

(1921) 07 CAL CK 0011

Calcutta High Court

Case No: Suit No. 1468 of 1921

Kumar Manmatha Nath
Mitter

APPELLANT

Vs

Walter Locke and Co.
and AnotherRESPONDENT

Date of Decision: July 5, 1921

Judgement

Ghose, J.

The Plaintiff, who is the owner of premises 4, Esplanade East, has instituted this suit against the Defendants (1) Wither Locke & Co., Ltd., being a company registered under the English Companies Act, (2) Walter Locke & Co., Ltd., being a Company registered under the Indian Companies Act, (3) H. Hobbs A Co., a firm carrying on business in partnership at 4 Esplanade East, and three persons named (4) J.B. Fulton. (5) G.R. Stanley. (6) P.R. Duckley residing at 4 Esplanade East, and described as Merchants Assistants, praying, for the recovery of possession of the premises. The suit against the Defendant No. 5 (G.B. Stanley) has been withdrawn as the Plaintiff was informed that he was not in possession of any portion of the premises. The Defendants J.B. Fulton and P.R. Duckley, although served with the writ, have not appeared in this suit. The circumstances under which this litigation has arisen are as follows:-- On the 25th July 1901 the premises in question were demised to Walter Locke & Co., Ltd. hereinafter described as the Defendant English Company for a term of twenty years beginning from the 1st April 1901 at the monthly rentals of Rs. 1,875, Rs. 1,925 and Rs. 2,025 for the first six years the second period of seven years and the third period of seven years respectively. By the Indenture of Lease the Defendant English Company, inter alia covenanted with the lessor not to assign, transfer or part with the possession of the entirety of the said premises without the previous consent in writing of the Plaintiff, so that the Defendant English Company should be at liberty without such consent, to sublet the upper flats of the said premises or any part thereof respectively. The said Indenture also contained a proviso for the entry by the Plaintiff in case of failure or neglect of observance of any of the covenants, conditions or agreements on the part of the Defendant English

Company to be performed and observed. The Plaintiff alleges that in or about the month of March 1920 Walter Locke & Co. Ltd., was registered in India to acquire and take over as going concern the undertakings, assets and liabilities of the Defendant English Company, and that the former Company thereafter carried on business at premise No. 4, Esplanade East, and that by reason thereof, there was a breach of the covenant hereinbefore referred to and that thereupon the Plaintiff became entitled to reenter upon the premises. The Plaintiff further alleges that on the Defendant English Company's attention being drawn to the last mentioned fact, the Defendant English Company informed the Plaintiff that there had been no transfer of the business of the English Company to the Indian Company. The Plaintiff on the faith of this assurance received the rents which had accrued previous thereto and which had not been received by him and also the subsequent rents up to December 1920. He states, however, that he has ascertained that a transfer to the Indian Company has been effected and that on account of the breach of covenant on the part of the Defendant English Company, he has not accented the rents from January to March 1921, and has also not received any portion of the monies due for the use and occupation by the, Defendant English Company of the premises in question after March 1921. The, Plaintiff further states that before the lease of the 25th July 1901 came to an end the Defendant English Company definitely informed the Plaintiff early in January 1920 that they were not going to occupy the premises after the expiration of the term of the lease of 25th July 1901, and that thereupon the plaintiff entered into an agreement on the 16th January 1920 with one B.N. Elias for letting out the premises in question to the latter for a period of ten years from the first April 1921 or as soon as the English Company vacated the premises in question. In these circumstances the present suit has been instituted by the Plaintiff for ejectment of the Defendants from the premises in question. The ground of forfeiture alleged in the plaint is not now relied upon and I do not propose to refer any further to the Defendant Indian Company. The Defendant firm of H. Hobbs & Co. occupy the first floor of the premises which was sublet to them by the Defendant English Company under a sub-lease expiring on the 31st March 1921. The Defendants Nos. 4 and 6 are occupiers of the remaining portion of the premises under the English Company.

