
(1936) 02 CAL CK 0040
In the Calcutta High Court

Maharaj Bahadur Singh

APPELLANT

Vs

Binode Behary Choudhury and Others

RESPONDENT

Date of Decision : 18-02-1936

Acts Referred:

Bengal Tenancy Act, 1885 — Section 111

Citation : AIR 1936 Cal 263

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

Bench : Division Bench

Judgement

R.C. Mitter, J.—This rule is directed against an order of the learned Munsiff, Additional Court, Balurghat, dated 27th May 1935, by which he has stayed an application made by the petitioner before me, u/s 26-J, under the provisions of Section 111, Ben. Ten Act. In my judgment, Section 111 does not apply to this case. The opposite party according to the case of the petitioner, took a transfer on the footing that the holding was not an occupancy holding, but a holding at a fixed rent. On that the petitioner before me filed an application u/s 26-J, and in answer to that application the opposite party has stated that the holding in question is a holding held at a fixed rate of rent. He also made an application for stay of the hearing of this application on the ground that an order has been made u/s 101, Ben. Ten. Act, directing the preparation of the record of rights. In my judgment simply because a defendant raises a question of status it cannot be urged that a pending proceeding should be stayed under the provisions of Section 111. Khemadananda Kumar v. Rashamaya Halder 1928 Cal 388 is an authority for this proposition. A suit or proceeding can be stayed u/s 111 only if the suit or the application is filed for the determination of the status of any tenant. The prayer in an application u/s 26-J is not for the determination of the status of a tenant but for the recovery of a sum of money although in deciding the said claim of the landlord, the question of status may have to be gone into. It is a money claim which the landlord wants to enforce, and the fact that the question of status has to be gone into because the defendant has raised the question of status, will not authorise the Court to stay the application u/s 111. I

accordingly make this Rule absolute and direct the learned Munsiff to proceed on with the application u/s 26-J. As there is no appearance on behalf of the opposite party, there will be no order for costs.