
(1927) 06 CAL CK 0038
In the Calcutta High Court

Mt. Tamijannessa Khatun

APPELLANT

Vs

Purna Chandra Chakravarti and Others

RESPONDENT

Date of Decision : 01-06-1927

Acts Referred:

Bengal Tenancy Act, 1885 — Section 153A
Provincial Small Cause Courts Act, 1887 — Section 17

Citation : AIR 1927 Cal 821 : 103 Ind. Cas. 853

Hon'ble Judges : Mukerji, J; Mallik, J

Bench : Full Bench

Judgement

Mukerji, J.—These two rules relate to two suits for rent which were decreed ex parte on the 24th March 1926, The defendant applied under Order 9, Rule 13 for setting aside the said ex-parte decrees and prayed for exemption from making the deposit necessary to be made u/s 153A, Bengal Tenancy Act. The Subordinate Judge refused to grant the exemption and ordered the decretal amounts to be deposited within seven days, and on the defendant failing to comply with the order rejected his petitions. The defendants thereupon moved this Court and obtained these rules.

2. The petitioner's contention in these rules is to the effect that as she had never admitted that any amount is due from her to the decree-holder no deposit is necessary. In support of this contention reference has been made to the observations of the Select Committee which considered the bill which was eventually embodied in Section 153A, Bengal Tenancy Act (Section 47, Act 1, B.C., 1907 and Act 1, E.B.C. 1908) and reliance has also been placed on certain decisions to some of which I shall presently refer.

3. To construe the provisions of the section it is hardly permissible to refer to the report of the Select Committee, but if it is, I may point out that while the report refers to Sections 149 and 150, Bengal Tenancy Act, which provides for payment in cases of amounts which are admitted, it also refers to Section 17, Provincial Small Cause Courts Act, 1887, which provides for the deposit of the amount due

under the decree, irrespective of any such admission. The observations of the Select Committee taken as a whole do not support the petitioner's contention.

4. On the plain reading of the section it is clear to my mind that it contemplates a deposit to be made in all normal cases, where a decree has been passed for any amount in a suit between the landlord and tenant as such. That the application to set aside the ex-parte decree under Order 9, Rule 13, or for a review of judgment u/s 114 and Order 43, Rule 1, Civil P.C., must contain a statement of the injury sustained by the applicant by reason of the decree or judgment is clear from the first paragraph of the section. Clause (a) provides that the application shall not be admitted unless the applicant has deposited the amount admitted by him as due to the decree holder, or such amount as the Court may, for reasons to be recorded by it in writing, direct. Clause (b) confers upon the Court a discretion to exempt the applicant from making the deposit, if, after considering the statement of injury, the Court is satisfied that no such deposit is necessary, but the reasons for the exemption have to be recorded by it in-writing, Unless, therefore, the Court-grants an exemption under Clause (b) the deposit must be made. If there is an admitted amount the deposit may be of the admitted amount, but in all cases the Court has powers to make an order for the deposit of any amount, whether there has been an admission or not. The section does not say that it is only in a case where there has been an admission of any amount due, that such a deposit has to be made, or that the deposit must be in respect of the admitted amount only and not of any amount in excess thereof. The obvious intention of the Legislature is that the Court should regulate the amount of the deposit, and in all cases it should record its reasons for the order it passes, whether it requires or excuses a deposit.

5. One of the oases relied upon on behalf of the petitioner is *Tara Shankar Ghose v. Nasaruddi* [1915] 19 C.W.N. 970 of the report-there is a passage which runs thus:

In our opinion, it is plain that the requirements of Section 153A have been fulfilled; the defendant was not bound to make any deposit, because he did not admit that any money was due from him to the plaintiff in respect of the holding for which rent was claimed.

6. This passage taken by itself, no doubt, supports the petitioner's contention. The question whether the Court can require a deposit to be made when there is no-admission, however, did not arise in that case, and the only ground upon which it was contended that the deposit was necessary was that there was an admission. I am not, therefore, pressed by the authority of this decision. The only other case cited on behalf of the petitioner to which reference need be made is that of *Rachhya Raut and Others Vs. Musammat Chando and Others*, the decision of a learned Judge sitting singly from which I feel I must dissent with all respect. It may be mentioned that *Beachcroft, J.*, in Civil Rule No. 541 of 1920, decided on the 18th November 1920, see *Amanullah Manjhi v. Ayfar Jan Bibi* [1920] 62 I.C. 444 held that where an application is made to set aside an ex-

parte decree for rent and the tenant denies that any rent is due and consequently no deposit is made u/s 153-A, Clause (a), Bengal Tenancy Act, the Court is not justified in admitting the application without recording in writing, under Clause (b) of the section that it is satisfied that a deposit is not necessary.

7. The learned Judge in these cases appears to have given sufficient reasons as to why the entire decretal amounts should be deposited, and on failure of the petitioner to comply with the order requiring such deposits has dismissed the application for setting aside the ex-parte decrees. In my opinion his orders are right.

8. The rules must accordingly be discharged with costs, hearing fee two gold mohurs in the case in which the opposite party have appeared.

Mallik, J.

9. I agree.