2. The English Company in their Written Statement deny that their undertakings, assets and liabilities have been transferred to the Indian Company, or that there was any breach of covenant on their part as alleged in the plaint. They say further that they duly tendered the rents in respect of the months of January to March 1921 to the Plaintiff, but owing to the refusal of the latter to accept the same, the said rents as also the rents for the months subsequent to March 1921 have been duly deposited in the office of the Controller of Rents. They go on to add that sometime, prior to the expiration of the lease there were negotiations between the Defendant English Company and the Plaintiff for a fresh lease of the premises; that those negotiations did not mature owing to the Plaintiff having insisted On a rent of Rs. 5,000 per month besides the payment by the tenant of the owner's and occupier's shares of the rates and taxes; that although the Defendant English Company had intimated to the Plaintiff sometime in January 1920 that they were

not prepared to accept the terms which had been proposed by him, they notified to him on the 17th May 1920 that having regard to the fact that the Rent Act had come into operation, they proposed to remain on the premises and to avail themselves of the benefits conferred by the Rent Act. They also state in their Written Statement that they had made all possible endeavours to secure accommodation elsewhere but had failed and that unless they are allowed to remain in occupation of the premises, their business will suffer grave and irreparable injury. The Defendant firm of Hobbs & Co. in their Written Statement adopted the statement made by the Defendant English Company and maintained that having regard to the provisions of the Calcutta. Rent Act they were entitled to remain in Detention of the first floor of the premises.

3. On these pleadings the following issues were settled between the parties:--

(1) Is the Plaintiff entitled to eject the Defendants Nos. 1 and 3, from the premises No. 4, Esplanade East?

(2) Is he entitled to the mesne profits claimed?

4. On behalf of the Plaintiff one Jacob Ruben Jacob has been called. He describes himself as the constituted attorney of one B.N. Elias and states that on the 16th January 1920 an agreement was arrived at between the Plaintiff and, Elias under which the latter was entitled to the grant of a lease of the premises in question for a period of 10 years at a monthly refit of Rs. 5,000. Under the agreement of 16th January 1920 the lessee would be required to pay the whole of the rates and taxes, to put the property in thorough--repairs, to insure it for the benefit of the lessor in a sum of not less than Rs. 3,00,000 against accident, fire and earthquakes and to deposit with the lessor a sum of Rupees one lakh in cash or proper securities to be approved of in writing by the lessor. On the lessee fulfilling these terms, he would have an option till the end of the period of ten years to the renewal of the lease for a further term of ten years at the enhanced rent of Rs. 5,500 a month.

5. The witness Jacob stated that the above terms were proposed by the Plaintiff in his letter of the 16th January 1920 and that they were accepted on the same day by Mr. Elias and that thereupon a cheque for Rupees one lakh was handed to the Plaintiff. The cheque, the witness believed, had been cashed by the Plaintiff : at any rate no portion of the amount of the cheque has been returned by the Plaintiff to Elias. The witness further stated that Elias had all along been and was still willing to carry out his part of the agreement of the 16th January; that he considered himself tied to the Plaintiff; and that he wanted possession to be given to him within a reasonable time. It appears that pursuant to the agreement of the 10th January 1920, a formal lease of the premises has been drawn up and has been executed by the Plaintiff and by Elias, the date of the execution of the lease by Elias being 5th January 1921 the lease was tendered in evidence, but it appearing it was not registered, it was not admitted in evidence as a lease, but portions of the document have been tendered in evidence for the purpose of showing that the

agreement between the Plaintiff and Elias was to the effect that Elias should have possession of the premises in question on the determination of the existing lease to Walter Locke & Co., Ltd., and as soon as the landlord gave vacant possession of the same. In cross-examination the witness stated to Mr. Pugh that Elias has, since the execution of the lease, raised the question as to whether in place of the clause in the document which I have just read out, a clause to the effect that possession of the premises in question should be given by the Plaintiff to Elias within a reasonable time after the expiration of the lease to Walter Locke & Co., Ltd. should not be substituted. The witness further stated in cross-examination that he had been advised by his Solicitors that the words now occurring in the lease were "all right" but that owing to the absence of a clause to the effect that possession of the premises in Question should be given to Elias within a reasonable time after the expiration of the lease to Walter Locke & Co., Ltd. Elias had not yet registered the lease granted by the Plaintiff.

