(1959) 11 CAL CK 0002

Calcutta High Court

Case No: Civil Revision Case No. 3652 of 1956 and 3550 of 1957

Dilip Narayan Roy Chowdhury		APPELLANT
	Vs	
Amarendra Kumar Dutta		RESPONDENT

Date of Decision: Nov. 18, 1959

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115, 151
- Constitution of India, 1950 - Article 227
- West Bengal Premises Tenancy Act, 1956 - Section 16, 16(2), 16(3), 30, 30(5)

Citation: 64 CWN 284

Hon'ble Judges: Banarjee, J

Bench: Single Bench

Advocate: Bijan Behari Das Gupta and Ashutosh Ganguly, for the Appellant; M.N. Ghosh, Sailendra Kr. Roy and Ashoke Kumar Sen Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Banarjee, J.

Civil Revision Case No. 3550 of 1957 arises out of an application under Article 227 of the Constitution and is directed against an appellate order reversing an order made by a Rent Controller in exercise of his powers u/s 16(3) of the West Bengal Premises Tenancy Act, 1956. Civil Revision Case No. 3652 of 1956 arises out of an application u/s 115 of the CPC and is directed against two orders passed by a learned Munsif, by one of which he refused to vacate an order passed against a tenant u/s 14(4) of the West Bengal Premises Rent Control (Temporary Provisions) Act of 1950, and by the other struck off the tenant-defendant''s defence against eviction.

2. The circumstances giving rise to the two applications for revision are hereinbelow stated.

3. Jagabandhu Saha, who is the opposite Party No. 2 in Civil Revision Case No. 3550 of 1957 is the owner of the premises No. 17/1E, Gopal Nagore Road, P.S. Alipore, Calcutta. Amarendra Kumar Dutta, Opposite Party No. 1 in both the Rules, is the monthly tenant in the aforesaid premises, paying a rent of Rs. 110/- per month.

4. In the month of March, 1955, Dilip Narayan Roy Choudhury, the petitioner in both the Rules, was inducted as a sub-tenant in the ground floor of the said premises, at a monthly rent of Rs. 75/-, payable according to the English Calendar.

5. On March 21, 1956, Amarendra, the Opposite Party No. 1 and himself a tenant of the first degree, instituted a suit against the petitioner, being Title Suit No. 188 of 1956 of the Court of the Second Additional Munsif at Alipore, interalia, claiming eviction of the petitioner from the portion let out to him on the ground of default in payment of rent and further claiming recovery of certain arrears of rent.

6. Shortly after the filing of the aforesaid suit, the West Bengal Premises Tenancy Act of 1956 came into force with effect from the 31st March, 1956. On April 21, 1956 the petitioner as sub-tenant started a proceeding u/s 16 of the West Bengal Premises Tenancy Act, against the superior land-lord and the tenant of the first degree above-named claiming declaration that the interest of the tenant of the first degree in so much of the premises as was sub-let to him shall cease and that he shall become a tenant directly under the superior landlord.

7. The claim made by the petitioner was contested both by the tenant of the first degree and the superior landlord. By his order dated July 31, 1956, the Rent Controller allowed the petitioner''s prayer and directed a local investigation by an Inspector for fixation of fair rent payable by the tenant and the sub-tenant.

8. In the meantime summons in Title Suit No. 188 of 1956 had been served on the defendant (present petitioner) and he filed his written statement in the suit on August 10, 1956. Thereafter, on August 21, 1956, the opposite party No. 1 (plaintiff in the suit) filed an application u/s 14(4) of the West Bengal Premises Rent Control (Temporary Provisions) Act of 1950, praying for an order on the tenant defendant for deposit of the arrears of rent in court and also for deposit of the current rent, month by month, as they fall due.

9. The present petitioner objected to any order u/s 14(4) being made principally on the ground that there existed no relationship of landlord and tenant between the plaintiff and the defendant in respect of the disputed premises. In making that objection the petitioner apparently had in his mind the order u/s 16(3) of the West Bengal Premises Tenancy Act, 1956, made in his favour.

10. The learned Munsif however, did not decide the objection raised by the petitioner, namely, that there existed no relationship of landlord and tenant, but, nevertheless, made an order u/s 14(4) of the Act of 1950, directing the petitioner to deposit a sum of Rs. 1047/10/- said to be due for the period from March 1955 to

August 1956 and further to go on depositing Rs. 75/- per month, month by month, beginning from September, 1956. The petitioner moved this court against the aforesaid order but without success.

11. The petitioner, thereafter, filed an application u/s 151 of the CPC for having the order made under sec. 14(4) vacated, again reiterating the ground that as a result of the order made u/s 16(3) of the West Bengal Premises Tenancy Act, the quondum relationship of landlord and tenant, between Amarendra, the plaintiff and himself had ceased and consequently no order u/s 14(4) of the Act of 1950 could be made against him.

