(1957) 01 CAL CK 0003

Calcutta High Court

Case No: Civil Revision No. 3750 of 1954

Bengal Tent Factories Ltd.		APPELLANT
	Vs	
Amiya Prova Das Gupta		RESPONDENT

Date of Decision: Jan. 21, 1957

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Constitution of India, 1950 - Article 227
- Rent Control Act, 1950 - Section 14(4), 19(6)(7), 19(9), 20(2), 32(4)

Citation: (1958) 1 ILR (Cal) 325

Hon'ble Judges: P.N. Mookerjee, J; P.K. Sarhar, J

Bench: Division Bench

Advocate: Atul Chandra Gupta, Bijan Bihari Das Gupta and Ashutosh Ganguli, for the Appellant; Niren De, E.R. Meyer and Pradyot Kumar Banerjee, for the Respondent

Judgement

P.N. Mookerjee, J.
This is the tenant''s Rule against an order passed by the court below, u/s 14(4) of the Rent Control Act of 1950. It arises under the following circumstances:

The Petitioner company was the tenant of the disputed premises from about the year 1942 under the owner Dr. Sarat Chandra Das Gupta. The contractual rent was originally Rs. 210 per month. It was subsequently raised to Rs. 429 per month inclusive of the occupier''s share of municipal rates.

2. In 1948, Dr. Das Gupta died and his heirs, namely, the present opposite parties, who were his widow and his three sons became entitled to his rights in the disputed premises. The rents, however, used to be received by opposite party No. 1 Mrs. Amiya Prova Das Gupta presumably on behalf of all the opposite parties, and the tenant Petitioner used to send the rents to her by cheques by registered post which were duly accepted by the said lady. This went on till about the middle of the year 1952, when it is alleged, the rent for July, 1952 was sent by the Petitioner by money

order on August 25, 1952, and, it not having been accepted and the money order having come back to the Petitioner on or about August 29, 1952, rents began to be deposited with the Rent Controller. The money order in question appears to have been for Rs. 334-5-6 pies which, according to the Petitioner, was the amount due on account of the 1952 July rent after deducting the amount of Rs. 94-10-6 pies which had to be paid by the Petitioner in the meantime on account of municipal rates, from the contractual rent of Rs. 429 per month.

3. On August 25, 1954, the present opposite parties applied for an order against the Petitioner u/s 14(4) of the Rent Control Act of 1950, alleging inter alia that rents were in arrear ever since July 1952, the total arrears up to that date, amounting to about Rs. 9,051-14 according to the said opposite parties. The prayer was, of course, the usual one for deposit of the arrears and current rents, as required or prescribed by the statute and in terms thereof. The Petitioner objected and his defence inter alia was that there were no arrears as all rents had been duly deposited with the Rent Controller.

4. The question thus arose whether the Petitioner was in arrears and, if so, to what extent, and what order should be passed under the section.

5. The learned Subordinate Judge found that the Petitioner was in arrears to the extent of Rs. 6,048-14 up to August, 1953, the subsequent rents appearing to him to have been duly deposited with the Rent Controller, and he made an order for deposit of the arrears within 15 days and also current rent month by month with effect from August, 1954, within the period or periods, prescribed by law. In his above order, which was passed on September 13, 1954, the learned Subordinate Judge gave liberty to the Petitioner company to deduct municipal taxes, paid by it, from the amount to be deposited as aforesaid.

6. On September 23, 1944, the Petitioner company applied for permission to deposit a sum of Rs. 5,563-6-6 pies without prejudice in compliance with the above order upon the allegation that a sum of Rs. 485-7-10 pies had been paid by it on account of municipal taxes and the same was being deducted from the arrears as found by the learned Judge, namely, Rs. 6,048-14, and, that permission having been granted, the deposit was made on September 24, 1954. On December 2, 1954, the opposite parties applied for the striking out of the Petitioner''s defence against ejectment upon the allegation that the above deposit had not been made according to law and, further, that there was default on the Petitioner''s part in complying with the court''s order for deposit of current rents as the rent for August, 1954, was not deposited on September 15, 1954, as directed therein, but only on the 17th. In the meantime, however, on November 29, 1954, the Petitioner had applied to this Court against the learned Subordinate Judge''s above order u/s 14(4) and obtained the present Rule.

