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**(1970) 04 CAL CK 0001**

**Calcutta High Court**

**Case No:** None

Phani Bhushan Roy

APPELLANT

Vs

Lakshmimoni Devi

RESPONDENT

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**Date of Decision:** April 29, 1970

**Acts Referred:**

- West Bengal Non-Agricultural Tenancy Act, 1949 - Section 43

**Citation:** (1973) 2 ILR (Cal) 324

**Hon'ble Judges:** Paresh Nath Mookerjee, J; Amiya Kumar Mookerji, J

**Bench:** Division Bench

**Advocate:** Hirendra Chunder Ghosh and Ajoy Kumar Basu Jr, for the Appellant; Sudhansu Sekhar Basu and Purnendu Sekhar Basu, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Mr. Justice Paresh Nath Mookerjee

1. This appeal is under Clause 15 of the Letters patent. It is directed against a decision of our learned brother, Chatterjee, J. (as he then was) and it arises out of a suit for eviction against a non-agricultural tenant. The suit succeeded in the first two Courts but, in second appeal, our learned brother, Chatterjee, J. dismissed the Plaintiff's suit on the ground that either the relevant notice of ejectment was insufficient or the suit was premature.

2. In our view, the decision of Chatterjee, J. is right and has to be affirmed.

3. It is clear, on the Plaintiff's own case, that the disputed tenancy commenced from the month of Magh, 1349 B.S. The notice that was given was a notice, given in Bhadra, 1357 B.S. asking the tenant to vacate "either with the expiry of the end of the month of Chaitra, 1357 B.S., or, at the end of the year of tenancy, which will expire next after the end of one-half year from the date of the service of this notice," The notice, therefore, was to terminate either with the end of Chaitra, 1357 B.S. or

with the end of Pous, 1358 B.S., the commencement of the tenancy having been the month of Magh of a Bengali calendar year according to either party's case. If the former be taken to be the date of expiry, the notice would obviously, be insufficient as it would not be expiring with the end of a year of the tenancy. If the latter date of expiry of the notice be taken, the instant suit would be premature, as it was instituted some time in Sravan, 1358 B.S. In this view, Chatterjee, J. must be held to have rightly dismissed the Plaintiff's suit.

4. The above view would, obviously, be supported by the Special Bench decision of this Court, reported in (1) [The Indian Iron and Steel Co. Ltd. Vs. Baker Ali](#) , which view has since been affirmed by the Supreme Court decision of (2) [Indian Iron and Steel Co. Ltd. Vs. Biswanath Sonar](#) ,

5. The first two Court relied on Section 43 of West Bengal Non-Agricultural Tenancy Act for the purpose of holding that, as under that section, the rent was payable according to Bengali calendar months, the year of the tenancy would be according to Bengali calendar. This view would be opposed to the above two authorities and we are unable to accept it. In our view Section 43 has no relevance, so far as the month or year of the tenancy is concerned although the mode or manner of payment of rent, which it prescribes and regulates, may be one of the matters for consideration for determination of the said question. It is, however, well-settled that the mode or manner of payment would not be the sole determinant in the above matter [Vide (3) [Baidyanath Bhattacharjee Vs. Nirmala Bala Devi](#) ,.]

In the above view, we dismiss this appeal. There will be no order for costs in this appeal.

Amiya Kumar Mookerji, J.

6. I agree.