
(1943) 05 CAL CK 0014

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1256 of 1940

Maharaja Sashi Kanta Acharya Bahadur

APPELLANT

Vs

Aptabaddin Bepari

RESPONDENT

Date of Decision : 07-05-1943

Acts Referred:

Citation : (1943) 05 CAL CK 0014

Judgement

Biswas, J.—This appeal is on behalf of the Plaintiff in a suit for rent, and raises a question regarding the meaning and effect of sec. 26 (a) of the Bengal Agricultural Debtors Act, which does not appear to be covered by any authority. The facts are shortly these: It appears that there was a proceeding before a Debt Settlement Board for settlement of the debts of the tenant Defendant, and in due course an award was made in the case. Among the debts included in the award under sec. 25 of the Act was a debt due by the Defendants in respect of arrears of rent for a holding which he held under the present Plaintiff. The total amount of this debt was declared to be Rs. 144-5-3 pies, but it was made payable in five equal yearly instalments commencing from the month of Jaistha, 1346 B. S. The Defendant failed to pay the first instalment, but the Plaintiff took no steps for its recovery in the manner provided in sec. 28. He preferred to wait until further rents accrued, and then brought the present suit for rent, in which he included not only the subsequent arrears, but also the whole of the amount Rs. 144-5-3 pies which had been adjudged to him under the award—This he claimed to do under the provisions of sec. 26 (a). The Courts below held that as on the date of the suit only the first instalment had become payable, the Plaintiff was entitled to include the amount of such instalment only, and not the whole amount of the award.

2. The question turns on the meaning of the words " the amount of arrears of rent payable under such award" occurring in cl. (a) of sec. 26. It seems to me that to give effect to the view which has been taken by the Courts below would be to defeat the object of this section. It is quite true, as both the learned Munsif and the learned Subordinate Judge point out, that the Act was passed for the

relief of debtors, but that does not mean that it should be construed in a manner most favourable to a debtor in disregard of the plain meaning of the words used in the statute. Sec. 26 expressly states that it is to take effect " notwithstanding anything contained in this or any other Act." This, to my mind, clearly shows that it was intended to be in the nature of an exceptional provision, and there would be no repugnancy in holding that its object was to benefit the creditor rather than the debtor in respect of the particular kinds of debts mentioned therein. Though arrears of rents are regarded as debts within the meaning of the Act and may be the subject-matter of proceedings before a Debt Settlement Board, it does not appear to be the intention of the Act to treat defaulting tenants with any special consideration. For instance, the principal due in respect of arrears of rent cannot be scaled down under its provisions (sec. 23). The legislature obviously contemplates the regular and punctual payment of rents by debtors, not only in their own interest, but also in the interest of all parties concerned.

3. It is important to observe that sec. 20 does not say that it is only in the event of default on the part of the debtor to pay any instalment of rent under the award that the landlord shall be entitled to include in a suit for subsequent rent the amount of arrears payable under the award. The question of default is immaterial for the purpose, and if that be so, there can be no reason for allowing only the overdue instalment, and not the whole amount to be included. In my opinion, the words "arrears of rent payable under such award" are to be given their plain and ordinary meaning, and be held to refer to the whole amount declared due, and not merely to any particular instalment of it. This becomes further clear on reference to the prescribed form in which the award is required to be made under sec. 25. The prescribed form requires the debts to be specified in column 5 of Schedule C, and column 5 speaks of the amount payable under the award and is then sub-divided into a number of sub-columns, one of which refers to the number of instalments, and the other to the amount of each instalment. Clearly, the amount of any instalment cannot be regarded as identical with the amount payable under the award, the latter sum being an aggregate of the different instalments allowed. In this view of the matter, I must hold that the Courts below were wrong in the interpretation they put upon the relevant words in sec. 26. The appeal must accordingly be allowed, and the decree of the Court below will be modified by adding the sum of Rs. 115-7-3 p. to the decree, this being the difference between the sum of Rs. 144-5-3 p. claimed and the sum of Rs. 28-14-0 allowed by the Court. As there is no appearance on behalf of the Respondent, there will be no order for costs in this Court.