
(1933) 08 CAL CK 0024

Calcutta High Court

Case No: None

Sheik Yusuf

APPELLANT

Vs

Jitendra Nath Roy

RESPONDENT

Date of Decision: Aug. 29, 1933

Citation: AIR 1934 Cal 489

Judgement

1. This is an appeal by the defendant in a suit instituted by the plaintiff landlord to recover the amount of Rs. 59-12-12½ gds, as interest on rent payable by the tenant defendant. The claim was made by the landlord on the footing that rent and cesses from 1332. to 1334 B. Section in respect of a tenancy had been sent by postal money order and were accepted by the plaintiff, but as the rents due were not received on due dates, interest was claimed according to contract between the parties concerned. One of the pleas raised in defence by the contesting defendant was that the suit was not maintainable. The Courts below have agreed in passing a decree in favour of the plaintiff. The effect of which is that interest on rent as claimed in the suit has been made recoverable as rent. In our judgment interest on rent cannot be held to be rent as defined by the Bengal Tenancy Act, and the term "rent" as defined in the said Act does not include interest: see in this connection *Koylash Chandra De v. Tarak Nath Mondal* (1898) 25 Cal 571. We are further of opinion that a difference exists, and the difference must be recognised between cases in which interest is claimed with rent, and those, like the case before us, in which interest on rent only is claimed; and a suit for recovery of interest only, apart from any claim for rent on which interest may be payable either under a contract or under the law, is not maintainable as a suit for rent.

2. On the above ground only, we are unable to affirm the decision of the Courts below. It was argued before us that no appeal lay from the decision of the Court of appeal below, and we have to give effect to that contention. The case however is a fit one in which the revisional jurisdiction of this Court should be exercised in favour of the defendant in the suit; and we have no hesitation in allowing the application for revision presented in this Court by the defendant. The appeal is dismissed on the ground that it is not maintainable

under the law ; but the application for revision is allowed. The result is that the decisions of the Courts below are set aside, and the plaintiff's suit dismissed. The parties are to bear their own costs throughout the litigation.