59 CWN 56 : (1956) 1 ILR (Cal) 387

Calcutta High Court

Case No: Appeal from Appellate Order No. 46 of 1950

Labpur Zemindaries Limited		APPELLANT
	Vs	
Debendranath Raimahashaya		RESPONDENT

Date of Decision: July 26, 1954

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 147(5), 168A, 168A(1)
- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 90, 47

Citation: 59 CWN 56 : (1956) 1 ILR (Cal) 387

Hon'ble Judges: P.N. Mookerjee, J

Bench: Single Bench

Advocate: Hari Prasanna Mukherjee and Satya Prasad Banerjee, for the Appellant;Panchanon Chowdhury and Nirmal Chandra Chowdhury, for the Respondent

Final Decision: Allowed

Judgement

P.N. Mookerjee, J.
This appeal arises out of a proceeding u/s 47 of the Code of Civil Procedure, read with Section 168A of the Bengal Tenancy Act.

2. The Appellants as landlords instituted Rent Suit No. 1621 of 1942 on April 15, 1942, for recovery of arrears of rent for the years 1345 and 1346 B.S. in respect of the holding, comprised in Khatiyan No. 422 of Mauza Purbasthali, district Burdwan, held by the Respondents'' predecessors under them. Before the date of institution of the suit, the rents of the said holding for the years 1347 and 1348 B.S. had also become due and payable on April 14, 1942, corresponding to Baisakh 1, 1349 B.S. The Appellants, however, reserved their right to institute a suit for these arrears of 1347 and 1348 B.S. u/s 147(5) of the Bengal Tenancy Act and sanction or permission to that effect was given by the court. Rent Suit No. 1621 of 1942 was decreed on February 8, 1943. The decree was

first put into execution in Rent Execution Case No. 1530 of 1944 on November 17, 1944, but, on objection being taken by the judgment-debtors as to its maintainability on certain grounds, it was dismissed as not maintainable in law on March 27, 1945. Thereafter, the decree holders put the said decree into execution over again in Rent Execution Case No. 607 of 1945 on June 9, 1945, and, in this! execution, the holding in suit comprised in Khatiyan No. 422 was sold and purchased by the decree-holders and the sale was; confirmed on November 28, 1945. In the meantime, on April 14, 1945, the decree-holders had instituted Rent Suit No. 396 of 1945 for the reserved arrears of 1347 and 1348 B.S. in respect of the above holding (Khatiyan No. 422) and the said suit; ended in a decree on June 13, 1945. On May 24, 1948, this second decree, viz., for the rents of 1347 and 1348 B.S. was put into execution against "other properties" of the judgment debtors (Khatiyans Nos. 839 to 844 of Mouza Purbasthali) in Rent Execution Case No. 465 of 1948. These properties were eventually sold in the said Execution Case and purchased by the decree-holders themselves on December 10, 1948, and, thereafter, on January 10, 1949, the judgment-debtors made two applications one u/s 47 of the Code of Civil Procedure, read with Section 168A of the Bengal Tenancy Act, objecting to the validity of the execution against the said "other properties" of the judgment-debtors and giving rice to Misc. Case No. 12 of 1949 which is the subject matter of the present appeal and the other under Order XXI Rule 90 of the CPC for the setting aside of the sale, held on December 10, 1948, as aforesaid, and registered as Misc. Case No. 11 of 1949. Of these applications, the former, viz., the objection to the execution proceedings u/s 47 of the Code of Civil Procedure, read with Section 168A of the Bengal Tenancy Act, was first taken tip by the learned Munsif and he held that the execution in the present case was in contravention of the said Section 168A of the Bengal Tenancy Act. He, accordingly, by his order, dated April 20, 1949, allowed the Misc. Case No. 12 of 1949, set aside the sale and struck off the execution proceedings as not maintainable. The other application, viz that for setting aside the sale under Order XXI, Rule 90 of the CPC (Misc. Case No. 11 of 1949) was then put up for orders on April 23, 1949, and, as neither party appeared on that date and no steps were taken, this Misc. Case was dismissed for default. The decree-holders appealed to the lower appellate Court from the decision of the learned Munsif, dated April 20, 1949, allowing the judgment-debtors" application u/s 47 of the Code of Civil Procedure, read with Section 168A of the Bengal Tenancy Act, and setting aside the sale and striking off their execution case. The learned Subordinate Judge, however, who heard this appeal, agreed with the larned Munsif that the said execution case clearly contravened Section 168A of the Bengal Tenancy Act and, in that view of the matter, he affirmed he learned Munsif"s decision and dismissed the decree-holders" appeal. From this appellate decision, the present Second Appeal has been preferred by the unsuccessful decree-holders.

