
(1941) 08 CAL CK 0032
In the Calcutta High Court

Raj Mohan Saha

APPELLANT

Vs

Jogendra Nath Sarkar and Others

RESPONDENT

Date of Decision : 11-08-1941

Acts Referred:

Bengal Tenancy Act, 1885 — Section 48D, 48D(ii), 75A

Citation : AIR 1942 Cal 353

Hon'ble Judges : Henderson, J

Bench : Division Bench

Judgement

Henderson, J.—This appeal is by the decree-holder and it raises an interesting point. The appellant instituted the suit for enhancement of rent under the provisions of Section 48D, Ben. Ten. Act. The Munsif found that a fair rent would be Rs. 25 per annum. Instead of asking the defendants whether they would agree to pay, he passed forthwith a sort of conditional decree, to the effect that, if the defendants did not intimate their consent within 15 days, they would be ejected. The defendants took no action. The decree-holder applied for execution and took delivery of possession, on 23rd December 1939. The case of the defendants is that they knew nothing of this conditional order. Indeed they appeared and filed a petition to the effect that they were willing to pay the enhanced rent and they endeavoured to have the decree put right.

2. Both parties were willing that the case should be settled on these terms. The appellant however felt nervous as to the effect of the new Section 75A, Ben. Ten. Act, on any compromise. It would be a strange effect of this amendment, which presumably was passed in the interest of tenants, that a landlord should be compelled, because of his nervousness, to eject a man whom he is perfectly willing to retain on terms agreeable to both sides. Since, however, this appeal was argued, the learned advocates have been able to agree on terms which can be incorporated by me in the decree of this Court. The present appeal arises out of an application u/s 47, Civil P.C., by the judgment-debtors to the effect that they are entitled to be restored to possession in view of the provisions of Section

75A, Ben. Ten. Act. Briefly, that section provides that decrees enhancing rent after 27th August 1937, shall be inoperative for a period of ten years. The Munsif rejected the petition but it has been allowed in appeal by the District Judge.

3. The only ground pressed in support of the appeal is that Section 75A, Ben. Ten. Act, has no application to decrees for ejectment. In support of the decision of the learned District Judge Mr. De argued that a decree for ejectment is really dependent upon a decree for enhancement and it cannot be enforced so long as the former is inoperative. In my judgment the provisions of Section 48D are reasonably plain and lead to the conclusion that a decree for enhancement of rent and a decree for ejectment are mutually exclusive. u/s 48D(ii), the Court has to fix a fair rent. Having done so, the Court must inquire whether the defendant is willing to pay. If he agrees, there is an end of the matter, and a decree giving effect to the Court's order ought to be drawn up. No question of ejectment can then arise. I have no doubt that such a decree would be one enhancing the rent and within the terms of Section 75A, Ben. Ten. Act. If the defendant does not agree, the only decree which can be passed is one for ejectment. In my opinion, it is impossible to call such a decree one enhancing the rent. It is entirely outside the scope of Section 75A, Ben. Ten. Act.

4. Then, in the second place, Mr. De contended that, whatever may be the law with regard to decrees which are properly drawn up, the peculiar decree which has been drawn up in the present case is within the terms of the section. It is impossible to extract any such meaning out of this decree, peculiar though it is. If the defendants had accepted the enhanced rent within the time allowed, it could have been interpreted as a decree for enhancement. But inasmuch as they did not do so, it can only now be interpreted as a decree for ejectment, pure and simple. The appeal is accordingly allowed. The order of the District Judge is set aside and that of the Munsif dismissing the objection restored. But in view of the compromise between the parties, it will be necessary to make the following order. If the defendants pay into Court Rs. 226-14-0 before 31st December 1941, they will be restored to possession and the decree-holder's execution case will be dismissed on full satisfaction. It is further directed that with effect from 1st January 1942, the defendants will hold the land on an annual rent of Rs. 25 for a period of eight years. I make no order as to costs.