7. The basis of the learned Subordinate Judge''s order appears to be that, although the arrears, claimed by the opposite parties in their application u/s 14(4) had all been deposited with the Rent Controller in time less amounts paid by the Petitioner on account of municipal taxes which, according to the learned Judge, it was entitled to deduct, a part of the said deposit, namely, to the extent of Rs. 6,048-14 was not a valid deposit, it having been made in the name of Messrs. Amiya Prova Das Gupta and not in the name of Mrs. Amiya Prova Das Gupta as it should have been done. For this purpose, the learned Subordinate Judge appears to have relied on Section 20(2) of the 1950 Act, although the section is not expressly mentioned in his order. Having held that the said deposit was invalid, the learned Subordinate Judge made his order u/s 14(4), directing inter alia fresh deposit of the same as aforesaid with liberty to the Petitioner to deduct therefrom municipal taxes, paid by it. The propriety of the learned Subordinate Judge''s above finding has been assailed on behalf of the Petitioner company and Mr. Gupta, appearing for the said company in support of this Rule, has contended that, in the circumstances of this case, the deposit ought to have been accepted as valid and the opposite parties'' application u/s 14(4) should have been dismissed. In any event, Mr. Gupta has contended, the court''s discretion u/s 14(4) should not have been exercised against the Petitioner in the circumstances of this case and at least, on that ground, the application ought to have been dismissed.

8. In reply, the opposite parties'' Learned Counsel Mr. Niren De has drawn our attention to certain facts to justify the learned Subordinate Judge''s exercise of discretion against the Defendant Petitioner. He has also supported the finding of learned Judge that the disputed deposit was invalid in law. It has further been urged by Mr. De on certain facts, appearing on the affidavits of the parties and the documents on records, that this is not a case where this Court should exercise its discretionary revisional powers in the Petitioner''s favour. At one stage, Mr. De also drew our attention to the fact that the Petitioner''s present application was only u/s 115 of the CPC and, there being no error or irregularity in the exercise of jurisdiction by the court below, its order cannot be interfered with in revision according to the settled law on the subject In support of this last submission, Mr. De relied on the well-known case Keshardeo Chamria Vs. Radha Kissen Chamria and Others, decided by the Supreme Court, where their Lordships examined and explained the scope of the section after an exhaustive review of the earlier authorities on the subject.

9. We have given the matter our most anxious consideration and we may at once say that we are not disposed to accept the extreme contention or contentions, urged by either party. In our view, the case should go back to the learned Subordinate Judge for fresh consideration in accordance with law and in the light of our observations in this judgment and, for that purpose, we will set aside the order of the learned Subordinate Judge without expressing any final opinion on the merits of either party''s contentions u/s 14(4) of the Rent Control Act of 1950. We would, however, say a few words on the construction of Section 20(2) of the Act for the

guidance of the court below. To the above extent only, we will exercise our power of revision in favour of the Petitioner but that power we propose to exercise u/s 32(4) of the Rent Control Act of 1950 and not u/s 115 of the CPC which, according to Mr. De, has no application in this case.

10. It is not disputed by Mr. De that, in reviewing orders under the Rent Control Act, 1950, including an order u/s 14(4), this Court can act suo motu u/s 32(4). It is not also disputed by him that the powers of revision under this section are very much wider than u/s 115 of the Code, even assuming that the same applies to such cases, or under Article 227 of the Constitution. Under the express provisions of Section 32(4), this Court can interfere on the ground of error of law or on the ground of material failure of justice irrespective of any error of jurisdiction or in the exercise of it, or even where the case is not an extreme case of injustice which, according to some authorities, is the sine qua non of the exercise of the powers of interference under Article 227. The order u/s 14(4) carries with it serious penal consequences in that, in case of non-compliance with it the tenant''s defence against ejectment may be struck out. If, therefore, the order has not been properly made, ordinarily, at least, it should be revised by this Court in the exercise of its powers u/s 32(4) as the retention of the improper order may seriously prejudice the Defendant, depriving him of his defence against ejectment, without any just cause, thus leading to a material failure of justice. The propriety of the order, therefore, should be carefully examined by this Court when it considers the matter u/s 32(4) and, if it is not satisfied as to that, the order should normally be revised. As to, in what form, this revision will be made in a particular case will, of course depend upon the circumstances of that case.

