

Rai Bahadur Atulya Dhan Banerjee Vs Sudhangsu Bhusan Dutta

Court: Calcutta High Court

Date of Decision: Jan. 4, 1950

Acts Referred: Civil Procedure Code, 1908 (CPC) " Section 115, 8
Constitution of India, 1950 " Article 227

Citation: 55 CWN 343

Hon'ble Judges: Lahiri, J; Das, J

Bench: Division Bench

Advocate: G.P. Sanyal and Hirendra Ch. Ghose, for the Appellant; Sachindra Ch. Das Gupta, for the Respondent

Judgement

Das, J.

This Rule arises out of an application under sec. 115 of the CPC and Art. 227 of the Constitution of India. The facts are as

follows:--The Opposite Party was a tenant from month to month under the Petitioner in respect of premises No. 110|2A|3, Amherst Street,

Calcutta, at a rent of Rs. 16 per month, payable according to the Gregorian Calendar.

2. The Opposite Party failed to pay the rent for the months of February, March and April, 1949.

3. Under sub-sec. (3) of sec. 12 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, which was then in force, the

interest of the Opposite Party in the said premises became ipso facto determined and the Opposite Party could no longer be deemed to be a

tenant.

4. The Petitioner gave the Opposite Party seven days" notice to vacate the premises, and on the failure of the latter to do so, initiated on the 5th

August, 1949, proceedings under sec. 41 of the Presidency Small Cause Courts Act, 1882, for recovery of possession of the said premises, on

the ground that the interest of the Opposite Party had ipso facto determined as aforesaid. The proceedings were registered as Small Cause Court

Suit No. 9240 of 1949 (Ejectment).

5. The Opposite Party filed a written statement denying the allegations made in the plaint. The suit Was heard by the 2nd Bench of the Court of

Small Causes, and on the 24th March, 1950, an order under sec. 43 of the Presidency Small Cause Courts Act, 1882, was made, possession

being directed to be delivered on the 25th April, 1950.

6. On the 31st March, 1950, the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 (West Bengal Act XVII of 1950), came

into force. This Act will hereinafter be designed as the 1950 Act for the sake of convenience. The Act repealed the West Bengal Premises Rent

Control (Temporary Provisions), Act, 1948 (Act XXXVIII of 1948), hereinafter to be called the 1948 Act for the sake of convenience.

7. On the 2nd May, 1950, the Opposite Party filed an application under sec. 18 of the 1950 Act, before the 2nd Bench of the Court of Small

Causes, Calcutta. On the 8th June, 1950, the Court passed the following order:-

Plaintiff absent. Defendant's pleader Sri H.K. Sen present.

Amount due is deposited in Court. Decree is set aside on full satisfaction. Money in Court to be withdrawn by the Plaintiff.

8. The Petitioner filed an appeal against the said order, dated 8th June, 1950. The appeal was registered as Appeal No. 1320 of 1950.

9. At the hearing of the appeal before the Special Bench a preliminary objection was taken on the ground that no appeal lay against the said order,

dated 8th June, 1950. The Special Bench gave effect to the preliminary objection and by an order, dated 28th August, 1950, directed that "the

appeal rejected on contest as not maintainable before the Special Bench. No order is made as to costs.

10. The present rule was obtained by the Petitioner against the order, dated the 8th June, 1950, passed by the 2nd Bench in Suit No. 9240 of

1949, as also against the order, dated the 28th August, 1950, of the Special Bench in Appeal No. 1320 of 1950.

11. Mr. Sanyal, learned Advocate for the Petitioner, has not challenged the propriety of the order, dated 28th August, 1950, made by the Special

Bench in Appeal No. 1320 of 1950. He has, however, contested the validity of the order, dated the 8th June, 1950, passed by the Second Bench

in Suit No. 9240 of 1949, on the ground that sec. 18 of the 1950 Act has no application to an order for possession made under sec. 43 of the

Presidency Small Cause Courts Act, 1882, because such an order cannot appropriately be regarded as a decree for recovery of possession within

the meaning of the expression in sub-sec. (1) of sec. 18 of the 1950 Act. The sub-section reads as follows:-

