

(1925) 06 CAL CK 0012**Calcutta High Court****Case No:** None

Bashirulla Bhuiya and Others

APPELLANT

Vs

Meajan and Others

RESPONDENT

Date of Decision: June 24, 1925**Citation:** AIR 1926 Cal 690 : 92 Ind. Cas. 593**Hon'ble Judges:** Cuming, J; Chakravarti, J**Bench:** Division Bench**Judgement**

Cuming, J.

In the suit out of which. this appeal has arisen the plaintiffs sued the defendants for recovery of arrears of rent and cesses alleged to be due for the years 1323 to 1325 for a certain howla jama at an annual rent of Rs. 9-9 0 with interest at the rate of 75 per cent, per annum under a registered kabuliyat dated the 1290 B. S. corresponding to 1884.

2. The Court of first instance decreed that plaintiffs" suit as against defendants Nos. 3 and 6 on contest and ex parte against the other defendants at the rate of Rs. 9-9 0 per annum inclusive of cesses with damages at the rate of Rs. 25 per cent. He did not allow interest at the rate of Rs. 75 per cent, per annum as claimed by the plaintiffs. The plaintiffs appealed to the District Court. That Court held that cesses were included in the rent, and it further held that the plaintiffs were not entitled to interest at the ratu of Rs. 75 per cent, per annum on the ground that the stipulation to pay interest at the rate of Rs. 75 per cent, per annum was entered in the kabuliyat as a threat to ensure punctual realization of the rent and on this ground he dismissed the appeal.

3. The plaintiffs have appealed to this Court on the question of interest. They contend that they are entitled to the interest at the kabuliyat rate, that unless the defendants can show that the parties, did not contract on equal terms or that one party was in a position to exercise undue influence over the other and took unfair advantage of the other they are entitled to the interest at the kabuliyat rate.

4. I think the appellants are entitled to succeed. No attempt has been made by the defendants to prove that at the time when the contract was entered into the plaintiffs were in a position to dominate the defendants and to exercise undue influence over them to induce them to enter into the contract, and that the defendants were not free agents in entering into the contract. The defendants having failed to prove this the plaintiffs are clearly entitled to the interest at the rate stated in the kabuliyat.

5. The appeal is, therefore, decreed and the decree of the lower Appellate Court is modified to this extent that the plaintiffs are entitled to interest at the rate of Rs. 75 per cent, per annum down to the date of the institution of the suit in the place of the damages at the rate of Rs. 25 per cent, as allowed by the lower Appellate Court.

6. The appellants are entitled to the costs of this appeal and the proportionate costs in the two lower Courts.

Chakravarti, J.

7. I agree.