11. Bearing the above in mind, we proceed to consider the present case u/s 32(4) of the Rent Control Act of 1950. The material point for consideration for that purpose will be the propriety of the learned Subordinate Judge''s order u/s 14(4). The learned Judge, as we have said above, based his order on the finding that the Petitioner''s deposit with the Rent Controller to the extent of Rs. 6,048-14 was invalid under the law, presumably having in mind Section 20(2) of the Rent Control Act. That section, as it is admitted by both sides and also by the learned Judge, requires-and we quote here the language of the statute-that some.

12. Statements in the tenant''s application depositing the rent, whether made designedly or with gross negligence, were calculated to prevent the landlord from receiving payment from the Controller.

13. Mr. De concedes that the words "were calculated to prevent" may reasonably be construed to mean "were likely to prevent". It is also not disputed before us that the statements to come within the mischief of the section, must have been made either designedly or with gross negligence. In order, therefore, that a particular deposit may be held to be invalid under the section it will be necessary to find that some or other of the statements in the tenant''s application on which the deposit was made,

were made designedly or with gross negligence and were calculated, that is, likely, to prevent the landlord from withdrawing the money. Granting that the learned Subordinate Judge actually found in the present case that the statement in the tenant''s application for deposit of rent with the Rent Controller at the heading thereof to the effect that the landlord was Messrs. Amiya Prova Das Gupta taken along with and in the light of the actual deposit in that name was calculated or likely to prevent the landlord from withdrawing the amount when he said that "it is not possible at all for the Plaintiffs by "themselves to withdraw the amount so deposited", there can be no question that strictly speaking, there is no finding made by him", that the above statement was made either designedly or with gross negligence. It is true that the learned Subordinate Judge did not accept the Petitioner''s case of bare mistake but he did not reject it either as his only observation on that point is as follows:

How far this is a mistake it is difficult to say at this stage.

14. This is no doubt followed by a purported finding of gross negligence, if not deliberate mis-statement, in the following terms:

That there was some gross negligence, if not deliberate mis-statement, on the part of the tenant cannot be denied, for it sent some rent by money order to Plaintiff No. 1 at a wrong address and when the money order could not be delivered to Plaintiff, made it the ground for depositing rent in the Rent Controller''s office.

15. and, if nothing further had been said on this part of the case by the learned Judge, we might have been inclined to accept it as a finding, at least of gross negligence. It appears, however, that immediately after the above statements in the order, the learned Judge added as follows:

It is, however, I think, unnecessary to go into these questions at this stage.

16. What was actually meant by the learned Judge by this added line is not very clear or easy to comprehend, particularly having regard to the halting and unsatisfactory nature of his statements in the other parts of his order. But for these statements and if the matter had been less serious, not involving the somewhat extreme statutory penalty for its non-compliance, we might have been inclined to take a liberal view and might have accepted the added line as merely indicating that the particular finding was not final or conclusive for purposes of the suit which would have been, in any case, the legal effect of such a finding, if there was any.

17. As matters stand, however, we are unable to take that view.

18. It ought to be borne in mind that an adverse finding against the tenant on any of the matters mentioned in the section, Section 20(2) may have very serious consequences and may work to the tenant''s irretrievable prejudice. Such findings, therefore, should be clear and distinct and ought to be very strictly made. In that view, we reject the suggestion that the learned Subordinate Judge, in the present

case, actually found either design or gross negligence on the part of the tenant Petitioner which alone would have justified his invalidating the tenant''s deposit of rent to the extent of Rs. 6,048-14 or to any extent whatsoever.

19. We hold, therefore, that the learned Subordinate Judge has not come to any firm or definite finding on the essential question of design or gross negligence and, in the absence of such a finding, we are not prepared to accept his view that the deposit with the Rent Controller was invalid to the extent of Rs. 6,048-14 or to any extent whatsoever. That question requires further consideration before the Plaintiff''s application u/s 14(4) can be disposed of. Clearly also in passing the order u/s 14(4) and in exercising his discretion under the section against the Petitioner, the learned Subordinate Judge proceeded upon the view that the deposit was invalid and it is impossible to state affirmatively that he would have passed the same order and exercised his discretion in the same way, even if the deposit was not invalid to any extent whatsoever. Indeed, if the deposit be valid, there would be not only no arrears but also no default and it will, at least, be open to serious doubt whether in that circumstances, the court would have any power to pass an order u/s 14(4) against the tenant. Be that as it may, it cannot be seriously doubted that the presence or absence of arrears or default would be, at least, a material consideration for the exercise of the court''s discretion under the section.

