

(1960) 12 CAL CK 0018

Calcutta High Court

Case No: Appeal From Appellate Decree No. 1034 of 1958

Mrs. H. Taylor and Others

APPELLANT

Vs

Hiralall Roy Chowdhury

RESPONDENT

Date of Decision: Dec. 13, 1960**Citation:** 65 CWN 805**Hon'ble Judges:** Niyogi, J; Banerjee, J**Bench:** Division Bench**Advocate:** Alak Gupta, for the Appellant; C.C. Ganguly and Kalipada Chakravarty, for the Respondent

Judgement

Banerjee, J.

There is a short point which calls for our decision in this appeal. The respondent landlord sued the tenants appellants for eviction on the ground of default made in payment of rent. While the case was pending before the trial court, the tenants failed to comply with an order u/s 14(4) of the West Bengal Premises Rent Control (Temporary Provisions) Act of 1950. The result was that the trial court ordered that the tenants' defence against ejectment be struck out and that the tenants be placed in the same position as if they had not defended the claim to ejectment. Thereafter, the trial court decreed the suit exparte. The defendants tenants were directed to vacate the premises within one month from the date of the decree; in default, the plaintiff was given liberty to recover possession in execution of the decree.

2. The tenants defendants appealed to the lower appellate court. The court of appeal below directed the tenants defendants to deposit the rent, which had fallen in arrears at that stage. The tenants did not pay. The result was that the lower appellate court exercised its powers u/s 14(5) of the West Bengal Premises Rent Control (Temporary Provisions) Act and passed the following order:-

That the memorandum of appeal is struck off and the appeal is dismissed with costs to the plaintiff-respondent for non-compliance with the court's order u/s 14(5) read

with section 14(4) of Rent Act of 1950.

3. The aforesaid order is being disputed before us at the instance of the defendants appellants.

4. Mr. Alak Gupta, learned Advocate for the appellants, contended before us that an order u/s 14(4) having already been made against the tenants defendants, there could not be another order u/s 14(5) made against them.

5. Alternatively, he contended that even if an order u/s 14(5) could be passed by the lower appellate court against tenants defendants, the effect of that order could not be the dismissal of the appeal. In our opinion, the first argument advanced by Mr. Gupta cannot be accepted because section 14(5) authorises the court of appeal to exercise power u/s 14(4) with necessary adaptation. But we are inclined to agree with the second part of Mr. Gupta's submission that the effect of an order under section 14(5) could not necessarily be the dismissal of the appeal.

6. This point is now covered by unreported judgment in (1) Civil Revision Case No. 540 of 1958 (Tilakdharn Prosad Misra v. Kissendas Agarwala), decided by one of the members of this Bench. In that case it was held as follows:

The Question is what sort of penal order is contemplated u/s 14(5) of the Act. The appellate court cannot certainly say that the defence taken against ejectment in the written statement be struck off because such an order may have already taken effect and the making of such an order after judgment has been passed may not be of much consequence to the defendant. I am of opinion that it is reasonable to hold that the necessary adaptation u/s 14(5) of the Act contemplates the striking out of the grounds taken in the memorandum of appeal against a decree for eviction and precluding the tenant appellant from agitating any ground against the decree for eviction.

7. The ground as to impropriety of an order passed u/s 14(4) of the Act is no part of the defence against eviction and even if an order u/s 14(4) had been made, a tenant defendant may agitate, in appeal, that the order u/s 14(4) was not properly made, in spite of the passing of an order u/s 14(5).

8. In the view that we take we set aside the judgment and decree passed by the court of appeal below and in its place pass the following order, namely, that the grounds taken by defendants against the decree, in so far as it was a decree for eviction, be struck off from the memorandum of appeal and the tenants appellants be precluded from agitating such grounds against the decree, in so far as it was a decree for eviction. Whether as a result of that, any other ground will be left to defendants appellants in support of the appeal, we do not know; if there be no ground left, then the court of appeal below will at liberty to dismiss the appeal on the ground that the defendants appellants were not able to make out any ground against the order made by the court of first instance. If, on the other hand, apart

from any ground against eviction the tenants defendants attack the decree, the court of appeal below shall have to hear those objections. One such objection may be that the order u/s 14(4) had not been correctly made against the tenants defendants by the trial court. If the court of appeal below finds in favour of the defendants appellants on that point, it may have to consider whether or not to remand the case to trial court to be heard and determined in accordance with law.

9. This appeal, therefore, succeeds and we set aside the judgment and decree of the lower appellate court and direct that court now to rehear the appeal in the light of the observations contained in this judgment.

10. Costs of this appeal will abide the final result.

11. We hope that the lower appellate court shall do its best to hear and determine the appeal as expeditiously as possible. Let the records be sent down as as possible.

Niyogi, J.

12. I agree.