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Court : Kolkata

Decided On : Dec-14-1937

Reported in : AIR1938Cal320

Appellant : Bata Krishna Pramanik

Respondent : Deba Prosad Garga and ors.

Judgement :

Bartley, J.

1. The question for consideration in this rule is whether a claim for arrears of interest only, such interest being due because of non-payment of rent in due time is or is not recoverable in a Small Cause Court suit. The opposite party in this rule claimed arrears of interest upon an annual jama of Rs. 1922.11.6 for a period of three years, the rent itself having been duly paid. The petitioner objected that such a suit was a suit to enforce payment of 'cesses or other dues when cesses and dues were payable to a person by reason of his interest in immovable property' and that consequently the suit cannot be brought in a Court of Small Causes, because of the provisions of Article 13 of the Schedule of the Small Cause Courts Act. It cannot now be disputed that a claim for arrears of interest is not a claim for rent, and the question before us is whether it can come under the definition of a claim for other dues 'payable to a person by reason of interest in immovable property' within the meaning of Article 13 of the Schedule to the Act. On

consideration of the whole question, we are of opinion that the answer must be in the negative. Article 13 bars a claim for cesses' and other dues payable to a person by reason of his interest in immovable property. Prima facie, it would appear that the other dues referred to must be ejusdem generis with cesses referred to immediately before, that is to say, charges arising from the immovable property itself. The claim in the present case cannot be said to flow from an interest in the immovable property. It is by way of penalty for default in the payment of rent or by way of damages for breach of an implied contract to pay rent in due time but it is not a sum payable to a person directly by reason of his interest in immovable property. In this view of the matter, the present rule is discharged with costs hearing fee being assessed at one gold mohur.

Nasim Ali, J.

2. I agree. The contention of the learned advocate for the petitioner is that interest on arrears of rent comes under the word 'dues payable to a person by reason of his interest in immovable property' within the meaning of Article 13 of the Schedule to the Provincial Small Cause Courts Act. It is argued by him that rent is payable to the landlord on account of his interest in the land and as interest is payable on arrears of rent, the interest must also be taken as arising out of the landlord's interest in the land. I am unable to accept this contention. The dues contemplated by this article must be 'dues' arising directly from the interest in the immovable property and cannot include 'dues' which are indirectly connected with something arising out of an interest in the immovable property. The word 'dues' in that article, as has been pointed out by my learned brother, must be ejusdem generis with the preceding word 'cesses', Now cess is something which is assessed or fixed. In modern times it is equivalent to like English word 'rate' : see Wharton's Law Lexicon, Edn. 13, pp. 150-151. Therefore the dues must be of the nature of an assessment or tax payable to a person by reason of his interest in immovable property. Interest on arrears of rent is really damages for default in payment of rent in time. Interest on money is generally damages but when payable by express stipulation or provision, it is recoverable as a debt : see Stroud's Judicial Dictionary, Edn. 2, Vol. 2, p. 995. It cannot therefore be said that it is a debt which is payable to the landlord by the tenant by reason of the landlord's proprietary

interest in the land demised. It no doubt arises out of a claim enforceable by the landlord by reason of his proprietary right in the land. In other words, it may have an indirect connexion with interest in the immovable property, but it does not flow directly from the landlord's interest in the land. The words 'payable to a person by reason of his interest in immovable property' in my opinion contemplate dues which arise directly out of interest in immovable property and not indirectly.

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