

Kalidas Mitra Vs Shanti Lal Shukla

Court: Calcutta High Court

Date of Decision: July 6, 1961

Citation: 65 CWN 1064

Hon'ble Judges: Banerjee, J

Bench: Single Bench

Advocate: Apurbadhan Mukherjee, Susil Kumar Biswas and Murari Mohan Mukherjee, for the Appellant; Mansukhlal Mehta, for the Respondent

Final Decision: Dismissed

Judgement

Banerjee, J.

The plaintiff appellant instituted a suit for eviction of the defendant respondent from the premises let out to him, on the plea

that the defendant was a defaulter in payment of rent and was not entitled to any protection under the West Bengal Premises Tenancy Act. The suit

was ex parte decreed. Against the ex parte decree the defendant preferred an appeal to the first appellate court. One of the grounds taken in the

appeal was that an application by the defendant for summoning certain witnesses was left undisposed of by the trial court and as such he was not

given adequate opportunity to contest the suit. The first appellate court, although of the opinion that the defendant was guilty of dilatory tactics in

the suit, allowed the appeal and remanded the case for re-hearing, after having had made the defendant to deposit compensatory costs amounting

to Rs. 60/-. After remand, when the case was taken up for hearing, the trial court expressed the opinion that on the pleadings there was no scope

for adducing oral evidence in the suit. Lawyers appearing on either side conceded that to be so and neither side pressed for examination of any

witness. The learned pleader for the defendant merely asked for a little time for argument. Thereupon the court recorded the following order, on

June 29, 1959:-

It appears that on the pleading of the parties there is no scope for any oral evidence in this suit for decision of the issues raised before me. So no

oral evidence is adduced before me. To 6.7.59 for argument.

2. Thereafter, the trial court decreed the suit and passed the following order:-

Ordered that the suit be decreed on contest with costs. The defendant be ejected from the suit premises and he shall vacate possession thereof

within one month from this date in favour of the plaintiff, failing which the plaintiff to get possession through court on execution of this decree. The

plaintiff's prayer for damages is allowed at the rate of Rs. 951-p.m. since 15.6.57 till the date of recovery of possession. The plaintiff do get 10/-

as damages tentatively, on which court fees have been paid and would be entitled to further damages on payment of adequate court fees.

3. Against the decree the defendant again took an appeal to the lower appellate court. The lower appellate court again remanded the suit to the

trial court for hearing with the following observations:-

Relying upon these two statements in the plaint and the written statement there remains no scope for any evidence for ascertaining whether the

defdt. was a statutory defaulter or not. But the learned lower court should not have acted so hastily in a case which had to be sent back on remand

on the basis of a ground taken by this defdt. to the effect that he could not get a chance to contest the suit, at the time of previous trial as his

application for citing witness remained undisposed of till the date of peremptory hearing. On that ground alone the Appellate Court had to send

back the suit on remand as the Appellate Court was under impression that the defdt. was denied a chance to contest the suit properly. In the

present case the learned lower court should not have expressed any opinion. Had there been any suggestion from the defdt. regarding want, of

necessity on his part to examine any witness, it would have been proper on the part of the learned lower court to make a note in the order sheet

and to take signature of the learned lawyer of the defdt. No such signature was taken in the order sheet or in the haziras of the witness although

facts and circumstances go to suggest that the learned lawyer of the defdt. submitted to the opinion of the learned lower court or in other words

conceded to the view expressed by the learned lower court. Be that as it may, as there is a plea of payment, and as the rate of rent has been

challenged in the written statement and as there is a plea regarding an agreement between the parties to the effect that any excess payment above

the finally settled rent at the rate of Rs. 70/-would be adjusted finally towards dues of the plaintiff, I consider that it would have been proper on the

part of the learned lower court to give a chance to the defdt. to examine witnesses. Under the circumstance, I have no other alternative, but to send

back the suit on remand again to the learned lower court for rehearing according to law and on the basis of observation made by me in my

judgment above. At the same time, I must say that the attitude adopted by the defdt, is far from satisfactory. If he had any intention to adduce

evidence, then why did he not press for examination of his witness before the learned lower court. I am told by the learned lawyer of the appellant

that he did not press for examination of his witness before the learned lower court, he was under the impression that judgment or of the deftd. The

should not have entertained such view without any basis and should have acted properly to protect the interests of his client.

Considering all facts and circumstances what I propose to do for the sake of justice is to direct the deftd. to deposit compensatory cost of Rs. 60/-

by 12-1-60.

4. The propriety of the order is being disputed in this appeal, at the instance of the plaintiff.

5. The conduct of a case, namely, examination of witnesses, exhibition of documents, etc., is entirely in the hands of the parties and their lawyers.

The duty of a court is merely to shut out inadmissible evidence and to prevent abuse of the process of law during hearing. It is no part of the duty

of a court to judge or to suggest beforehand whether the pleadings need or need not be supported by evidence. On the pleadings the following

issues were originally raised:-

(i) Is the suit maintainable in its present form?

(ii) What exactly is the rate of rent?

(iii) Has the alleged notice to quit been served on deftd? If so, is the same legal, valid and sufficient?

(iv) Is the plff. entitled to a decree for khas possession of the suit premises after evicting the deftd. therefrom?

(v) Is the plff. entitled to a decree for mesne profits? If so, how much?

(vi) To what relief, if any, is the plff. entitled?

6. At the re-hearing of the suit after remand issue No. (ii) was recast as hereinbelow set out:-

What is the rate of rent? Irrespective of that, is the deftd. a defaulter so as to lose the protection of W.B.P.T. Act?

7. Since the parties went to trial on definite issues, the election should have been left entirely with the parties whether or not to adduce evidence to

prove or disprove the issues of fact. By an untimely suggestion that it was not necessary to adduce oral evidence, the trial court may have

embarrassed the parties and their lawyers and may have dissuaded them from adducing evidence. I view with great disfavour this unfortunate state

of affairs brought about by the trial court.

8. For the reasons aforesaid I do not propose to interfere with the order of remand passed by the court of appeal below and dismiss this appeal.

At the same time I agree with the view expressed by the lower appellate court that the defendant and his lawyer were a good deal to blame in not

adducing oral evidence and in unreasonably succumbing to the suggestion made by the trial court not to examine witnesses. The defendant must,

therefore, compensate the plaintiff for all the troubles thus caused. The cost awarded by the court of appeal below by way of compensation is

wholly inadequate. I, therefore, direct that the defendant must deposit a sum of Rs. 500/- by way of costs suffered by the plaintiff up-to-date. Such

cost must be deposited in the trial court within a period of six weeks from today. Notwithstanding anything hereinbefore contained, in default of

deposit of such cost, within the time hereby allowed, this appeal shall be deemed to have been decreed, the judgment and decree of the lower

appellate court set aside and the decree of the trial court affirmed.

9. I am told that the defendant has already deposited a sum of Rs. 60/-, under the order for costs passed by the lower appellate court. If that is so,

the defendant will be at liberty to deposit the balance, namely, a sum of sum of Rs. 440/-, in satisfaction of the order for payment of costs made by

me.

10. The plaintiff will be at liberty to withdraw and appropriate the costs, if deposited, irrespective of the result of the suit.

11. This appeal is disposed of as hereinbefore stated. There will be no other order as to costs in this appeal. In view of the order passed in the

appeal the alternative application is dismissed without any order as to costs.