

(1913) 04 CAL CK 0025

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 3067 of 1910

Monohar Mukerjee

APPELLANT

Vs

Khettra Nath Sabui and others

RESPONDENT

Date of Decision : 23-04-1913

Acts Referred:

Citation : (1913) 04 CAL CK 0025

Judgement

Jenkins, C.J.—The only question that arises on this Appeal is as to the time from which interest should run on arrears of rent. The contract between the parties is one after the passing of the Bengal Tenancy Act and one to which the provisions of that Act applies. By that contract provision is made for payment of the rent in monthly kists or instalments, and also for payment of interest on each, from the time when it falls due. It is contended on behalf of the landlord that literal effect should be given to this provision for interest.

2. On behalf of the tenant it is contended that interest cannot run from the date when each instalment fell due but from the expiration of that quarter of the agricultural year in which the instalment fell due. The reasons urged by the tenant for the adoption of this view, notwithstanding the express provision of the contract, are these: It is said in the first place that the provision for interest is in excess of that which can be permitted, inasmuch as it is for interest which exceeds 12 1/2 per cent, per annum. It is conceded that this is a sound objection, but the landlord says that he is entitled to recover interest at the rate of 12 1/2 per cent. But if that be so, it cannot be by virtue of the contract, because there is no contract to that effect. The tenant goes further and says that it would be opposed to the distinct enactments of the Bengal Tenancy Act to hold that there is any contractual relationship between the landlord and tenant that would entitle him to receive 12 per cent, per annum from the date when each kist fell due. It may be conceded that the landlord was entitled to impose on the tenant an obligation to pay the monthly kists, for that is in accord with the provisions of sec. 53 of the Bengal Tenancy (sic) whereby it is provided that "subject (sic) to custom or established usage, a (sic) tenant shall be

instalments falling (sic)arter of the (sic) indicate modi(sic) that there cannot be monthly instalments. But that carries the landlord but a short way on his road towards his claim. Sec. 67 of the Bengal Tenancy Act is one of a group of sections being those numbered 65 to 68 inclusive which deal with arrears of rent. By sec. 67 it is provided that " an arrear of rent shall bear simple interest at the rate of twelve and a half per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the institution of the suit, whichever date is earlier." That section, as it now stands, is a result of the amendment by the Bengal Tenancy Amendment Act, 1907, and the case has been argued before us as though the amendment made no difference for the purpose of the question now under discussion. The answer that the landlord would make to the contention that sec. 67 must govern the relationship of landlord and tenant is that these sec ions only relate to those cases where a contract between the parties provides for quarterly kists and, in support of that, reference is made to the decision of the Privy Council in Hemanta Kumari v. Jagandrndra Nath (1). Especial reliance is placed on a passage at p. 221 where Lord Macnaghten in delivering the judgment of the Privy Council says, " A subordinate question arose in Appeals Nos. 20 and 21 of 1890, with regard to the interest on the rent in arrear. It appears that there are s(sic) arrears which have become due sip(sic) Bengal Tenancy Act, 1885. T (sic)linate Court held that inte(sic) calculated month (sic) the High (sic) provision which into force, the interest should be calculated quarterly. It appears to their Lordships that the High Court were wrong, and that the provision in sec. 67 of the Act, on which they relied, only applies to cases where the rent is payable quarterly. Here it is not disputed that the rent is payable monthly, and on rent in arrear it appears to their Lordships that interest ought to be calculated monthly." The learned Judges of the High Court in disposing of this matter had said this, " Now, with regard to the arrears which fell due since the present Act came into force, they stand on a different footing. We do not find that the Plaintiff claimed interest on the footing of any contract, and therefore the only claim that he has for interest is based upon the terms of the Bengal Tenancy Act. By sec. 67 of that Act an arrear of rent shall bear simple interest at the rate of 12 percent, from the expiration of that quarter of the agricultural year in which the instalment falls due, to the institution of the suit. So under the present law he is not entitled to interest from the date of the instalment, but from the end of the quarter in which it fell due. We therefore give him 12 per cent, from the end of the quarter on which the instalment fell due, to the institution of the suit." In the grounds of appeal to the Privy Council, it was urged that " the Court had erred in not allowing interest on the monthly instalments of the rents which had fallen due after the Tenancy Act came into force: That the Appellant having proved by evidence that from a long time past the Defendant had been paying rent in monthly kists and interest at the rate of (sic) 12 per cent, in the case of breach of any (sic) instalment, the Appellant was entitled to (sic) stalment irrespective of whether the rents fell due before or after the Tenancy Act came into force; hat the evidence adduced in the case established a contract to pay interest on the monthly instalment before the