12. The learned Munsif refused the aforesaid application, holding that the attempt to reopen the order was only for delaying the hearing of the suit. The propriety of this order is being disputed before me in Civil Revision Case No. 3652 of 1956.

13. In the meantime the Rent Controller had fixed the fair rent payable by the petitioner and the Opposite Party No. 1 in respect of the respective portions held by them. He fixed the rent payable by the petitioner at Rs. 35/- per month and the rent payable by the present Opposite Party No. 1 at Rs. 65/- per month. The aforesaid fixation of rent was made by an order, dated February 23, 1957.

14. There was an appeal taken to the Appellate Officer against the order, passed u/s 16 of the West Bengal Premises Tenancy Act. The appeal succeeded and the petitioner''s case was dismissed in its entirety. The propriety of this appellate order is being disputed before me in Civil Revision Case No. 3550 of 1957.

15. I propose to take up the points raised in Civil Revision Case No. 3550 of 1957 first of all.

16. It is in evidence that the present petitioner as sub-tenant served a notice on the superior landlord, on April 9, 1956. The notice was not sent by registered post. But nevertheless, it is admitted, the superior landlord received the notice. The aforesaid notice is Exhibit I and the material portion thereof is set out below:--

Dear Sir,

Re: Premises No. 17/1E, Gopal Nagore Road, Alipore, Calcutta.

I have been occupying the ground floor of your above property, as a sub-tenant under your tenant Sri Amarendra Kumar Dutta, from 5th March, 1955.

I always dislike becoming a sub-tenant but as Amarendra Babu falsely represented himself as the owner of the said property I entered there with the idea of being a tenant directly under the landlord himself.

To my utter astonishment it transpired subsequently that Amarendra Kumar Dutta played falsehood with me; he is not the actual owner but is a tenant-at-will under you;

Under the circumstances I request you to kindly make the necessary arrangements to recognise me as a direct tenant under you and settle the amount I shall have to pay you as monthly rent for the portion of your house still occupied by me.

17. Section 16(2) of the West Bengal Premises Tenancy Act provides that the tenant and every sub-tenant to whom premises have been sublet shall give notice to the landlord of such subletting in the prescribed manner. The period within which such notice was to be given was originally to be three months from the commencement of the Act. The period was, however, extended to six months by the amending Act XVIII of 1956, which came into operation on the 27th July, 1956. The Rules under the Act, prescribing the particulars to be incorporated in the notice, were, however, not published until June 28, 1956.

18. It was contended before the Appellate Officer below that the notice, Exhibit I, suffered from several defects. In the first place, the notice was not given both by the tenant and the sub-tenant as required u/s 16(2) of the Act of 1956. In the second place, the notice did not conform to the requirements of Rule 4 of the statutory Rules under the said Act and in particular did not contain details of the portion sublet and the rent payable by the sub-tenant. Inasmuch as the notice was not in accordance with the law, the application u/s 16(3), it was contended, was not maintainable.

19. There is now no dispute before me that the sub-tenancy of the petitioner started before the commencement of the Act of 1956. The notice, whatever may be its form, was also admittedly served on the superior landlord within the prescribed time.

20. The first question of my consideration, therefore, is whether a notice contemplated u/s 16(2) must be given jointly by the tenant and the sub-tenant or alternatively if such notice is to be severally given it must be given by both before a sub-tenant can maintain an application u/s 16(3). In my opinion there is no indication in the Act or the Rules framed thereunder, that such a notice must be jointly given by the tenant and sub-tenant to the superior landlord.

21. All that Section 16(2) of the Act provides is that notice of sub-letting must be given by the tenant and every subtenant. Section 30(5) provides a penalty for "any tenant or sub-tenant who fails to give notice" and the extent of the penalty is fine upto Rs. 1000/-. The plain meaning of the language used in the two sub-sections abundantly implies that such notice need not be given by the tenant and the sub-tenant jointly. They must give notice and while it will not harm them, if such notice be jointly given, it will be sufficient compliance with the provision of the statute if they individually give such notice. Failure on the part of one of them to give such notice will not certainly make the other liable for the penal consequences, provided for it Section 30(5) of the Act.

22. Turning now to the other aspect of the question as to whether an application u/s 16(3), by the subtenant for declaration of direct tenancy, under the superior

landlord, is liable to be defeated for want of service of notice u/s 16(2) by both the tenant and the sub-tenant, I am of the opinion that the answer must be negative.

