Sudhir Ranjan De Vs Taraprosad Chatterjee

Court: Calcutta High Court

Date of Decision: Jan. 8, 1959

Acts Referred: West Bengal Premises Tenancy Act, 1956 â€" Section 34, 34(2), 38

Citation: 63 CWN 356

Hon'ble Judges: Sen, J

Bench: Single Bench

Advocate: Arun Kishore Das Gupta, for the Appellant;Ashutosh Ganguly, for the Respondent

Judgement

Sen, J.
This revisional application arises from an order of the Rent Controller, Calcutta u/s 34 of the West Bengal Premises Tenancy Act,

1956. The petitioner Sudhir Ranjan De is the owner of the premises bearing No. 17 Ganga Prosad Mukherjee Road. The premises has also been

described as bearing No. 17A, Ganga Prosad Mukherjee Road. There is, however, no dispute now after the disposal of Second Appeal No. 91

of 1957 about the identity of the premises. The premises was held as a tenant. by the opposite party Tarapada Chatterjee under the previous

owner Mr. B. C. Sen and the present petitioner Sudhir Ranjan De has purchased the house in question from Mr. B. C. Sen and has therefore

become the landlord of the opposite party. The tenant opposite party filed an application before the Controller u/s 34 of the West Bengal Premises

Tenancy Act on the 10th April, 1956 praying to 1he Controller to call upon the landlord to effect certain necessary repairs, and in the event of the

landlord not executing the repairs within a reasonable time, to grant permission to the tenant opposite party to effect repairs himself and to realise

the cost out of the rent payable to the landlord. The landlord appeared before the Rent Controller and the Rent Controller deputed an Inspector to

inspect the premises and to report on the items of repairs necessary and he also heard both parties. On the 28th May, 1956 the landlord stated

before the Controller that he was willing to carry out the repairs. He was therefore allowed time until 28.6.56 to complete the repairs. On the 28th

June, 1956 a petition was filed by the landlord that unless the tenant vacated the premises it would not be possible to effect the repairs of the roof.

The Controller, however, quite rightly pointed out that u/s 34 of the Act he could not direct the tenant to vacate the premises, but he allowed

further time until 21.7.56 to the landlord to complete the repairs of the roof On the 28th August, 1956 the parties appeared and the landlord

claimed that he had effected the repairs but the tenant stated that the roof had not been properly repaired and the Inspector was directed to go

again to the premises and submit a report. In view of the Inspector''s report the learned Controller held that repairs to the roof were not complete

and he thereupon took evidence as to the amount of cost that might be required to complete the repairs satisfactorily and he then passed an. order

on the 13th September, 1956, in which he specified that the sum of Rs. 797-8-0 would be required to carry out the repairs and he directed the

tenant to effect the repairs himself at a'' cost net exceeding the amount specified in the order and to recover the amount in two yearly instalments of

Rs. 398-12-0 out of two years'' rent. Against that decision the landlord preferred an appeal before the District Judge which was heard by Sri M.

E. Roy, Subordinate Judge, Alipore. There was also a cross objection by the tenant that the amount specified by the Controller was too low and

that higher amount should have been specified by him as the amount which might be spent on effecting the necessary repairs. The learned

Subordinate Judge however, dismissed the appeal as well as cross appeal and confirmed the order of the Controller passed under sec. 34 of the

Tenancy Act. Accordingly the landlord has preferred the present revisional application.

2. Mr. Arun Kishore Das Gupta appearing for the landlord petitioner has urged two points. The first point urged by him is that the repair to the

roof as was ordered by the Controller did not come within the category of ordinary repairs to keep the building wind and water tight but amounted

to partial building or rebuilding and that it was not within the competence of the Controller to order such repairs to be effected or permit the tenant

to effect such repairs at his own cost and recover the money out of rent.

3. The second point urged by Mr. Das Gupta is that in any case an amount in excess of the amount of half the rent for one year could not be

recovered from the landlord under the provisions of section 34 of the Act.

4. In support of his first contention Mr. Das Gupta has referred to a decision of Rama Prasad Mookerjee, J. in Soorajmall Nagarmall Vs. Indian

National Drug Co. Ltd., . That was a case under the corresponding section of the Rent Control Act, 1950 being section 38 of the Act, Mookerjee

J, held that u/s 38 of the Rent Control Act, the Controller could not give a direction which would have the effect of requiring very substantial

reconstruction, that if the roof of the premises was leaking the landlord might be called upon to stop the leak and that could be done by having a

special coating over the roof or by some other means, but if there was any portion of the roof which was likely to collapse the matter might he

reported to the Corporation of Calcutta for taking necessary action, but it would be outside the scope of section 38 of the Rent Control Act and

beyond the competence of the Rent Controller to order the landlord to effect such repairs or permit the tenant to effect such repairs at the cost of

the landlord. It must be pointed out, however, that the wording of sec. 38 of the West Bengal Premises Rent Control Act, 1950 and that of section

34 of the West Bengal Premises Tenancy Act are not precisely similar. Sub-section (3) in particular on the interpretation of which Rama Prosad

Mookerjee, J. based his decision has been substantially altered in the new Act. Moreover in. the case before Rama Prosad Mookerjee, J., there

was no evidence of any agreement between the parties by which the landlord took the responsibility for effecting repairs. In the present case, such

contract was proved between the parties by the correspondence which had been exchanged between the original owner Mr. B. C. Sen, and the

present tenant opposite party. It must be held that the landlord under took to effect necessary repairs whenever required to make the house

habitable. In the present case the tenant opposite party proved that the Corporation of Calcutta had issued a notice under Rule 5(1) of Schedule