3. Both the courts below have accepted the judgment-debtors" contention that, in view of Section 168A(i)(6) of the Bengal Tenancy let, it must be held, in the circumstances of this case, that the claim for arrears of rent for 1347 and 1348 B.S. and the decree, obtained therefore, must be deemed to have been satisfied by leason of the confirmation of the

sale on November 28, 1945, and that, accordingly, the present execution for the said arrears would not be maintained. They appear further to have been of the opinion that, when the landlords had purchased the holding in arrears in execution of a decree for rent, no execution was permissible u/s 168A of the Bengal Tenancy Act for arrears of an earlier period. In my view, in the facts and circumstances of the present case, which I have sufficiently set out above, the decision of the two courts below cannot be supported.

4. u/s 168A(1)(b) of the Bengal Tenancy Act, the auction-purchaser at a sale in execution of a decree for rent, and I am prepared to assume here that the word "purchaser" in the section includes also the decree-holder purchaser as in the present case,-is liable to pay inter alia the arrears of rents "which may have become payable to the decree-holder between "the date of the institution of the suit and the date of the "confirmation of the sale." In the instant case before me. these two dates are respectively April 15, 1942, and November 28, 1945. Rents for 1347 and 1348 B.S., however, had become payable before, that is, on Baisakh 1, 1349 B.S., corresponding to April 14, 1942. These rents, therefore, do not fall within the period, mentioned in Section 168A(1)(b) of the Bengal Tenancy Act as applying to this case, and, accordingly, the. decree-holders purchasers in the present case were not liable under that section to pay the same before obtaining confirmation of their sub on November 28, 1945. These rents, or the decree therefore cannot, therefore, be deemed to have been satisfied by reason on the said confirmation of sale.

5. In fairness to the two courts below I ought to notice here the reasons which prompted them to accept the judgment-debtors'' argument u/s 168A(1)(b) of the Bengal Tenancy Act.

6. The learned Munsif was apparently of the view that, under that section, the auction-purchaser (including the decree-holder purchaser'') was bound "to pay all arrears of rent accrued due "subsequent to the period in suit" and, accordingly, he held that the sale in execution of decree in Rent Suit No. 1942 for the arrears of 1345 and 1346 B.S. in Rent Execution Case No. 607 of 1945 wiped off the tenants'' liabilities for the rents of the subsequent period 1347 and 1348 B.S.

7. In support of his view, the learned Munsif relied upon the two decisions of this Court, reported in Saraj Bashini Debi v. Parindra Nath Banerjee and Ors. (1945) 49 C.W.N 614 and Amana Barmanya v. Adhar Chandra Mandal ILR (1946) 1 Cal. 664. It appears, however, that the decisions cited do not, when properly read, support the view of the learned Munsif. In Amana Barmanya v. Adhar Chandra Mandal ILR (1946) 1 Cal. 664, the passage at p. 666 of the Report is clear enough to show that only the post-suit liabilities for arrears of rent up till the confirmation of the sale-or, to use the language, used by their Lordships,

The arrears of rent which accrued due from the date of the institution of the suit down to the date of the confirmation of the sale.

8. Which substantially reproduces the words of the statute itself, would have to be discharged by the auction-purchaser. The same also must be the meaning of the decision in Saroj Bashini Debi v. Parindra Nath Banerjee and Ors. (1945) 49 C.W.N 614 although the language, used by Henderson, J., and, particularly, in the head note-is not very happy and that probably misled the learned Munsif.

9. In the lower appellate court the learned Subordinate Judge "has added another reason. He has drawn a distinction between the words "payable" and "due" and he has, in effect, held that, as the statute uses the words "which may have become payable" between the two dates, mentioned in the section (Section 168A(1)(b)) instead of the words "which may have become due," pre-suit liabilities also, viz., for arrears of rent which had fallen due before the institution of the suit but, remained unpaid and, therefore, payable on that date, would be covered by it.

10. I am not impressed by this reasoning of the learned Sub ordinate Judge. There is really no distinction here between the two expressions "due" and "payable," noticed by the learned Subordinate Judge, and, even in Amano Barmanya v. Adhar Chandra Mandal ILR (1946) 1 Cal. 664 mentioned by the learned judge himself, their Lordships used the word "due" in place of the word "payable." These two words appear to me to be synonymous and nothing turns here upon any distinction between them. The really important words are "may have become" which exclude arrears due or payable at any earlier point of time, even though they continued to remain payable during the period mentioned in the statute.