6. On behalf of the Defendant English Company Mr. Bradshaw, their Director and General Manager in India, has been examined before me. He stated that there were negotiation between the Plaintiff and the Company in 1919 for a new lease of the premises after the expiration of the old lease, but no agreement was arrived at: that he interviewed the Plaintiff on the 6th January 1920 when the latter told him he had an offer of Rs. 5,000 per month plus all rates and taxes plus the cost of repairs and insurance. The witness considered the demand excessive and accordingly refused the same. Thereupon the witness wrote to the Plaintiff a letter on the 7th January 1920 in these terms:-- "With further reference to my interview yesterday afternoon with your son and Mr. Ghosh, your Solicitor, re, the terms on which you were willing to renew our lease, I write to say that upon mature consideration I regret we are unable to accept the terms offered. As the building cannot now be termed modern and has not the convenience of present-day buildings, it would be impossible to get anything like the same rent for the residential flats and it would be impossible to saddle the business with a rent out of all proportion to its value. We are sorry therefore to have to decline your offer especially after the long and pleasant relations we have had during our tenancy of the last 20 years."

7. He admitted that after he had written the above letter, he was informed by the Plaintiff on or about the 17th April 1920 that the Plaintiff had contracted with one Elias on the 16th January 1920 for granting him lease of the premises with effect from the 1st April 1921, i.e., on the determination of the tenancy under the lease of the 25th July 1901. He stated that on the 17th May 1920 he had informed the Plaintiff that the Defendant English Company desired to remain in occupation of the premises after the expiration of their lease and that if the Plaintiff was unwilling to grant them a further lease they proposed to seek the protection of the Rent Act. He said he had endeavoured to, secure premises No. 2, Chowringhee for the Company but the negotiations in respect, of No. 2, Chowringhee, had not matured, and added that after the expiration of the lease of the 25th July 1901 he had taken, steps to move the Rent Controller for fixing a fair rent of the premises in question from April 1921, and that these proceedings were still pending before the

Controller of Rents. In cross-examination the witness very frankly stated that he did not wish to suggest that Elias had no rights whatsoever under the agreement arrived at between him and the Plaintiff on the 16th January 1920. His point was that he had never refused to pay proper rent in respect of the premises and that owing to the difficulty of getting suitable accommodation elsewhere he had been obliged to seek relief under the Rent Act.

8. This is practically all the oral evidence in the case (the Defendants H. Hobbs & Co. have not given any evidence) and I now propose to turn to the documentary evidence which has been put in. I need not refer to the letter of 7th January 1920 as I have already set out the same : nor to the letters which passed between the Plaintiff and Elias on the 16th January 1920 because I have set out the substance thereof. As I have said, on the 17th April 1920 the Defendant English Company were apprised of the fact that the Plaintiff had entered into an agreement on the 16th January 1920 with Elias for granting him a lease of the premises in question for a period of 10 years after the expiration of the then existing lease to the English Company. The Defendant English Company did not reply to the letter of the 17th April 1920 till the 17th May 1920, i.e., not till the Rent Act had come into operation. On the 17th May 1920 they informed the Plaintiff that they desired to remain in occupation of the premises and proposed to seek the Protection of the Rent Act. On the 20th July 1920 the Defendant English Company stated that although they had given notice to the Plaintiff that they proposed to remain on after the expiration of their lease under the protection of the Rent Act, they were, however, negotiating to take other Premises and that they hoped to give the Plaintiff vacant possession of the premises in suit on the 31st March 1921. On the 18th February 1921 the Defendant English Company wrote to say that owing to the failure in obtaining possession of premises No. 2, Chowringhee, they would be unable to give vacant possession of 4, Esplanade East, on the expiration of their lease on the 31st March 1921. On the 11th February 1921 the Plaintiff stated in reply that the Defendant English Company had given him definitely to understand that they would not remain on after the expiration of the lease on his terms and that thereupon he had entered in January 1920 into a binding agreement with another party for the lease of the premises which was to commence from the termination of the then existing lease in favour of the Defendant English Company and that he could not help stating that the Defendant English Company were going back upon their promise. On the 14th February 1921 the Defendant English Company explained to the Plaintiff the position and stated that owing to their failure in securing accommodation in premises No. 2, Chowringhee, they had been obliged to seek the protection of the Rent Act in respect of premises No. 4, Esplanade East. On the 16th February 1921 there is a letter in which the position taken up by the Defendant English Company is contested in great detail on behalf of the Plaintiff. On the 22nd February 1921 there is a letter from the Defendant English Company in which the position of the Company is reviewed at great length. Then there is a letter of the 2nd March to which no reference need be made, having regard to the fact that the ground of forfeiture referred to above has now been abandoned by the Plaintiff. Lastly, the Defendant Company have

