(1953) 01 CAL CK 0013

Calcutta High Court

Case No: None

U. Roy		APPELLANT
	Vs	
Messrs. Dost Mohamad Estate Ltd.		RESPONDENT

Date of Decision: Jan. 16, 1953

Citation: 57 CWN 345

Hon'ble Judges: Chakravartti, C.J; Sinha, J

Bench: Division Bench

Advocate: Asoke Sen, Nikhil Chandra Talukdar and N.N. Guha, for the Appellant;Bankim Chandra Banerji, for the Respondent

Judgement

Chakravartti, C.J.

This Rule is directed against an order dated February 22, 1952, passed by the learned Chief Judge of the Small Cause Court whereby he varied an order passed by the Rent Controller. The facts arc that the petitioner before us purchased the stock-in trade of a certain company, known as the Mercantile Electric Company, which was then occupying shops Nos. 6 and 7 at premises No. 31/A, Dharamtolla Street, Calcutta. The purchase was made on the 20th January, 1942. The premises are owned by the opposite party and from May, 1952, the petitioner himself became a tenant under the opposite party. The rent paid by the petitioner was Rs. 140 per month, but in 1945 it was raised to Rs. 154. On the 31st March. 1949, the opposite party made an application for the fixing of a fair and reasonable rent under the Rent Act of 1948 and shortly thereafter, in May, 1949, the petitioner made an application on his own account. The two proceedings thus initiated were dealt with by the Rent Controller together and he disposed of them by one judgment. Two separate orders however, were passed in the two proceedings.

2. The Rent Controller fixed the standard rent at Rs. 69-11-6 per month with effect from April, 1949. The landlord not being satisfied with that order, appealed, but he appealed only from the order that had been passed in the proceedings initiated by

himself. No appeal was preferred from the other order made in the other proceeding initiated by the petitioner. The learned Judge, for the reasons given in his judgment, held that the rent paid in December, 1941, was Rs. 140 as alleged by the landlord and that being so, he determined the standard rent at the amount of Rs. 177-1-6 per month in accordance with Schedule A to the Act of 1950. He directed further that the standard rent fixed by him would be payable from the month of April, 1949, "as the application of the landlord is dated 31st March, 1949."

3. In so far as the grounds urged by Mr. Sen against the fixation of the standard rent at Rs. 177-1-6 are concerned we do not think that there is any substance in them. The landlord produced counterfoils of the rent receipts granted by him in respect of November, 1941, and January, 1942. Both showed that the rate of rent was Rs. 140 per month. Mr. Sen raised some question about the mode in which counterfoils have been proved, but in view of the fact that those were admitted without objection, we do not think that we should be justified at this stage in excluding them in exercise of our revisional jurisdiction. Since the decision of the learned Judge appears to be based on evidence, we do not think that any ground has been made out for altering the figure fixed by him.

4. Mr. Sen however contended that although he might not be entitled to challenge the amount of the standard rent, he had still an argument to advance against the date from which the increased rent had been directed to run. He pointed out that the landlord had not appealed from the order made in the tenant''s case and the effect of that omission. Mr. Sen contended, was to leave that order, so far as it was not affected in law by the order passed in the landlord''s appeal, unaffected. Accordingly, Mr. Sen contended that the utmost that the learned Judge could do in the appeal would be to direct the rent fixed by him to be payable from the month of April. 1950, that is to say, from the first month after the date on which the Act of 1950 had come into force.

5. Section 17(3) of the Rent Control Act, 1950, provides that if at the date when the Act comes into force, any proceeding for refixing of the standard rent is pending in appeal, the appellate officer shall fix the standard rent in accordance with the provisions laid down in that Act. Mr. Sen contended that even that provision did not authorise an appellate authority, which might have occasion to apply the Act of 1950 to a pending appeal in a case first initiated under the Act of 1948, to direct the rent fixed under the 1950 Act to commence from a date prior to the commencement of the Act. I am unable to accept that contention. In my view, the provision contained in sub-section (3) would be practically meaningless if the appellate court was not entitled to apply the Act of 1950 in full to any appeal pending before it. If it was so entitled, it was also entitled to direct the rent fixed under the Act of 1950 to run from the month next after the date of the application, by virtue of section 10 of the Act. Had there been no other fact in the case, the appellate court would be entitled to direct the standard rent fixed by itself to run from April, 1949, as the learned Judge

in fact directed.

