will be entitled to proceed according to law to recover balance of such sum that may be due to him by reason of his paying patni rent and cess after his purchase.

9. As the opposite party No. 1 has substantially succeeded in this Rule, he will have the costs of this Court, hearing-fee assessed at 1 gold mohur. Further costs to abide the result.