Where any decree for recovery of possession of any premises has been made on the ground of default in payment of arrears of rent under the

provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, but the possession of such premises has not been

recovered from the tenant, the tenant may apply to the trial Court within sixty days of the coming into force of this Act for vacating the decree for

ejectment against him;

Sec. 4 of the West Bengal Premises Rent Control (Temporary Provisions) Amendment Act, 1950 (West Bengal Act LXII of 1950), enacts that

in sec. 18 of the said Act-

(i) in sub-sec. (1) for the words "on the ground of default in payment of arrears of rent under the provisions" the following shall be substituted,

namely:-

On the ground that the interest of the tenant in such premises has been ipso facto determined under the provisions of sub-sec. (3) of sec. 12.

12. Sec. 5 of the Amending Act (LXII of 1950) expressly makes the amendment retrospective and applicable to pending proceedings. The

Opposite Party can, therefore, get relief under the sub-section if the expression "'decree for recovery of possession'" includes an order for recovery

of possession under Chapter VII of the Presidency Small Cause Courts Act, 1882.

13. The word "'decree'" is not defined in the 1950 Act or the Amending Act LXII of 1950.

14. The term is not defined in the Bengal General Clauses Act. It is defined in the Code of Civil Procedure. This definition with some modifications,

has been made applicable to cases under the Presidency Small Cause Courts Act, 1882, by virtue of sec. 8 of the CPC and notification No.

7989G., dated the 3rd July, 1949, issued there under by the High Court.

15. Mr. Sanyal referred us to the decision in Bai Maherbai Sorabji Master v. Pheroze-shah Sorabji Gazdar I.L.B. 51 Bom. 885 (1926) where it

was held that the proceedings under Chapter VII of the Presidency Small Cause Courts Act, 1882, are not suits within sec. 22 of that Act. Mr.

Sanyal accordingly argued that the adjudication in such proceedings could not be regarded as "'decrees'" within sec. 18 of the 1950 Act.

16. In the present case, we are not directly concerned with the effect of proceedings under Chapter VII or of an order under sec. 43 of the

Presidency Small Cause Courts Act, 1882, for purposes of that Act or other Acts.

17. We have to construe the meaning of the word "'decree'" as used in sec. 18 of the 1950 Act.

18. Ordinarily, a decree may be defined to mean the formal expression of an adjudication made in a "'suit'" which conclusively determines the rights

of the parties, so far as the Court expressing it, is concerned.

19. The word suit primarily means an action started on a plaint. But it is also used in a wider sense. In Hurrochunder Roy Chowdhury v.

Shoorodhonee Debia 9 W.R. 402 (F. B.), Sir Barnes Peacock. C. J., at page 406 observed that "'The word suit does not necessarily mean an

action.... Any proceeding in a Court of Justice to enforce a demand is a suit....'" In the case of Bhoopendranarain Dutt v. Baroda Prosad Roy

Choudhury (1891) 18 Cal. 500, 504 (1890) the word suit was held to embrace all contentious proceedings of a civil kind, whether they arise in a

suit or a miscellaneous proceeding.

20. The explanation appended to sub-sec. (1) of sec. 12 of the 1950 Act states that ""in the proviso to sub-sec. (1) the term "suit" does not include

proceedings under Chapter VII of the Presidency Small Cause Courts Act, 1882."" This implies that in other parts of the 1950 Act, the term ""suit

may include ""proceedings under Chapter VII of the Presidency Small Cause Courts Act, 1882."" The marginal note to sec. 18 of the 1950 Act

speaks of the powers of the Court to rescind or vary decrees and orders.

21. In the above view, it is not possible to say that the word ""decree"" unequivocally refers to ""an adjudication in a suit only"" and excludes an

adjudication in a proceeding under Chapter VII of the Presidency Small Cause Courts Act, 1882.

22. The question has to be decided on well-known principles of construction of statutes.

23. I propose, therefore, to state the relevant rules of construction of statutes.

24. The fundamental rule of interpretation of a statute, to which all other rules are subordinate, is that a statute which expresses the will of the

legislature, is to be expounded according to the intent of the legislature that made it.