11. My view of the law, as expressed above, is fully supported by the decision of Chakravartti, J., as he then was, in the case of Satish Chandra Chatterjee v. Atul Chandra Chakravarti (1948) 52 C.W.N. 625. His other and later decision, in Abdul Mannan v. Madhabi Ranjan Chakrabarti ILR (1949) 1 Cal. 62 :(1948) 52 C.W.N. 627 and the two earlier decisions of this Court, in Lakshman Chandra Roy Choudhuri v. Birendra Kumar Singha ILR (1945) 1 Cal. 556 (1944) 48 C.W.N. 837 and Uday Chand Mahatab v. Mahima, Ranjan Ray ILR (1945) 2 Cal. 550 (1945) 49 C.W.N. 629 also appear to be based upon the same view of the law. I may usefully quote here the very apposite and relevant observations of the learned Judge (Chakravartti, J.) in the first of the cases cited Satish Chandra Chatterjee v. Atul Chandra Chakravarti (1948) 52 C.W.N. 625 which occur at pp. 626 to 627 of the Report and which run as follows:

Coming now to Section 168A of the Bengal Tenancy Act, it is only too clear that Clause (b) of Sub-section (1) has no reference to the rent for any period prior to the date of the suit. The clause speaks expressly of

"any rent which may have become payable to the decree-holder between the date of the institution of the suit and the date of the confirmation of the sale."

It does not go further backward. There does not seem to me to be anything in the language or intention of Section 168A from which it can be held that the legislature intended that on the rent sale of a holding, the pre-suit liabilities for rent would all be extinguished.

12. With, these observations of the learned Judge I entirely agree and I would like to add with the utmost respect that that was only the proper view of the scope of the section, both on its language and its underlying intention.

13. I, accordingly, reject the interpretation, put upon Section 168A of the Bengal Tenancy Act by the two courts below.

14. Clearly also, as a result of the auction-purchase in the earlier execution case (Rent Execution Case No. 607 of 1945) the tenancy became extinguished by merger as there is no dispute here that the decree-holders auction-purchasers were the sole landlords and the judgment-debtors were the sole tenants. The term of the tenancy, therefore, expired within the meaning of the proviso to Section 168(1)(a) of the Bengal Tenancy Act (vide, Abdul Mannan v. Madhabi Ranjan Chakravarti ILR (1949) 1 Cal. 62: (1948) 52 C.W.N. 627 at pp. 631-632 and Lakshman Chandra Roy Chaudhuri v. Birendra Kumar Singha ILR (1945) 1 Cal. 556 : (1944) 48 C.W.N. 837, at pp. 559-560 vide also Uday Chand Mahatab v. Mahima Ranjan Roy ILR (1945) 2 Cal. 550 : (1945) 49 C.W.N. 629 at pp. 559-560) and the landlords were entitled to execute their decree for the arrears of 1347 and 1348 B.S., subsequently obtained, against the "other properties" of the judgment-debtors. That is what they have done in the present execution case and, accordingly, no valid objection can be raised to this execution and it cannot be dismissed as not maintainable in law.

15. The decision of the two courts below, giving effect to the judgment-debtors" objections u/s 47 of the Code of Civil Procedure, read with Section 168A of the Bengal Tenancy Act, and allowing their Miscellaneous Case No. 12 of 1949 under the said statutory provisions, must, therefore be set aside. Those objections must be disallowed and the order of the two courts below, setting aside the sale and dismissing the execution case as not maintainable, must be reversed.

16. It appears that the judgment-debtors" objections to the sale under Order XXI, Rule 90 of the CPC were not proceeded with and were dismissed or, rather, allowed to be dismissed, for default, obviously because the sale had already been set aside by the court by its earlier order, dated April 20, 1949. That order, however, has now been set aside and, in that context and in the circumstances of this case, I deem it proper to hold-and I feel amply justified in so holding,-that the order of the learned Munsif, dismissing the judgment-debtors" application under Order XXI, Rule 90 of the CPC (Misc. Case No. 11 of 1949) for default, should also be set aside. 1, accordingly, set aside that order too in the exercise of my revisional powers. The application under Order XXI, Rule 90 of the Code will now be considered by the learned Munsif on its merits, and, if the

judgment-debtors succeed in showing that the sale is vitiated by any irregularity or illegality which invalidates it under the law, the sale will be set aside; otherwise the sale will stand and it will be confirmed in due course.

17. Subject as above, this appeal is allowed and the judgments and orders of the two courts below are set aside. The judgment- debtor''s objections to the Appellants'' execution proceedings are overruled but their application for setting aside the sale, held therein, will now be considered by the learned Munsif on the merits in accordance with law in the light of the observations which I have made above.

18. In the circumstances of this case, the parties will bear their own costs in this Court.