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Court : Kolkata

Decided On : Mar-01-1917

Reported in : 40Ind.Cas.614

Judge : Fletcher and ;Newbould, JJ.

Appellant : Bhupendra Kumar Sarkar and ors.

Respondent : Rani Kissori Dasi Executrix to the Estate of Late Raneswar Bhowmik

Judgement :

Fletcher, J.

1. This is an appeal by the plaintiffs against the judgment of the learned District Judge of Berhampore, dated the 19th August 1914, affirming the decision of the Munsif of the same place. The plaintiffs brought the suit to recover the rent in arrear, they being the zemindars and the defendant being the patnidar under them. The plaintiffs put in before the Collector an application under Regulation VIII of 1819, for the purpose of realising the rent in arrears. They claimed a sum in excess of what was admitted by the defendant. The result was that the Collector having adjudicated under Section 14 of the Regulation on this matter found the rent to be as stated by the defendant and awarded a sum of Rs. 32 to the

defendant as her costs in the proceedings before him. The plaintiffs did not accept this and brought the present suit for recovering the rent in arrears. The suit failed in both the lower Courts and the grounds on which it failed are these: First of all the Courts found that a proper tender had been made by the defendant of the rent due before the proceedings were instituted and that, therefore, no interest ought to be awarded to the plaintiffs under Section 68(1) of the Bengal Tenancy Act. The second finding was that the defendant was entitled to set off the sum of Rs. 32 awarded to her as costs by the Collector and the third finding was that the defendant was entitled to get damages under the provisions of Section 68(2) of the Bengal Tenancy Act. At the hearing of the appeal before us, another point was made, namely, that there was a clear admission in the written statement that a sum of Rs. 75-8-6 was due to the plaintiffs and that the Courts ought not to have gone behind that admission. But this last point is not raised in the grounds of appeal before us and apparently it was not raised in the grounds of appeal before the lower Appellate Court. It is too late now to consider this point that was not made until the case was actually argued before us.

2. Now, as to the first point, namely, the disallowance of interest, the learned Judge was clearly entitled to disallow interest under Section 68 (1) of the Bengal Tenancy Act, he having found that the defendant had made an offer of performance within the meaning of Section 38 of the Indian Contract Act. Once he has made that finding, then the defendant is not responsible for the non-performance; that means that she is not liable to pay interest on the amount due.

3. The second point was that the Collector had no jurisdiction under the provisions of Regulation VIII of 1819 to award to the defendant any costs of the proceedings before him. Mr. Majumdar, who has conducted the appeal on behalf of the defendant-respondent, has given us an interesting historical statement as to the position of the Collector under that Act and as to how he came to supersede the Civil Court as originally provided in the Regulation. I think the case rested on a broader basis than that. The Collector had power to determine the actual rent and had a quasi-judicial capacity and, therefore, had jurisdiction to direct in what manner the costs of the proceedings before him ought to be borne. I think the learned Judge was right in coming to the conclusion that the costs before the

Collector awarded in favour of the defendant should be set off as against the amount sued for.

4. The next point was as regards the claim under Section 68(2) of the Bengal Tenancy Act, The learned Judge has found that the suit was instituted without reasonable and probable cause and in that view, Sub-section (2) of Section 68 clearly gave the Court jurisdiction to award damages under that section. Finally the learned Judge directed the plaintiffs to pay the costs of the suit. Ordinarily, of course, a litigant who succeeds on his claim, although he may be deprived of his costs, cannot be ordered to pay them. But in a case that comes under Section 38 of the Indian Contract Act, the defendant is not responsible for non-performance and if he is not responsible for non-performance, if he is not awarded the costs of the suit, it may be said that he is made responsible for the non-performance of the contract. I think, therefore, that the Judge had jurisdiction to direct that the plaintiff should pay to the defendant her costs in the suit although not twice over, as was apparently ordered by the Munsif. In the lower Appellate Court, apparently the order for costs was not made twice over and the order, though made in that form in the Court of first instance, may perhaps be varied by simply altering the decree of the Munsif from one dismissing the suit with costs to a simple dismissal of the suit without any order as to costs, the defendant having already been given credit for the amount awarded to her by the Court for the costs of the suit, Subject to this slight alteration in the decree of the Court of first instance, the present appeal fails and must be dismissed with costs.

Newbould, J.

5. I agree.

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