6. But it was contended by Mr. Sen that there was a special fact in the present case which debarred the appellate Court from giving effect to the standard rent fixed by it from any date earlier than the commencement of the 1950 Act. He pointed out that while the order passed in the landlord''s case was under appeal before the appellate Court and the appellate Court might, in that appeal and with regard to that case, direct the standard rent fixed by it to run from the month next after the application, it could not do so in the other case, namely, with respect to the order made in the tenant''s application. Not having been appealed from, that order could be altered only by way of refixing the rent under the Act of 1950 and if it was a case of refixing, surely no order could be made with effect from any date prior to the date on which the new Act had come into operation.

7. In my view, that contention is right. Mr. Banerji, appearing on behalf of the opposite party, referred us to a decision of the Supreme Court in the case of Narhari and others v. Shankar and others (1) [(1951) SCR, 178 (C.W.N.)]. There it was held by the Hyderabad Bench of the Supreme Court that if there was one suit and from the decree passed in the suit, two appeals were preferred which were disposed of by one judgment but separate decrees were passed, an appeal from one of the decrees only would be competent and would not be barred by res judicata. Directly, the Supreme Court in that case was considering a situation where two decrees had been passed in two appeals arising out of one suit. But in the course of their judgment the learned Judges did make the following observation :-''It is now well settled that where there has been one trial, one finding, and one decision, there need not be two appeals, even though two decrees may have been drawn up."

8. Mr. Banerji reinforced his reference to the Supreme Court decision by citing a decision of this Court in the case of Bahadur Singh Singhee Vs. Rani Jyotirupa Debi and Others . In my view, the decisions relied upon my Mr. Banerji are of no assistance to him. As I have already stated, the Supreme Court was not concerned directly with a case where there had been two suits or two proceedings. In the hypothetical case to which they referred, they seem to have presumed the existence of two decrees passed in the same suit, but when they say that there need not be two appeals, I understand them to mean that there need not be two appeals for the purpose of avoiding the bar of res judicata as against the one appeal that might be filed. That such was the intention of the learned Judges appears to be abundantly clear from the whole trend of the judgment and also the passage which immediately follows the passage which I have quoted. The case of Bahadur Singh Singhee Vs. Rani Jyotirupa Debi and Others is also concerned with the question of res judicata. In my view, it is one thing to say that when two decrees have been passed on the same basis and an appeal is preferred from one of them only, the basis can be challenged and agitated in an appeal taken from one of the decrees, although the other decree may not be appealed from, but it is quite a different thing to say that the effect of

any appellate decree that may be passed in the appeal preferred, would be automatically to extinguish the other decree from which no appeal had been preferred I cannot imagine how a decree or order can disappear, unless it is reversed on appeal or unless it becomes barred by limitation or is satisfied. If in the type of case we are considering, the decree, not appealed from, directs the judgment-debtor there under to do a certain thing or pay a certain amount or pay costs, I cannot imagine how the effectiveness of that decree as a decree capable of being put into execution, can be destroyed simply by the appeal from the other decree being allowed. That appeal or the canvassing of the issues therein may not be barred by res judicata, but any decree passed therein must be adjusted to the other decree which has been left untouched. The fact that the omission to file an appeal from one of the two decrees passed in a single suit does not prevent the common basis of the two decrees from being challenged and agitated in the appeal preferred, does not, to my mind, mean or involve that if the decree is set aside or varied such reversal or variation will also affect the other decree not appealed from as regards its actual enforceability. In any event what we are considering here is whether a decree inconsistent with the decree not appealed from should be passed at all, besides that there were two separate proceedings in the present case.

9. Applying what I conceive the true principle to the present case, it seems to me that the learned Judge, while he was free u/s 17(3) of the Act of 1950, to pass an order with effect from the month following the date on which the application was made, could not in any way affect the force of the other order made in the tenant''s case which was surviving. With notice of the other order, the only order which he could legally and reasonably pass would be to leave the period prior to the commencement of the Act of 1950, to the order passed by the Rent Controller and limit the operation of his own order to the period subsequent to the date of the commencement of the 1950 Act. As I have stated, the other order not having been appealed from, could be affected or varied only by way of refixing the rent and no refixation could take effect from any date earlier than the date of the commencement of the 1950 Act.

10. For the reasons given above, it follows that the standard rent fixed by the learned Judge could take effect only from the 1st April, 1950, and that the period between the 1st April, 1919, and the 31st March, 1950, must be left to be governed by the order of the Rent Controller. In the result this Rule is made absolute in part. The order of the learned Judge is varied in the manner indicated above and it is declared and held that the standard rent for the period between April, 1949 and March, 1950, shall be at the rate fixed by the Rent Controller while from April 1950, it shall be at the rate fixed by the Appellate Court.

There will be no order as to costs.

Sinha, J.

I agree.