

(1961) 07 CAL CK 0002

Calcutta High Court

Case No: Appeal From Appellate Order No. 85 of 1960

Kalidas Mitra

APPELLANT

Vs

Shanti Lal Shukla

RESPONDENT

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 of the defendant. 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 defendant. 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 defendant? If so, is the same legal, valid and sufficient?

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

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

(vi) To what relief, if any, is the plaintiff. 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 defendant. 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.