23. Section 16 contemplates two classes of cases. Sub-section 1 of Section 16 deals with sub-tenancies created by the tenant of the first degree after the commencement of the Act of 1956, while sub-section 2 deals with sub-tenancies created by the tenant of the first degree before the commencement of the Act, With or without the consent of the superior landlord. In both the classes of cases creation and termination of the sub-tenancies are to be notified to the superior landlord, in the prescribed manner and within the time specified by the statute. Failure to do so shall entail penal consequences.

24. When sub-section (3) of Section 16 speaks of "any case mentioned in Sub-section (2)", it merely speaks of sub-tenancies created before the commencement of the Act of 1956, but without the consent in writing of the landlord or in respect whereof the landlord denies that he gave the oral consent. The question of service of notice u/s 16(2) of the Act, becomes material in connection of such a case for the purpose of satisfying the time limit fixed for the making of an application u/s 16(3), which must be filed before the Controller "within two months from the receipt of the notice of sub-letting by the landlord or issue of the notice by the sub-tenant as the case may be * * ". Therefore, if three conditions are satisfied, (1) that the sub-tenancy was created before the commencement of the Act of 1956, without the written consent of the superior landlord or in respect of which there was a denial by the superior landlord that he had given oral consent, (2) that the sub-tenant issued the requisite notice and (3) the proceedings were commenced within the time fixed by Sub-section (3) of Section 16, there is no other difficulty in the way of maintainability of an application u/s 16(3). The giving of the requisite notice to the superior landlord by the tenant of the first degree u/s 16(2) of the Act is not, in my opinion, a condition which must be fulfilled before a sub-tenant (or a superior landlord as the case may be) can start a proceeding u/s 16(3) of the Act.

25. It is no doubt true that the giving of notice by the tenant of the first degree is couched in mandatory language in sub-section (2) of Section 16 of the Act and sub-section (5) of Section 30 of the Act prescribes a penalty for failure to give such a notice. But all that has nothing to do with maintainability of the application u/s 16 (3) of the Act, either by the superior landlord or by the sub-tenant. Such an application can be maintained if only the three conditions hereinbefore referred to, are satisfied, notwithstanding that the tenant of the first degree failed to give the requisite notice contemplated by Section 16(2) of the Act.

26. The tenant and the subtenant, in the present case, were not pulling on well, as the filing of Title Suit No. 188 of 1956 amply demonstrates. It will be too much to expect, in such a case the giving of a joint notice by both the tenant and the sub-tenant to the superior landlord. The tenant Amarendra might have had his own reasons for himself not giving a notice of the sub-tenancy u/s 16(2) because he had

already instituted a suit for the eviction of the sub-tenant and secondly because the manner of giving such notice had not been prescribed even at the time when the application u/s 16(3) of the Act was made. These are special reasons which should have weighed with the Appellate Officer and he should not have dismissed the proceeding u/s 16(3) of the Act, on the ground that he did.

27. Lastly, the objection that the notice given by the subtenant (Exhibit I) did not contain the prescribed particulars and was not served in the prescribed manner, does not appeal to me. In the first place the Rules under the Act were not published with the promptitude that they deserved. The Act of 1956 became operative from March 31, 1956 and Section 16(2) originally prescribed a period of three months from the date of commencement of the Act for the giving of the required notice The Rules under the Act, interalia, prescribing the manner of giving the notice, were published in June 28, 1956, only two days before the expiry of the period fixed for giving the notice under the original Act. This delay necessitated an amendment to Section 16(2) of the original Act, which was done by West Bengal Act XVIII of 1956 published in the Calcutta Gazette of July 27, 1956. By the amendment the period originally prescribed for the giving of the notice was extended from three months to six months from the commencement of the original Act. The petitioner must have been terrified at the possibility of the expiry of the period, originally fixed for the giving of the notice and wanted to avoid the possibility of frustration caused by the delay in the publication of the Rules by giving a notice, in the best language he could think of but not containing the particulars, later on prescribed. The notice was sent by ordinary post and not by registered post with acknowledgement due, as prescribed by the Rules subsequently published.

28. The circumstances under which the unorthodox notice was served certainly deserve sympathetic consideration. But despite my sympathy, law is an objective thing and there it stands sympathetically treated or not. I have, therefore, to consider whether the form of the notice, prescribed by the Rules, is of such importance that disregard thereof must vitiate the notice.

