

(1949) 09 CAL CK 0027
In the Calcutta High Court
Case No : Civil Rule No. 19 of 1949

Upendra Nath Sinha

APPELLANT

Vs

Maharajadhiraj of Burdwan and Another

RESPONDENT

Date of Decision : 07-09-1949

Acts Referred:

Bengal Agricultural Debtors Act, 1936 — Section 37A, 37A(1)

Citation : AIR 1950 Cal 146 : 54 CWN 310

Hon'ble Judges : G.N. Das, J

Bench : Single Bench

Advocate : Hari Prosanna Mukherjee, for the Appellant; Lala Hemanta Kumar and Purushottam Chatterjee for Opposite Party Nos. 2 and 1, for the Respondent

Judgement

G.N. Das, J.—This rule was obtained by an applicant u/s 37A, Bengal Agricultural Debtors Act and is directed against an order dated 28th September 1948 passed by the learned District Judge of Birbhum.

2. The facts are not in dispute and may be stated as follows: The disputed land formed part of a non-transferable occupancy holding which was held under the opposite party No. 1. On 10th March 1927 one Panchanan Singh, the predecessor-in-interest of the petitioner, purchased a share in the said holding. In execution of a certificate for arrears of rent obtained by the landlord opposite party No. 1 against the recorded tenant, the disputed holding was brought to sale on 22nd November 1938 and was purchased by the certificate, holder. Thereafter the purchaser at the certificate sale took possession on 2nd July 1942. To these proceedings Panchanan Singh or the present petitioner was not made a party, presumably because the purchase by Panchanan Singh was not recognised by the landlord. After the coming into operation of Section 37A, Bengal Agricultural Debtors Act an application was filed under that section by the present petitioner who had succeeded to the interest of Panchanan Singh on 24th May 1943. On 31st January 1945 opposite party No. 2 was impleaded as an occupant in possession. The proceedings u/s 37A, Bengal Agricultural Debtors

Act continued before the Special Debt Settlement Board. The application was ultimately allowed by the Board. An appeal was taken against the decision of the Board. The appeal was dismissed. Against the order of the Appellate Officer the opposite party moved the District Judge who allowed the same. A petition in revision against the order of the District Judge was filed in this Court and a rule was obtained which was registered as C. Rule 412 of 1948. This rule was heard by Mukherjee J. on 28th August 1948. The rule was made absolute, the order of the learned District Judge was set aside and the case was remitted to the learned District Judge for a decision of the other points which arose on the petition filed before the District Judge which had not been previously disposed of by him. After the matter went back on remand, the learned District Judge held that the petitioner being the suecessor-in-interest of transferee of a non-transferable occupancy holding had no locus standi to make the application in view of the terms of Section 37A (1) (b) (iii). The reason given was that Panchanan Singh or his successor, the present petitioner had not been recognised as a tenant and therefore it could not be said that the petitioner or Panchanan Singh was jointly liable with any other person in respect of a debt for arrears of rent. It is the propriety of this order which is challenged in this Rule.

3. The question which arises in this rule turns on the interpretation of Section 37A (1) (b) (iii) which runs thus:

"before the commencement of the Bengal Agricultural Debtors (Amendment) Act 1940, in the case of a debt for arrears of rent in respect of which such person was liable jointly with any other person."

4. In order to ascertain the meaning of the words "was jointly liable with any other person in respect of a debt for arrears of rent" the primary question is whether the liability contemplated by the clause has reference to the liability of the tenant, and his co-sharers inter se or whether the liability is one vis a vis the landlord. Section 2, Clause (15), Agricultural Debtors Act says that the words "landlord", "rent" and "raiyat" shall bear the same meaning as these words bear in the Bengal Tenancy Act. "When therefore Section 37A (b) (iii) speaks of joint liability for arrears of rent the obvious implication is that the liability is one vis a vis the landlord and not merely as between the tenant and his co-sharers. This view also receives support from Section 37A Clause (5) where it is stated that the applicant is required to pay the sum due under the award in certain instalments and also to continue to pay the current rent to the landlord. The section therefore connotes that the liability for arrears of rent should be a liability towards the landlord. Under the old Section 73, Bengal Tenancy Act, in case of a transfer of an occupancy holding either in whole or in part the transferor and the transferee became jointly liable for the rent due in respect of the occupancy holding since the transfer. It was held in the case of *Jatindra Nath v. Binode Behari* 52 I. C. 289 : (A. I. R. 1919 Cal. 167) that the old Section 73, Bengal Tenancy Act had no application to non-transferable occupancy holdings. By reason of the transfer therefore the transferee of a non-transferable occupancy

holding did not become liable to pay the rent due since the transfer to the landlord. The definition of the words "landlord", "tenant" and "raiyat" in the Bengal Tenancy Act which applies to the Bengal Agricultural Debtors Act also indicates that the transferee of a non-transferable occupancy holding cannot be regarded as jointly liable with the old co-sharer tenants for rent. In this view it cannot be said that Panchanan Singh or his successor, in interest, the present petitioner was liable with any other person for the arrears of rent due to the landlord. The condition mentioned in Section 37A (1) (b) (iii) has not therefore been fulfilled in the facts of the present case. The view taken by the learned District Judge is, therefore, correct. The applicant has no locus standi to make the application u/s 37A, Bengal Agricultural Debtors Act.

5. This rule must therefore be discharged but in the circumstances of this case I make no order as to costs.