

(1922) 03 CAL CK 0029**Calcutta High Court****Case No:** None

Brahmamoyi Debya and Another

APPELLANT

Vs

Somarali Sheikh and Others

RESPONDENT

Date of Decision: March 2, 1922**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 178, 53, 54(3), 67

Citation: AIR 1922 Cal 77 : 68 Ind. Cas. 109**Hon'ble Judges:** Panton, J; Newbould, J**Bench:** Division Bench**Judgement**

1. This appeal arises out of a suit for arrears of rent, and the only point to be decided is the rate of interest to be given to the plaintiffs on the arrears.

2. The tenancy commenced with the execution of a registered kabuliyat for a term of three years on the 25th May 1880 and the defendants in this suit are the sons and son-in-law of the executants of the kabuliyat and they or their predecessor have been holding over since the first term of the kabuliyat expired. The kabuliyat provides for payment of 24 rupees in cash and 3 aras of paddy, or in lieu of the paddy 12 rupees per annum. The condition as to interest contained in the kabuliyat is that the tenant should pay interest at 6 pies per rupee per menses on the cash rent and one cotta per rupee per month on the rent payable in paddy. Both the lower Courts have held that the plaintiffs cannot get interest at higher rate than 12 per cent, per annum. This finding is based on two grounds, firstly, that the contract for interest was a hard and unconscionable bargain, and, secondly, that the provisions of Section 67 of the Bengal Tenancy Act are a bar to the plaintiff's getting any higher rate of interest than that provided in that section.

3. On appeal both these grounds were attacked. But the learned Vakil for the respondent was content to rely on the application of Section 67 and the question of the effect of the finding that the bargain was hard and unconscionable was not

argued. As regards the effect of Section 67 the point has recently been considered by a Division Bench of this Court in the case of Chindra Nath Sharma v. Sheikh Inamdi (7). In that case it is pointed out that there has been divergence of judicial opinion as to the effect of holding over and the more important cases dealing with this point are there discussed. On behalf of the appellants it is strenuously urged that when a tenant holds over there is no new contract entered into which would make the provisions of Section 178 of the Bengal Tenancy Act applicable and that consequently there is no bar to recovery of interest under the terms of the original contract if that is made before the passing of that Act. This contention is overruled by the decision above cited. That decision has been attacked, We do not think that we should be justified in referring the matter to a Full Bench. On behalf of the appellants our attention has been drawn to another recent decision in the case of Srimati Pramada Sundari Sarkar v. Ledu Mattxbir (5) Sec App 167 and 2269 of 1918, decided on the 3rd June 1920. A short note of this case appears in 24 Calcutta Weekly Notes, (Votes Portion) Cl. On examination of the judgment we find that it is of no assistance to the present case. The judgment itself does not state the facts. From the paper-book it appears that no question of the applicability of Section 67 was ever raised. The lower Appellate Court in that case reduced the interest arbitrarily on the ground that the bargain was hard and unconscionable. The tenancy held by the defendant was Cast Him hewli or permanent tenure and, therefore, that case would be covered by the Full Bench case in Lal Gopal Butt Chowdhry v. Monmathe Lai Butt (4). The facts of the present case cannot be distinguished from the facts of the case of Chandra Nath Sharma v. Sheikh Inamdi (7) already referred to and we follow that decision.

4. One other point was argued. It was contended that so far as the rent in kind was concerned Section 67 would have no application. This contention is based on a decision of the Patna High Court, Bishelhar Nath Sahu v. Husani Sao (6). With all respect to the learned Judges who decided that case we are unable to agree with them that Section 67 is inapplicable to a case of produce rent which is not paid quarterly. That decision is based on the decision of their Lordships of the Judicial Committee in Bemanta Kumari Bebi v. Jagadindra Nath Roy (8). That decision has been considered in two reported cases of this Court, Narendra Kumar Qohie v. Qora Ohand Poddar 33 C. 683 PC : 3 C. L. J. 391. and Monohar Mukherjee v. Khetra Nath : Paresh Chandra Mukherjee 19 Ind Cas 625 : 18 C.L.J. and it has been held that their Lordships of the Judicial Committee did not rule that the whole of the Section 67 is limited in its application to cases where rent is payable quarterly. We do not see any reason why Section 67 should not be applicable to interest on arrears of paddy of rent paid annually. On behalf of the appellants it is contended in support of this objection that arrears of rent is defined by Section 51 Clause (3) and that Clause must be read with Section 53 which applies only to money rent. Clause (3) of Section 54 is not an exhaustive definition which includes every kind of arrears of rent. It only deals with cases of rent payable in installments. It would be absurd to hold that

all arrears of rent were Covered by this definition, otherwise rent payable annually would never fall in arrear. For these reasons, we hold that this appeal fails and must be dismissed with costs.