
(1918) 03 CAL CK 0038
In the Calcutta High Court

The Port Canning and Land Improvement Co., Limited APPELLANT
Vs

Nayan Chandra Paramanik
 Srimanta Bharosha and RESPONDENT
Others Vs Sarif Mollah

Date of Decision : 15-03-1918

Acts Referred:

Bengal Tenancy Act, 1885 — Section 46

Citation : AIR 1919 Cal 1044 : 45 Ind. Cas. 234

Hon'ble Judges : Shamsul Huda, J;Fletcher, J

Bench : Division Bench

Judgement

No. 3325 of 1915.

Fletcher, J.—This is an appeal by the plaintiffs against the decision of the learned Additional District Judge of the Twenty-four Perganahs, dated the 2nd December 1915, affirming the decision of the Munsif of Basirhat. The suit was brought by the plaintiffs under the provisions of Section 46 of the Bengal Tenancy Act. The questions raised in the appeal are as follows : Section 46 of the Bengal Tenancy Act mentions a suit for ejectment on the ground of refusal to agree to enhancement of rent. It states that such a suit shall not be instituted against a non-occupancy raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent and the raiyat has within three months before the institution of the suit refused to execute the agreement. There seems to be a certain amount of confusion as to what is meant by that section. It is quite obvious that the word "agreement" mentioned in the first subsection of Section 46 cannot be strictly construed, because an agreement cannot come into existence until it has been assented to by both parties and where it requires to be reduced to the writing until it has been executed. Therefore, the agreement mentioned cannot mean an agreement strictly. It is quite obvious from what the section says that the Statute means an agreement proposed by the landlord because a landlord cannot tender an agreement to the tenant that has already been executed. If you read that, the section is a perfectly straightforward

section. What it means is this: that a landlord before he can institute a suit for ejectment on the ground of refusal to agree to an enhancement of rent has got to tender to the tenant the agreement which he proposes that the tenant should execute; and if the tenant fails to execute it, then certain other provisions in the section say what the landlord may do with reference to the property. Now, in this case it is quite clear that the landlord followed the provisions of the sub-section, which states that a landlord desiring to tender an agreement may file it in the office of the Court, that the Court is to direct it to be served in the prescribed manner and that when it is so served, it should be deemed to have been tendered. There is nothing stated in the section as to a notice going along with the agreement. The only requisite is that the agreement, that is, the document containing the terms of the proposed agreement, has got to be tendered. Now, what happened in this case was this: The landlord sent a draft of the proposed agreement duly stamped to the Court, and exercising a wise, discretion the Court thought it safer not to part with the stamped copy but tender to the tenant or rather serve on him a copy identical but without a stamp on it. It also served along with that copy a notice. It is said that it was not the original of the agreement that was tendered to the raiyat but only a copy. Of course, there was an agreement with a stamp on; but they were both drafts of the proposed agreement; that being so, the tenant could have executed either draft and, if he had executed the draft tendered to him, it would have been a sufficient compliance within the terms of the section although perhaps, strictly speaking, the duty of paying the stamp would have fallen on the tenant. But the tenant did not do that; but being served with it, he set up the objection that he had been served with a copy of an agreement. The short answer is that there has not been an agreement. There never has been an agreement. The agreement could not come into being until executed by the tenant and not being in being, all copies of the draft of the proposed agreement are just as much originals as the other. That being so, it is quite clear that what was served on the tenant in this case was the proposed agreement in writing. The tenant could have, if he thought fit, executed it. I do not agree with the view taken by the learned District Judge on that point.

2. Then the other point urged is one which it is said that the learned Judge made himself and was not a matter raised in the arguments before him. He says that the notice accompanying the copy of the agreement or the proposed agreement that was served on the tenant was not in accordance with the terms of the Act. The short answer is that there is nothing in Section 46 that requires a notice to be served along with the copy of the agreement. I have no doubt that it is convenient to do so. But the Statute does not make it obligatory and the form of the notice in this case did not tell the tenant that he would lose his rights if he did not execute before a particular date, but informed him that he should execute the agreement and that if he had any objection he could submit it to the Court. He did not make any objection, nor did he submit any to the Court. The notice is not shown to have been issued under a statutory obligation, and the tenant had his three months and the suit was not instituted until after the

expiration of that time. In this case, there seems to me to have been a perfectly good tender of the agreement as mentioned in the section and, the tenant not having availed himself of that, the plaintiff was entitled to institute the suit. I think the decision of the learned District Judge must be set aside in this respect.

3. Then, as regards the cross-appeal. That was not disposed of by the learned Judge of the lower Appellate Court because he thought that the point which he had decided, although purely technical, was sufficient to dispose of the whole case. As regards the actual service of what is called in the Statute the agreement, that is, the proposed agreement, on the tenant, the fact that there was such a service has been adjudicated on. The case was decided against the plaintiff on the grounds, first, that the so called original had not been served, and secondly, that the notice that accompanied the original was not in accordance with the terms of the Statute. I have already dealt with these points. First of all, the document served on the tenant was just as much an original as any other copy, and secondly, no notice under the terms of the Statute was necessary. However, these points have been adjudicated on between the parties and you cannot have the same points argued in the cross-appeal as in the appeal.

4. But another point has not been adjudicated on, and that is as to whether the defendants are non-occupancy raiyats because Section 46 of the Bengal Tenancy Act only applies if the landlord establishes that the tenants are raiyats with non-occupancy rights. That point has not been decided and the case, must go back to the Court of appeal below to have the rest of the cross-appeal decided as to whether or not the defendants are non-occupancy raiyats. If the learned Judge decides that they are non-occupancy raiyats, then he must proceed to settle the fair and equitable rent under the other provisions of Section 46 of the Bengal Tenancy Act. If, on the other hand, the Judge finds that the defendants are raiyats with rights of occupancy, then the other part of the case which has been kept in abeyance--what exactly that means I do not know--will be disposed of.

5. The present appeal is, therefore, allowed with costs both in this Court and in the lower Courts and the case is sent back to the Court of appeal below with the above remarks.

6. Shamsul Huda, J.--I agree.

7. Nos. 474 and 475 of 1916.

8. The order made above in appeal No. 3325 will apply to these cases also.