

(1898) 08 AHC CK 0005**Allahabad High Court****Case No:** None

Muhammad Husen

APPELLANT

Vs

Muzaffar Husen and Another

RESPONDENT

Date of Decision: Aug. 5, 1898**Citation:** (1899) ILR (All) 22**Hon'ble Judges:** Aikman, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Aikman, J.

This is an appeal by the defendant in a suit brought against him as lambardar by the plaintiffs under the provisions of Section 93, Clause (h) of the Rent Act, to recover their share of profits for the years 1301, 1302 and 1303 Fasli, and for the profits of the kharif harvest of 1304 Fasli. In the Court of First Instance the defendant pleaded that the claim as regards the profits for the kharif of 1301 Fasli was barred by limitation. These profits fell due on the 1st February 1894. The suit was filed one day beyond the three years allowed for such a suit by Section 94 of the Act. The Assistant Collector overruled the defendant's plea on the ground that the Court was closed on the last day of the period of three years, and that the suit was within time, having been instituted on the day on which the Court reopened. The Assistant Collector, however, found that no profits were due for that year, and gave the plaintiffs a decree for the profits of the remaining years claimed, calculated on actual realizations. The plaintiffs appealed to the District Judge, who modified the decree of the Assistant Collector, and gave a decree for profits for all the years in suit, finding that there had been gross negligence on the part of the lambardar, and that the rental, all but a small amount, might have been collected had due diligence been used. The defendant comes here in second appeal.

2. In the first ground of appeal he renews his plea that the claim for the profits of 1301 Fasli was barred by limitation. Nothing appears to have been said on the plea

of limitation in the Lower Appellate Court, and it is contended on behalf of the respondents that the appellant should not be allowed to raise it now. I am of opinion, however, that it is open to me to entertain it even at this late stage, and I do so. In my opinion the claim for the profits for that year was barred. It is true that the last day of the period of the three years was a Sunday, but that does not, under the Rent Act, entitle the plaintiffs to an additional day's grace. Section 203 of the Rent Act provides that whenever a Court is closed on the last day of any period provided in this Act for the presentation of any memorandum of appeal or for the deposit or for the payment of any money in or into Court, the day on which the court reopens shall be deemed to be such last day. It is noticeable that nothing is said in this section in regard to the presentation of plaints. Consequently the provisions of that section do not apply to the present case. There is no other section in the Rent Act which would help the plaintiffs. The provisions of Act No. XV of 1877 do not affect special or local laws which specially prescribe periods of limitation; consequently the plaintiffs are not entitled to take advantage of the general provisions contained in Section 5* of that Act. Nor will Section 7 of the General Clauses Act of 1887 help the plaintiffs, for by Section 2 the application of part I of the Act, in which that section occurs, is limited to the Act itself and to all Acts made by the Governor-General in Council after the passing of the Act. The former General Clauses Act contained no provisions similar to Section 7 of the present Act. For these reasons I am of opinion that the first ground in the memorandum of appeal must be sustained, and that that portion of the decree of the Lower Appellate Court which awarded profits to the plaintiffs on account of the kharif harvest of 1301 Fasli must be set aside. In the remaining grounds of appeal it is contended that the lower Court was wrong in allowing the plaintiff's additional profits owing to rents remaining uncollected through the gross negligence of the defendant. Although the reasons given by the learned District Judge do not appear to me in all cases valid, yet there was, in my opinion, evidence upon which he could come to the conclusion at which he arrived. He found on a consideration of the evidence that the lambardar had been unable to collect a sum of Rs. 55-4-8 owing to the poverty of the tenants. With regard to the balance uncollected, his finding appears to me to be one of fact which I cannot disturb in second appeal.

3. For the above reasons I so far allow the appeal as to set aside that portion of the decree of the Lower Appellate Court which awarded Rs. 14-0-11 to the plaintiffs on account of the profits of 1301 Fasli. Quoad ultra the appeal is dismissed.

4. The parties will pay and receive costs throughout in proportion to their failure and success.

* [Section 5.--If the period of limitation prescribed for any suit, appeal or
Proviso where Court is closed expires on a day when the Court is closed the
closed when period expires. application may be instituted, presented or made
that the Court re-opens. Any appeal or application

Proviso as to appeals and application for review.

limitation prescribed therefor, when the appellant satisfies the Court that he had sufficient cause for not making the appeal or making the application within such time.