passing of the Tenancy Act, and the Court was in error in holding that the Appellant had not claimed interest on the footing of any contract, and the only claim she had for interest was based upon the terms of the Bengal Tenancy Act. That the Appellants claim for interest on the monthly instalments, whether based on contract or usage, was not affected by sec. 67 of the Bengal Tenancy Act."

3. Prior to the Bengal Tenancy Act interest on arrears of rent in respect of agricultural tenancy was regulated by sec. 21 of Act VIII of 1860,-which practically reproduces sec. 21 of Act X of 1859 - whereby it was provided that "any instalment of rent which is not paid on or before the day when the same is payable according to the pottah or engagement, or if there be no written specification of the time of payment, at or before the time when such instalment is payable according to established usage shall be held to be an arrear of rent under this Act, and unless otherwise provided by written agreement, shall be liable to interest at twelve per centum per annum."

4. The only other provision for payment of interest on rent apart from contract to that effect was to be found in Act XXXII of 1839, which corresponds with the English Act 3 and 4 William IV, Ch. XLII, sec. 28. The judgment of the Privy Council must be read in the light of these facts.

5. That judgment did not accept the view of the High Court that interest was payable under sec. 67 but under some other obligation-whether it was the Act of 1869 or the contract or usage does not appear-and it matters not, for their Lordships were satisfied that interest was payable, and I am not sure that there was any appeal by the tenant from the decision of the High Court that interest was payable. That then is how the matter stood. Their Lordships were dealing with a contract before the passing of the Act, and what we have to consider is whether that decision can in any way be taken as affecting a contract of tenancy made after the Act. The last thing that we would wish to do would be in any way to escape from the just result of the decision of the Privy Council, or to place upon any decision a limited construction of which it was not fairly capable. But it seems to me that we have in this case a condition of things which differentiates the present case from that before their Lordships in an essential matter. In saying this I have in mind the fact, I have already stated, that the contract here was after the passing of the Act, which brings into play the provision in sec. 178, sub-sec. (3), cl. (h), which says that 14 nothing in any contract made between a landlord and a tenant after the passing of this Act shall affect the provision of sec. 67 relating to interest payable on arrears of rent." It is conceded in this case that so far as the rate of rent in excess of twelve per cent, was charged, it was contrary to the provisions of the Bengal Tenancy Act. Therefore, as it seems to me, we have this position that there is no valid contract for the payment of interest on kists, the only provision in that direction being one which is admittedly illegal. How then is this interest payable ? I have indicated the provisions of the law that permit a Court to charge interest-The Acts of 1869 and 1859 have passed away. We still have the Interest Act and the Bengal Tenancy

Act. The Interest Act has no application here, so that we are reduced to this that there is no provision, statutory or contractual, which imposes upon the tenant a liability to pay interest, unless we can bring into play the operation of sec. 67. That has been done by the lower Appellate Court. There has been no appeal from this by the tenant and the landlord is thus entitled to the interest secured to him by sec. 67 : beyond that he cannot go. For these reasons we confirm the decree. There would be no order for costs of Defendant No. 1 for he has not appeared. Defendant No. 2 will have his costs for he has been compelled to appear though he has no direct interest in the subject-matter of the appeal.