

(1917) 05 CAL CK 0005
In the Calcutta High Court

Prafulla Nath Tagore and Others

APPELLANT

Vs

Matabaddin Mandal and Others

RESPONDENT

Date of Decision : 07-05-1917

Acts Referred:

Bengal Tenancy Act, 1885 — Section 169(c)

Citation : 42 Ind. Cas. 881

Hon'ble Judges : Smither, J; Fletcher, J

Bench : Division Bench

Judgement

1. This is a Rule calling upon the opposite party to show cause why the order complained of should not be set aside on the grounds stated in the petition. The applicants before us, who are the landlords of the opposite party, were the plaintiffs in a rent suit. They having obtained a decree for rent against the opposite party brought the tenure to sale. The tenure having been sold and the decree satisfied, there remained in the hands of the Court a balance representing the surplus of the sale proceeds. Certain arrears of rent having accrued due to the plaintiffs since the institution of the former suit, the petitioners made an application, under the provisions of Section 169 of the Bengal Tenancy Act, for payment to them out of the surplus sale proceeds of those arrears with interest and costs, and the learned Judge of the Court below directed payment of those arrears of rent so accrued due after the institution of the suit out of the surplus sale proceeds but did not direct the payment of interest upon such arrears. The only question is whether under the terms of Section 169 (c) of the Bengal Tenancy Act interest ought to be directed to be paid out of the surplus sale proceeds on the rent in arrears at the rate provided for by the terms of the Act. The decision of this Court in Moharajadhiraj Bejoy Chand Mohutab Bahadur v. S. C. Mookerjee 11 C. W. N. 1108. is a clear authority in favour of the plaintiffs-petitioners. It is quite true that the observations of Mr. Justice Ghose in that case were not approved of by Mr. Justice Brett in the case of Maharaja Monindra Chandra Nandy Bahadur v. Asar Mahmud Mandal 12 C. W. N. 144 note. But that was a decision of Mr. justice Brett sitting alone. There seems to us to be no

reason why we should depart from the terms of the earlier decision of a Bench of this Court in Moharajadhiraj Bejoy Chand Mohatab Bahadur v. S. C. Mookerjee 11 C. W. N. 1108; clearly, it has the advantage of preventing farther suits and proceedings in execution to recover the interest which the Statute gives on the rent that accrues due after the date of the institution of the former suit. We think we ought to follow the decision in Moharajadhiraj Bejoy Chand Mohatab Bahadur v. S. C. Mookerjee 11 C. W. N. 1108. and make this Rule absolute so far as regards interest, and direct interest to be paid at the rate provided for by the Statute on the rent accrued due after the institution of the suit in execution of the decree in which the tenure was ultimately brought to sale.

2. A point has also been argued before us as regards The Costs in the Court below. No doubt, the Court has jurisdiction to award costs if it thinks fit; but in this case the Court having given to the petitioners no costs, we see no reason to interfere with the discretion of the Court below in that respect.

3. The Rule is accordingly made absolute on the terms stated above-with costs one gold mohur.