

## CIVIL REVISION.

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*Before Costello J.*

MUKUNDALAL RAY

*v.*

SUDARSHAN MUKHERJI.\*

1933  
Dec. 22.

*Bengal Tenancy—Holding, Transfer of—Notice—Service, Proper manner of—Rules of Bengal Government, Ch. V, r. 27(2)—Bengal Tenancy Act (VIII of 1885), ss. 26F, 39(7), 189.*

The manner of service of notices of transfer of holdings is laid down in Chapter V of the Bengal Government Rules, made in exercise of powers conferred by sub-section (7) of section 39 and section 189 of the Bengal Tenancy Act, published on the 28th March, 1929.

Normally notices will be effected by registered post.

Rule 27(2) seems to be intended to cover all cases where the sending of notices by registered post has not the effect of bringing to the knowledge of the landlord the fact that a transfer has taken place.

There is no real distinction between the failure to obtain an acknowledgment because the post office has been unable to deliver the registered cover by reason of it having been wrongly addressed and the case where there has been a failure to obtain an acknowledgment by reason of the addressee (landlord) refusing to give any such acknowledgment.

There are only two ways of effecting service of notices for the purpose of section 26F, *viz.*, sending the notice to the landlord by registered post or displaying the notice in the Collector's office for a period of one month.

CIVIL RULES obtained under section 115 of the Code of Civil Procedure by the applicant.

The facts of the cases and the arguments advanced at the hearing of the Rules appear fully in the judgment.

*Sharatchandra Basak*, Senior Government Pleader, *Jahnabicharan Das Gupta* and *Guruprasanna Sen Gupta* for the petitioner.

*Rajendrachandra Guha*, *Amiyakumar Som* and *Prāphullachandra Nag* for the opposite party.

\*Civil Revision, Nos. 1134 and 1135 of 1933, against the order of the 4th Munsif of Munshiganj, Dacca, dated June 30, 1933.

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COSTELLO J. These two Rules are directed against an order made by the Munsif of Munshiganj, dated the 30th June, 1933, whereby he rejected two applications made by the present petitioner, Mukundalal Ray of Nagarnandi, under section 26F of the Bengal Tenancy Act (VIII of 1885, as amended by Act IV passed by the Bengal Legislative Council in 1928). The applications were opposed by the opposite party in the present proceedings, Sudarshan Mukherji (who was the purchaser of the holdings to which the applications refer), on the ground that the applications were made beyond the limit of time provided for by the terms of section 26F. There was also a subsidiary ground that the applicant could have no relief without paying off the mortgage debts, which the purchaser had paid off after he had purchased the holdings in question. The applications were filed on the 1st of December, 1932. One of the *kabâlâs* effecting the transfer of one of the holdings was dated the 9th of April, 1932. The other *kabâlâ* was not filed in the proceedings before the Munsif. A notice of the transfer of the holdings was affixed on the notice-board of the appropriate Collectorate on the 30th of May, 1932. It was kept on the notice-board for a period of one month and then, on the 30th June, 1932, an order was recorded to the effect that notice had been served by being displayed on the notice-board. The learned Munsif came to the conclusion that the applicant "should have come "within sixty days from the 30th of June, 1932" and he, accordingly, held that, as the applications were only filed on the 1st of December, 1932, the applicant, as the landlord of the transferred holdings, had not "come" within the prescribed period from the date of the service on the notice-board. The applicant's case was that by reason of the notices having been sent to a wrong address he had never received them. The learned Munsif took the view that the law prescribes service by affixation on the notice-board under certain conditions and that such service was a proper service.

Section 26F(1), so far as relevant for our present purpose, says that

The immediate landlord of a holding or the transferred portion or share may, within two months of the service of notice issued under section 26C or 26E, apply to the court that the holding or portion or share thereof shall be transferred to himself.