produced before me the receipts which had been granted by the Controller of Rents in respect of the rents of the premises from January 1921 which were deposited in his office under the provisions of the Calcutta Rent Act.

9. In this state of the evidence, oral and documentary, it has been contended before me on behalf of the plaintiff that he is entitled to the relief he seeks on two grounds-- (1) that the Defendant English Company have not observed the provisions of sub-secs. 4 and 5 of sec. 11 of the Rent Act and (2) that inasmuch as the Defendant English Company had definitely refused to accept the terms which had been proposed by the Plaintiff in respect of a fresh lease of premises No. 4, Esplanade East, so far back as on the 7th January 1920, i.e., long before the Rent Act came into existence the Plaintiff was free to let out the premises to any one he liked and that he did in fact let out the premises to Elias on the 16th January 1920, long before the Rent Act had been thought of and that I ought not to pass an order as will result in the Plaintiff being exposed to the consequences of a breach of his agreement with Elias.

10. On behalf of the Defendant English Company the contention has been advanced that there was at no time any definite refusal on their part to take a lease of the premises in question from the Plaintiff on terms which were fair and equitable. It was true that the Defendant English Company had not accepted the Plaintiff's terms as they thought they were extravagant; but the policy of the Rent Act was to prevent the tenant from having his rent raised against him, or from being turned out, though his tenancy by agreement had expired, so long as he was willing to pay the rent authorised by statute. In other words, the Defendant English Company became statutory tenants of the premises in question on the expiration of the terms of the old lease and that so long as they observed the terms of the statute, they and the other Defendants as well were entitled to remain in the premises in question. Lastly, it was argued having regard to the nature of the business which the Defendant English Company carried on in these premises, it was extremely inconvenient to and hard on them that they should be asked to move out of the premises at a month's notice, especially as no suitable accommodation was to be found elsewhere.

11. So far as the Plaintiff's first contention is concerned, I do not think that there is any substance in it. The rents up to March 1921 were due to the Plaintiff under the lease of the 25th July 1901. Those rents as they became due had been tendered to the Plaintiff in due and proper time. The ground of forfeiture alleged in the plaint has been given up, and that being so, I am unable to hold that there was any valid reason whatsoever on the part of the Plaintiff which justified him in refusing to accept the rents which had been tendered by the Defendant English Company in respect of January to March 1921. Be that as it may, on the refusal of the Plaintiff to accept the rents so tendered, the Defendant English Company deposited them in the office of the Controller of Rents on the 1st April 1921, i.e., on the first available date on which they could deposit the rents under the statute. As regard the rents for the months subsequent to March 1921. I am satisfied, on the evidence produced before me that the Defendant English Company deposited those rents in proper time in the office of the Controller of Rents. That being so, I hold against the

Plaintiff's first contention, and I am of opinion that the Defendant English Company have duly observed the provisions of sub-secs. 4 and 5 of sec. 11 of the Rent Act.

