

Nut Behari Das Vs. Mahammad Ali

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Court : Kolkata

Decided On : Feb-20-1941

Reported in : AIR1941Cal528

Appellant : Nut Behari Das

Respondent : Mahammad Ali

Judgement :

ORDER

Henderson, J.

1. This rule is directed against an order of the Munsif staying the suit under the provisions of Act 9 of 1940. The petitioner is the plaintiff and he instituted the suit both to recover arrears of rent and for ejection. The defendant denies that anything is due on account of rent. He also filed a prayer for staying the suit. The Munsif called upon the plaintiff to withdraw either his prayer for ejection or his prayer for arrears of rent. The plaintiff refused to do so and the Munsif then stayed the whole suit. The plaintiff then obtained this rule. My learned brother Mitter J. in *Purnendu Nath Tagore v. Narendra Nath* : AIR1941 Cal302 , pointed out the difficulty that there is in interpreting Section 3 of the Act. In my opinion, the only possible interpretation of the unhappy words used is the interpretation which he has placed upon them. To put it shortly the Act is intended to protect tenants who do pay their rent and not tenants who do not.

2. The position, therefore, is that on the plaint, as filed, the defendant is not entitled to the stay; he has, however, taken a defence that nothing is due on account of rent. If that defence is well founded, then the suit will have to be stayed. Before the Munsif can decide whether he ought to stay the suit or not, he must, therefore, try, as a preliminary issue, the question whether the claim for arrears of rent is established or not. If the plaintiff proves his case and that he is also entitled to a decree for ejectment, he will be entitled to a decree and the proviso will come in. If nothing is due on account of rent, then the suit will have to be stayed. The order of the lower Court is, therefore, set aside and he is directed to dispose of the matter in accordance with the directions contained in this judgment. The opposite party will pay the costs of the petitioner in the rule: hearing fee is assessed at one gold mohur.

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