

(1970) 04 CAL CK 0012

Calcutta High Court

Case No: L.P.A. No. 3 of 1961 in S.A. No. 711 of 1956

Phani Bhusan Roy

APPELLANT

Vs

Lakshmi Moni Debi

RESPONDENT

Date of Decision: April 29, 1970

Citation: (1973) 2 ILR (Cal) 324

Hon'ble Judges: P.N. Mookerjee, J; Amiya K. Mookerji, J

Bench: Division Bench

Advocate: Hirendra Chandra Ghose and Ajoy Kumar Basu, Jr, for the Appellant; Sudhansu Sekhar Basu, for Purnendu Sekhar Basu, for the Respondent

Final Decision: Dismissed

Judgement

P.N. Mookerjee, J.

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.

2. 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.

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

4. 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 tenancy 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 Pans 1358 B.S. the commencement of the tenancy having been the month of Magh of a Bengali calendar year according to either parties' 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 sometime in Sravan 1358 B.S. In this view, Chatterjee J. must be held to have rightly dismissed the Plaintiff's suit.

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

6. The first two Courts relied on Section 43 of the 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 of the year of the tenancy is concerned although the mode or manner of payment of rent which it presents 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 [Baidyanath Bhattacharjee Vs. Nirmala Bala Devi](#), .

7. In the above view, we dismiss this appeal.

8. There will be no order for costs in this appeal.

Amiya K. Mookerji J.

9. I agree.