

Narayan Chandra Banerjee Vs. Kailash Chandra and ors.

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Court : Kolkata

Decided On : Jun-26-1931

Reported in : AIR1932Cal226,136Ind.Cas.900

Appellant : Narayan Chandra Banerjee

Respondent : Kailash Chandra and ors.

Judgement :

Jack, J.

1. This rule has been issued calling upon the opposite party to show cause why an order of the Munsif, Second Court at Khulna, under Sections 26-J and 26-F should not be set aside on the ground that an application under Section 26-F must follow an application under Section 26-J and that the application under Section 26-F cannot be made until after the balance of the landlord's fees and compensation have been paid into Court as provided by Section 26-C read with Section 26-J.

2. The contention of the petitioner depends upon the interpretation of Section 26-J, Clause (3). That clause states:

The provisions of Section 26-F shall apply to the case of a transfer referred to in Sub-section (1) and the immediate landlord shall be competent to exercise his rights of purchase under that section within two months of the date of payment into Court of the balance of the landlord's transfer fee and the compensation allowed.

3. The petitioner is right in holding that the application under Section 26-J must first be made in order to make the provisions of Section 26-F applicable to a case to which the provisions of Clause (1), Section 26-J applies. But he is not right in urging that the landlord is not competent to exercise his rights of purchase under Section 26-E until the balance of the landlord's transfer fee and compensation allowed have been paid. Such an interpretation of the section would mean that if the balance of the landlord's transfer fee and compensation are not paid the landlord would not be competent to pre-empt under Section 26-F and that in any case he has got to wait until the tenant chooses to pay the balance of the landlord's transfer fee. The position of the landlord in such a case would be much worse than that of the landlord whose tenant makes a bona fide transfer. This cannot be the intention of the legislature. Obviously, this portion of Clause (3), Section 26-J is merely a provision fixing the time within which the landlord may apply to pre-empt. The provisions for limitation in Section 26-E would not apply in this case (no notices having been issued under Section 26-C or 26-E) thus making it necessary to provide a special period of limitation in the case in which an application is made by the landlord under Section 26-J. It has also been pointed out that this point was not at all raised in the Court below. The judgment of the Court below shows that application was made at the same time under Sections 26-J and 26-E and there seems to be no reason why this should not be allowed. This being the only ground on which this Rule was granted this Rule is discharged with costs: hearing fee one gold mohur.