20. Before concluding, we would briefly refer to Mr. Gupta''s extreme argument that the deposit with the Rent Controller should he accepted by us as having been validly made and the opposite parties'' application u/s 14(4) should be rejected. In support of his above argument Mr. Gupta relied very strongly on the decision of our learned brother P.B. Mukharji, J. in the case of Ajoyananda Paul and Ors. v. The Indian Homeopathic Medical Association (1952) 89 C.L.J. 276, 292-3 That case, however, is clearly distinguishable as the deposit there was made in the name of the deceased landlord, and, as the learned Judge very rightly observed, such deposit could not be held to be one calculated to prevent the landlords'' (that is, the deceased landlord''s heirs and legal representatives, the executors and the sons in that case) from withdrawing the money. It is to be noted in this connection that the only suggestion or argument in that case on this point was that, the deposit having been made in the name of. a dead man, the notices from the Rent Controller would go to the dead person and his heirs and legal representatives would not be able to know whether any deposits were made or not and the absence of this knowledge or information would prevent the Plaintiffs from receiving the payment from the Controller. But, as the learned Judge rightly pointed out, the situation was not so hopeless and, the landlord''s address having been correctly given, the notice, though in the name of the deceased landlord, would go to that address and it was unlikely that the sons and executors would not know about it to enable them to apply for the money and get it under Sub-sections (6) and (7) of Section 19. They had no doubt, to satisfy the Rent Controller by sufficient proof that they were the legal representatives of the deceased landlord but we do not think that merely putting them to such proof can

be held to be calculated to prevent them from getting the money. The decision, therefore, was perfectly right though it is not of much assistance to the present Petitioner.

21. Our attention was drawn by Mr. Gupta to the concluding observations of P.B. Mukharji, J. at p. 293 of the Report-or, shall we say, obiter dicta, as the learned Judge having definitely found that the relevant misstatements in that case were not calculated to prevent the landlord from receiving payment from the Controller, Section 20(2) of the Act became excluded on that ground, even apart from those observations where the learned Judge is stated to have held that, if a particular mis-statement comes within Section 19(9) of the Act, it will make the tenant liable to the penalty, provided in that section, but it will not be available against him further for making his deposit invalid u/s 20(2) of the Act. We are not quite sure whether the learned Judge meant to lay down such an extreme proposition, but, if he did, we would say, with respect, that the proposition is too wide and it may have the effect of making Section 20(2) nugatory in many instances. We are even less inclined to accept that a wrong statement of the name of the landlord in the tenant''s application for deposit of rent, leading to the deposit being made in that wrong name-and that is all that has been really found by the learned Subordinate Judge in the present case,-would come within the mischief of Section 19(9). We may point out here that, u/s 19(9), the relevant mis-statement must be of the reasons and circumstances, leading to the deposit of rent with the Controller while, u/s 20(2), it must be calculated to prevent the landlord from receiving payment from the Controller. The two types of misstatement would not necessarily be the same although, in a particular case, they may be so. The mis-statement in the present case, which was, as we have found above, really relied upon by the learned Subordinate Judge, was of the name of the landlord which was stated to be Messrs. Amiya Prova Das Gupta and, although it may come u/s 20(2) as being calculated to prevent the landlord from receiving payment from the Controller, it will be difficult to bring it within Section 19(9) as a statement of the reasons and circumstances, leading the tenant to deposit the rent with the Controller. The above obiter dictum of P.B. Mukharji, J., therefore, can be of no avail to the present Petitioner.

22. In the above view, we make this Rule absolute in part, set aside the order of the learned Subordinate Judge and send "the case back to him for fresh consideration of the Plaintiffs'' application u/s 14(4) of the Rent Control Act of 1950, in accordance with law and in the light of the observations, made in this judgment.

23. Costs of this Rule will abide the final result of the suit.

P.K. Sarkar, J.

24. I agree.