12. The second question raised by the Plaintiff, raises, however, a difficult point. Undoubtedly, the policy of the Rent Act is as has been contended for on behalf of the Defendant English Company. In other words, the objects which the legislature had in passing the Rent Act included restriction on increasing rents, restriction on right to possession and restriction on premiums. In the case of rent, a standard is fixed and any rent in excess of that standard is declared by the statute, to be irrecoverable from the tenant, notwithstanding any agreement to the contrary. In the case of the restriction on the right to possession, sec. 11 provides as follows:-- "Notwithstanding anything contained in the Transfer of Property Act, 1882, the Presidency Small Cause Courts Act 1882, or the Indian Contract Act, 1872, no order or decree for the recovery of possession of any premises shall be made so long as the tenant pays rent to the full extent allowable by this act, and performs the conditions of the tenancy: Provided that nothing in this sub-section shall apply where the tenant has done any act contrary to the provisions of cl. (m), cl. (o), or cl. (p) of sec. 108 of the Transfer of Property Act, 1882, or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, or where the premises are bona fide required by the landlord either for the purpose of building or re-building, or for his own occupation, or for the occupation of any person for whose benefit the premises are held, or where the landlord can show any cause which may be deemed satisfactory by the Court." It is further provided that the fact that the period of the lease has expired or that the interest of the landlord in the premises has been transferred, shall not, of itself, be deemed to be satisfactory cause within the meaning of the last mentioned proviso, provided the tenant is ready and willing to pay rent to the full extent allowable by the Act. I need not refer to the case of restriction on premiums, because nothing turns upon it so far as this case is concerned.

13. The question now is whether in this case the Plaintiff landlord has shown any cause which can be deemed satisfactory by the Court for coming to the conclusion that the Defendant English Company are disentitled to relief under the provisions of the Rent Act. I think the legislature in enumerating in the proviso to sec. 11 the grounds upon which a landlord can successfully claim an order for possession did not intend to limit the claim to those grounds but merely enumerated those grounds for the purpose of indicating the grounds upon which a landlord would be entitled to possession as of right leaving it open to the Court to exercise a discretion in his favour upon any other grounds which might appear to the Court to be satisfactory.

14. What are the facts here? As I read the correspondence between the Plaintiff and Defendant English Company, it is reasonably clear that on the 7th January 1920 the Defendant English Company intimated to the Plaintiff, in perfectly clear and unambiguous language, that they would not remain in occupation of the premises in question after the expiration of the terms of their lease on the 31st March 1921. They, therefore suggested to the Plaintiff that he should look for a new tenant in respect of the premises in question.

Within 9 days of the date of the letter of the Defendant English Company, the Plaintiff succeeded in securing a tenant who was agreeable to accept his terms, and who gave ample evidence of his solvency and of his bond fides by immediately depositing with him a sum of rupees one lakh. All this took place long before the Rent Act came into operation. I do not think it can be suggested on the evidence before me that there is not at the present moment a definite and binding agreement between the Plaintiff and Elias. The whole evidence points to the conclusion that the Plaintiff and Elias consider themselves tied to each other. It is said that Elias is a speculator. For the purposes of this case, this question is, to my mind, irrelevant. It is next argued that the lease taken by Elias from the Plaintiff in respect of the premises was conditional on Elias getting vacant possession of the premises from Walter Locke & Co. Ltd., and considerable stress has been laid on the words in Ex. H to which I have already drawn attention. It is argued that where the landlord has secured a lessee on condition that possession should be given to him on the Defendant English Company vacating the premises, there was no chance whatsoever of the landlord being exposed to the consequences of the breach of any agreement which he might have arrived at between himself and Elias if he failed to give possession. In support of this contention my attention has been drawn to the case of *Hunt v. Bliss* 36 T.L.R. 74 (1919). It has been pointed out, on the other hand, on behalf of the Plaintiff that *Hunt v. Bliss* 36 T.L.R. 74 (1919) has no application whatsoever to the facts of this case and that the case to which reference may usefully be made for the purpose of deciding the matters in controversy between the parties, is that of *Green-Price v. Webb* 36 T.L.R. 29 (1919). It is perfectly true that on the expiration of a lease the lessee, if he chooses to remain in the premises, becomes a statutory tenant under the provisions of the Rent Act. The legislature presents him with a statutory tenancy at the will of the tenant for so long as he liked and no longer. Now if no other circumstances were present in this case, I should have unhesitatingly come to the conclusion that the Defendant English Company were entitled to remain in the premises in question for so long as they liked and that no order for recovery of possession could be made in favour of the Plaintiff; but in this case the tenant suggested to the Plaintiff, long before the expiration of the term of the lease of the 25th July 1901, that the Plaintiff was free to negotiate with other people for letting out the premises in question. On the faith of that representation the Plaintiff has entered into a binding agreement with Elias. And is there any reason why that agreement should not be carried out? I do not think the arrangement between the Plaintiff and Elias is conditional. The landlord, in my opinion, has undertaken to give possession of the premises to Elias on the expiration of the term of the lease of the 25th July 1901, or, at any rate, within a reasonable time thereafter. Mr. Elias considers six months to be a reasonable time. I do not think the words in Ex. H referred to above can possibly mean that Elias would have to wait for an indefinite period to obtain possession of the premises. That being so, I think if possession is not given by the Plaintiff to Elias, the Plaintiff will be exposed to the consequences of a breach of his agreement with Elias and that it is just and proper that protection should be afforded to the Plaintiff. It is said that the tenant has certain definite rights under the Rent Act; so indeed he has; but the rights of the landlord have not yet been wholly taken away by the legislature. It is further said that the view I am