17 of the Calcutta Municipal Act on the occupier of the premises on the 27th February, 1956, by which the occupier and presumably the owner

also, had been directed to repair the building in question by changing the damaged T-iron Burghas or beams and by repairing the cracks in the

walls and arches, and by half terracing the roof, as the same were lying in a dangerous condition It is true that these repairs are extensive repairs

and going to the extent of rebuilding the roof to a certain extent, but if the roof has become so dangerous as to be likely to sag in, it is necessary to

effect proper repairs to the roof even to the extent of rebuilding in order to make the building habitable, and since the landlord by the terms of the

tenancy undertook to effect the necessary repairs required to make the building habitable, I agree with the courts below in holding that it was within

the competence of the Controller to direct such repairs to be effected or allow the tenant to effect the repairs under the provisions of section 34 of

the West Bengal Premises Tenancy Act, 1956 if the landlord failed or omitted to effect the repairs satisfactorily.

5. Next I turn to the second point. This question involves the interpretation of sub-section (2) of section 34 and particularly the two provisos to the

sub-section. The first proviso is as follows:

Provided that the amount so deducted or recoverable in any year shall not exceed one half of the rent payable by the tenant for that year.

6. Prima facie, this means that the total amount which may be allowed to be spent in any year by tenant under the Controller''s order on repairs or

maintenance of water supply and other services and recovered from the landlord must not exceed the amount of half the year''s rent. The proviso

does not mean that any large amount may be spent with the permission of the Controller and recovered in instalments spread over several years at

the rate of half the year''s rent in each year. This is clarified by the second proviso which runs as follows:

Provided further that if any repairs or measures not covered by the said amount are necessary in the opinion of the Controller, and the tenant

agrees to bear the excess cost himself the Controller may permit the tenant to make such repairs or take such measures.

7. Thus, the Controller may permit an amount in excess of half the years rent, to be spent on repairs or maintenance of services only if the tenant

agrees to bear the excess cost. If the total amount spent were recoverable in instalments spread over several years, the question of the tenant

agreeing to bear the exess himself would not arise. Mr. Ashutosh Ganguly appearing for the opposite party has suggested that the second or further

proviso is proviso to the main clause of sub-section (2) of section 34 under which ""the Controller may.... by an order in writing permit the tenant to

make such repairs or take such measures at such cost as may be specified in the order"" and the tenant may ""deduct the cost thereof which shall in

no case exceed the amount so specified from the rent."" Mr. Ganguly has urged that the words ""the said amount"" in the further or second proviso

refers to ""the amount so specified"" in the main clause, that is, the amount fixed by the Controller in his order permitting repairs to the tenant, and

that the words do not mean the amount equal to one half of a ""year''s"" rent referred to in the first proviso. But according to rules of construction the

words ""the said amount"" must refer to the amount mentioned next before the words, and therefore the correct interpretation of the words ""the said

amount"" would seem to be the ""amount... not exceeding one-half of the rent for that year"" which is mentioned in the first proviso which occurs

Immediately before the words ""the said"" amount in the second proviso. To hold that ""the said amount"" in the second proviso means the amount or

cost specified by the Controller in his order, would be to make the proviso meaningless. If the tenant chooses to spend an amount in excess of the

amount specified by the Controller in his order, he does so on his own responsibility, and in view of the terms of the main clause in sub-section (2)

he cannot recover from the landlord the amount spent by him in excess of the amount specified in the Controller''s order. If the tenant chooses to

incur any excess expenditure in such circumstances, he does not require the permission of the Controller. Accordingly the provision that the tenant

must agree to bear the excess cost himself would be superfluous. Further, under the main clause the Controller after due enquiries may fix the

amount which he considers necessary for effecting the required repairs or taking the required measures. So the question of permitting the tenant to

spend an amount in excess of that amount cannot arise. These considerations show that the interpretation suggested by Mr. Ganguly cannot be

correct. Taking the words ""the said amount"" to mean ""the amount not exceeding half the rent for that year'' which is mentioned in the first proviso,

the second proviso means that when the Controller himself finds that an amount greater than the amount of half the year''s rent is necessary for

effecting the required repairs or taking the required measures, he cannot specify the greater amount in his order unless the tenant agrees to bear the

excess over the amount of half the year''s rent himself. This interpretation makes the second or further proviso both logical and necessary. I

therefore hold that u/s 34(2) of the West Bengal Premises Tenancy Act the Controller can permit the tenant to spend at one time or in the course

of one year only an amount not exceeding half the year''s rent; and an amount in excess of half the year''s rent can be specified in his order only

when the tenant agrees to bear the excess amount himself; and in any case, in respect of repairs executed at one time or in the course of one year

only the amount of half the year''s rent can be recovered from the landlord. In the present case the rate of rent is Rs. 68-13 and half the year''s rent

is Rs. 412-14. Accordingly, only that amount can be recovered from the landlord for effecting the repairs which were done under the order of the

Controller under consideration. This Rule is therefore made absolute in part to the extent mentioned aforesaid. The order of the Controller is

upheld with the modification that only Rs. 412-14 shall be recoverable by the tenant opposite party out of the rent payable by him, for having

effected the repairs which he did under the order of the Controller dated 13.9.56. In the circumstances no order is made as to costs.