It is necessary, therefore, to ascertain what is meant by service of notice for the purpose of this section. The manner of service is laid down in Chapter V of the Bengal Government Rules, which were made in the exercise of powers conferred by subsection (7) of section 39 and section 189 of the Act and were published on the 28th of March, 1929. Rule 25(1) runs as follows:—

Notices under sections 12, 13, 15, 18(1)(a), 26C, 26E, 26F, 26H and 48H of the Act shall contain, so far as may be possible, the particulars given in forms Nos. 2 to 7 appended to these Rules.

And the relevant form, in a matter of the kind under consideration, is form No. 3.

Rule 27(1) says:—

In each case, under rule 25, notices, other than those to be served on the Collector, shall be forwarded by post, registered under Chapter VI of the Indian Post Office Act, 1898 (VI of 1898), and the fee required for a special acknowledgment shall be paid.

The procedure, as regards the drawing up of the notice and the direction as to how it is to be served on the landlord, is contained in section 26C, subsection (3) of the Act, which says that

When any such instrument (that is an instrument of transfer) is admitted to registration, the registering officer shall send to the Collector the landlord's transfer fee, the prescribed cost of transmission thereof and the notice of the transfer in the prescribed form, and the Collector shall cause the landlord's fee to be transmitted to and the notice to be served on the landlord named in the notice or his common agent, if any, in the prescribed manner.

Now the prescribed manner is as laid down in rule 27(1): so that normally notices will be effected by registered post. Rule 27(2) seems to be intended to cover all cases where the sending of notices by registered post has not the effect of bringing to the knowledge of the landlord the fact that a transfer has taken place. Rule 27(2) runs as follows:—

If an acknowledgment for a notice, sent by registered post, cannot be obtained, the notice shall be served by affixing a copy in the office of the Collector, for a period of one month, and such notice shall, thereupon, be deemed to have been duly served.

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It follows, therefore, that, if the special acknowledgment referred to in rule 27(1) cannot be obtained, service can then take place by the notice being displayed in the office of the Collector for a period of one month.

Dr. Basak, on behalf of the present petitioner, has argued that that sub-rule cannot apply in a case, where no acknowledgment has been obtained by reason of the fact that the notice was sent to a wrong address. I am unable, however, to hold that there is any real distinction between the failure to obtain an acknowledgment because the post office has been unable to deliver the registered cover by reason of it having been wrongly addressed and the case where there has been a failure to obtain an acknowledgment by reason of the addressee landlord refusing to give any such acknowledgment. As the matter stands at present, it would seem that there are only two ways of effecting service of notices for the purpose of section 26F, *viz.*, serving the notice on the landlord by means of registered post and the displaying of the notice in the Collector's office for a period of one month.

Dr. Basak, however, argues that rule 27(2) would not apply where the prescribed form, that is to say, form No. 3 has not been properly or accurately filled in in the first instance. It is to be observed that in that form spaces are provided for the names of the landlords and their postal addresses and in the schedule to the form there is a column, in which is to be entered the *khatyân* number of the landlord of the tenancy transferred. There is nothing to show, in the present case, how it came about that the notice was sent to a wrong address. But, even if it could have been shown that the particulars given in form No. 3 were not accurate; I think, it would still have been necessary to hold that the matter is covered by the provisions of rule 27(2).

That being so, it follows that the landlord had lost his right of pre-emption on the expiry of two

months from the end of the month during which the notice had been displayed in the Collectorate. In the present instance, therefore, in my opinion, I am bound to hold that the learned Munsif was right in coming to the conclusion that the applications made to him were too late.

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As regards the other ground, on which the applications were based, the learned Munsif said as follows :—

As regards the amount paid for redemption of the mortgage it must be included in the consideration of the *kabálá*. Of course the applicants must get their proportionate landlord's fees on the amount.

It appears that, in the applications then before the learned Munsif, there was no claim for the payment of the landlord's fees. The matter, therefore, really did not arise. Therefore, it is clear that nothing that happened in the proceedings before the learned Munsif will operate to prevent the landlord from obtaining such fees as he is entitled to under the provisions of sections 26C and 26D.

The Rules must be discharged with costs, hearing-fee one gold *mohur* in each case.

*Rules discharged.*

G. S.