taking would render the whole Act nugatory; I do not agree that I am doing anything of the kind. Each case must depend upon its own facts; and to my mind the facts disclosed in the present case are more near the facts in *Green-Price v. Webb* 36 T.L.R. 74 (1919) than to the facts in the case of *Hunt v. Bliss* 36 T.L.R. 74 (1919). I am, therefore, inclined to think that the Plaintiff landlord has shown cause which ought to be deemed satisfactory by the Court for the purpose of coming to the conclusion that he is entitled to the order he seeks (vide proviso to sub-cl. 1, sec. 1, sec. 11 of the Calcutta Rent Act).

15. While, however, I have been constrained to come to the conclusion which I have just mentioned, I think, having regard to the peculiar facts of this case, I ought at the same time to mitigate the stringency of my order as far as possible. So far as the Defendant H. Hobbs & Co. are concerned, I find that they had a sub-lease of the first floor in these premises expiring on 31st March 1921. Therefore, so far as they are concerned, they stand or fall with the Defendant English Company. The Defendants Nos. 4 and 6 have not shown any cause whatsoever why I should not decree the suit against them. The order therefore which I propose to make is that the Plaintiff will be entitled to recover possession of the premises in question, but he will not be entitled to execute the decree for ejectment for a period of six months from date against the 1st, 3rd, 4th and 6th Defendants. I have already stated that the suit has been withdrawn as against the Defendant No. 5. The Plaintiff will get the costs of the suit on Scale No. 2 against the 1st and, 3rd Defendants and on Scale No. 1 against the 4th and 6th Defendants.

16. There is no evidence before me that the Indian Company was at the date of the suit in possession of any portion of the premises. I think, therefore, the suit, so far as the Indian Company is concerned, should stand dismissed. In the circumstances of the case, I do not, however; propose to allow any costs to the Indian Company.

17. As regards the question of mesne profits, it is urged on behalf of the Plaintiff that I ought to allow to him at least Rs. 3,500 per month on Mr. Bradshaw's evidence. What Mr. Bradshaw did really say in his evidence is this : that he thought that if the Plaintiff was minded to give a fresh lease of the premises after the premises had been thoroughly repaired, and after modern conveniences had been put in including the installation of an electric lift and so on, he would be willing to pay a rent of Rs. 3,560 per month. It is in evidence that the premises in question have not been repaired for a period of six years; taking all circumstances into consideration, I allow mesne profits at the rate of Rs. 3,000 per month from the 1st April 1921 till the date when possession of the premises is given to the Plaintiff. The Defendant English Company has deposited certain rents in the office of the Rent Controller. There is no difficulty as regards the rents up to 31st March 1921; the Plaintiff will be entitled to take them out. As regards the monies deposited in respect of the months subsequent to March 1921, the Plaintiff will also be entitled to take out the same from the office of the Rent Controller; he will give credit for the same in taking the account of the mesne profits from the 1st April 1921 up to the date when possession is recovered by him. Inasmuch as I have held that the Defendant English Company were not entitled to remain in possession of the premises after the 31st March 1921, I think the

mesne profits ought to run from 1st April 1921. Interest on mesne profit at six per cent.