29. Whether a provision of law is mandatory or directory largely depends on whether the thing directed to be done is of the essence of the thing required or is merely a matter of form. Accordingly, when a provision of law relates a matter of convenience rather than of substance or where such a provision has been made with a view to the proper, orderly and prompt con-duct of business, such a provision is generally to be regarded as directory, unless followed by words of absolute prohibition. It is noteworthy that Section 16(3) does not contain any prohibition to the effect that no Controller shall entertain an application by a sub-tenant unless such sub-tenant has given notice in the prescribed form, The object of the notice, in my opinion, is principally to apprise the landlord of the existence of sub-tenancy or sub-tenancies created by his tenant. Apprisal of further particulars about the sub-tenancy or sub-tenancies, for example, the extent thereof, the rent, the date of

creation or termination thereof are certainly convenient and may avoid future dispute between the parties. However desirable it may be to give the notice in the prescribed manner, I am not prepared to hold that the omission of one or more of the particulars, prescribed by the Rules, in the notice will always have disasterous effect an the notice. In the instant case the notice (Exhibit I) apprised the landlord of the name of the sub-tenant, the date of creation of the sub-tenancy and of the fact that the sub-tenancy was limited to the ground floor of the premises No. 17/1E, Gopal Nagore Road. The rent of the sub-tenancy however, was not stated in the notice. This omission, certainly makes the notice defective and irregular but not void and ineffective.

30. Crawford in his book "The Construction of Statutes" observed (at page 518 Edition of 1940) :-

After all, if every minor and unessential detail of a statute were considered imperative, almost every act performed in accord therewith would be invalid or ineffective, whether the act was performed by individuals or by public officers. The confusion and impotency which would take place would in all probability break down our legal system. In order for law to be administered efficiently, effectively and expeditiously the distinction between essential and non-essential requirements must be maintained, either by the Courts or by express legislative enactment.

31. I am of the opinion that the notice (Exhibit 1) was made out in substantial compliance of the Rule 4 of the Rules prescribed under the Act. The omission therein, however undesirable and irregular, did not defeat the principal purpose of the notice, namely, to apprise the landlord of the existence of the sub-tenancy. I, therefore, hold that the proceeding u/s 16(3) did not become fundamentally defective, on account of the omission of one of the prescribed particulars in the notice.

32. The service of the notice on the superior landlord, otherwise than by registered post, is inconsequential in this case because the landlord actually received the notice.

33. In the view that I take I set aside the order made by the appellate Officer. In my opinion the proceedings u/s 16(3) of the Act of 1956 was maintainable, the irregularity in the notice notwithstanding. The Appellate Officer must therefore, rehear the appeal on its merits.

34. I, however, make one point clear. I express no opinion against the observation made by the Appellate Officer on the rent fixed by the Controller. If the Appellate Officer feels that the rent fixed by the Controller was not fair, he shall be at liberty to fix the rent himself on further evidence to be taken by him, if he is inclined to affirm the decision of the Controller in other respects.

35. Civil Rule No. 3550 of 1957 is therefore, made absolute and the case remanded to the Appellate Officer below for rehearing, in the light of my observations contained in this judgment.

36. I turn now to Civil Rule No. 3652 of 1956. The tenant petitioner denied that there existed any relationship of landlord and tenant between himself and the opposite party, tenant of the first degree, Amarendra. In view of the Order made u/s 16(3) of the Act, by the Rent Controller, declaring the tenant petitioner to be a direct tenant under the superior landlord, the objection made by the tenant appears to be substantial objection and if the Order made by the Rent Controller be not set aside in appeal, it shall remain a substantial objection. In the case of D.R. Gellatly Vs. J.R.W. Cannon, , Chakravartti, C.J. and Sinha, J. expressed the opinion that if the person sued as a tenant, pleaded that he was not a tenant then till that question was decided against the tenant there could be no question of applying to him Section 14(4) of the Rent Control Act, 1950, or any other provision of the said Act. It is strange that the petitioner ultimately submitted to an order u/s 14(4) by consent. The consent must have been the result of mistaken legal position. Against the order dated September 26; 1952 there was an application u/s 115 of the CPC moved before this Court, which application Renupada Mukherjee, J. dismissed. Thereafter there was an application u/s 151 of the CPC made by the present petitioner which application was dismissed as a malafide application and for default of compliance with the order dated September 26, 1956, the defence against eviction was directed to be struck off.
37. Renupada Mukherjee. J. himself issued the present Rule (Civil Rule 3652 of 1956), his Lordship''s previous Order dismissing the application u/s 115 of the CPC against the order u/s 14(4) of the Act. of 1950, notwithstanding.

38. The learned Munsif did not decide the application u/s 151 of the CPC on its merits. In the circumstances of the case all that I can do is to direct the learned Munsif now to hear the application u/s 151 of the CPC on its merits, and if satisfied on merits to pass such order as may be fit and proper, his previous order in the matter notwithstanding.

39. I, therefore, set aside this order passed by the learned Munsif and direct him to rehear the application, in the light of my observations contained in this judgment. There will be no order as to costs in any of the Rules.