25. Again, the rule is well settled that the words of the statute themselves best declare that intention. Where the words are precise and

unambiguous, the meaning of the words must receive their full effect, however unjust, arbitrary or inconvenient the result may be.

26. But language is seldom free from ambiguity as to be incapable of bearing more than one sense. In such a case, to adhere rigidly to the literal

and primary meaning of a word in all cases, would be to miss the real meaning. It was accordingly ruled in *Salmon v. Duncombe* (1886) 11 App.

Cas. 627 (J.O.) that where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness

or ignorance of law, except in the case of necessity or the absolute intractability of the language used. Thus where the meaning of a statute in its

ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some

inconvenience or absurdity, hardship or injustice not intended, a construction may be put upon it which modifies the meaning: of the words, and

even the structure of the sentence, *A.-G. v. Lockwood O. M. & W.* 898.

27. As to the broad and apparent intention of the framers of the 1950 Act it is not possible to entertain any doubt that they intended to give

protection, with retrospective effect, to all tenants against eviction consequent on default in payment of arrears of rent, under certain condition and

that no distinction was sought to be made between tenants against whom suits for recovery of possession were filed in the mofussil Courts or in the

original side of this Court and tenants against whom the summary procedure for eviction under Chapter VII of the Presidency Small Cause Courts

Act, 1882, was resorted to. Such a discrimination would be based neither on logic nor on reason and would be unjust and unfair to a large body of

tenants.

28. In my opinion, the expression ""decree for recovery of possession"" should be widely construed so as to include orders for recovery of

possession made under sec. 43 of the Presidency Small Cause Courts Act, 1882.

29. It was pointed out that secs. 12 (1) and 34 of the 1950 Act and sec. 6 of the Amending Act LXII of 1950 make a distinction between orders

for recovery of possession and decrees for recovery of possession. But the use of both the words order and decree in these sections may have

been made ex abundanti cautela so as to embrace all possible cases of eviction, e.g., orders for restoration of possession in restitution proceedings

or miscellaneous proceedings under Or. 21, r. 100 of the Civil Procedure Code, etc.

30. Mr. Sanyal also referred us to the following observations of the learned Chief Justice in *Amulyaratan Bhattacharya v. Megh-mala Dutt* 63 C.

W. N. 474 (1949):-

It will be seen, therefore, that the order which is obtained in the Small Cause Court is very different from a decree for possession obtained in this

Court, and the Small Cause Court cannot make a decree for possession which is final and conclusive between the parties subject only to appeal.

31. The observations were made for an entirely different purpose, viz., in construing the effect of sec. 16 of the 1948 Act, and cannot help us in

determining the meaning of the word ""decree"" for recovery of possession in sec. 18 of the 1950 Act.

32. I am not unmindful of the decision of this Court in *Nandalal Roy v. Suresh Chandra Sen* (7), where the expression ""any order or decree for

recovery of possession of any house"" occurring in paragraph 10C of the Bengal House Rent Control Order, 1942. fell to be construed. In that

case this Court was of opinion that the word ""order"" meant ""an original order for recovery of possession--an order in the nature of a decree

passed in a suit for ejectment,"" i.e., an order under sec. 43 of the Presidency Small Cause Courts Act. 1882. It is not necessary to consider

whether the word order for possession refers only to an original order for possession because in my opinion, the construction of the words used in

paragraph 10C of the Bengal House Rent Control Order, 1942, does not justify us in giving a restricted meaning to the words ""decree for

recovery of possession"" in the 1950 Act so as to exclude orders for recovery of possession under sec. 43 of the Presidency Small Cause Courts

Act, 1882, which according to Nandalal Roy's case 50 C. W. N. 171 (1946) itself, partake of the nature of decrees for recovery of possession.

33. My conclusion, therefore, is that the expression ""decree for recovery of possession"" in sec. 18 of the 1950 Act should be broadly construed so

as to include an order for recovery of possession under Chapter VII of the Presidency Small Cause Courts Act, 1882.

34. The sole contention raised on behalf of "he Petitioner must, therefore, be overruled.

35. The result is that this Rule must be dip-charged but in view of the facts of this case, parties will bear their costs in this Rule.

Lahiri, J.

I agree.