(1955) 07 CAL CK 0024

Calcutta High Court

Case No: Appeal from Appellate Decree No. 1240 of 1953

Kali Kumae Mitra	APPELLANT
Vs	
Sm. Mahamaya Basu	RESPONDENT

Date of Decision: July 26, 1955

Acts Referred:

- West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Section 12, 12(1), 12(2), 14, 14(3)

Citation: (1957) 2 ILR (Cal) 752

Hon'ble Judges: P.N. Mookerjee, J

Bench: Single Bench

Advocate: Ajit Kumar Datta and Prasum Chandra Ghosh, for the Appellant;Asoke Chandra Sen, for the Respondent

Final Decision: Dismissed

Judgement

P.N. Mookerjee, J.

On January 11, 1952, the Plaintiffs-Respondents instituted the present suit for ejectment against the Defendant-Appellant on inter alia the ground of habitual default in the payment of rent. The notice to quit was served in sufficient time to determine the tenancy on the expiry of December, 1951. The suit has been decreed by the two courts below upon the finding that the tenant was a defaulter for more than six months in the payment of rent. The defaults found were for January to June, 1951, that is, well within the relevant period of 18 months under the proviso to Section 14(5) of the Rent Control Act, 1950, and, accordingly, the tenant was held disentitled to the protection of the Bent Control law. The defaults, however, were all purely technical defaults, the rents having been paid subsequently and accepted and, as a matter of fact, the arrears were all cleared off before the institution of the suit. Those technical defaults were, however, held by the two courts below to be relevant and sufficient for the purpose of ejectment u/s 12(1)(i) of the 1950 Act, and, consequently, of Section 14 also, and the proviso of Section 14(5) was applied against the tenant. It may be mentioned here that for ejectment the landlords took

also the ground of bona fide requirement under Clause (h) of Section 12(2), and. that having been negatived by the two courts below, it was not pressed in this Court and, on the materials also, this ground can hardly be supported.

2. Mr. Dutta, who argued the appeal on behalf of the tenant-Appellant, conceded with his usual fairness that, in view of the Branch decision of this Court in Dwarkin and Sons Ltd., v. Hari Singh (1954) 58 C.W.N. 1012, and the observations in the Full Bench case of T.S. Sarma v. Nagendra Bala Debi Choudhurani (1952) 57 C. W.N. (F. B), it was no longer possible to contend that mere technical defaults, even in the case of tenants who had cleared off all arrears before the institution of the suit, would not come within the mischief of Section 12(2)(i) or the proviso to Section 14(3). He, therefore, abandoned that defence in this Court, but he raised an interesting point on Sections 12 and 14 of the Rent Control Act. He argued that Sections 12(i)(t) and 14 (including the proviso to Sub-section (3) thereof) contemplated cases where the suit for ejectment was brought only on the ground of default and they were inapplicable and could not be invoked where the suit was brought not only on the ground of default under Clause (i) of Section 12(1), but also on grounds, mentioned in one or other of the other different clauses of the said Section 12(2). In other words, his argument was that, if the landlord wanted to avail himself of Section 12(2)(i) and the proviso to Section 14(5) he must forego other grounds, if any, of the ejectment u/s 12(1). For this proposition he attempted to find support from the decisions of this Court, reported in T.S.R. Sarma v. Nagendra Bala Debi Choudhurani (Supra), Maulvi Miah (Maulavi and Co.) Vs. Sashanko Mohan Guha, , and Sudhi Ranjan Ray Choudhwri v. Hillol Kumar Gupta ILR (1956) Cal. 317 : (1954) 58 C.W.N. 869, where Section 14 was held inapplicable to composite suits for ejectment, that is, to suits in which other grounds in addition to the ground of default had been taken for ejectment. Mr. Dutta also pointed out that any other view would be fraught with immense danger to the tenant and would defeat the purpose of Section 14, so far as it was intended to relieve the tenant against consequences of defaults in the payment of rent, as the landlord might then, by including false or frivolous grounds under any of the other clauses of Section 12(2) along with the ground of default mentioned in Clause (i) of that section, render Section 14 altogether unavailable even to a deserving tenant.

3. The argument looks attractive at first sight, but, considering the matter carefully in the light of the recent Bench decision of this Court in the case of Mohit Kumar Bose v. Jagat Mohan Dutta (1955) 59 C.W.N. 852, and taking into account all the different aspects of it and the various consequences which may follow or legitimately arise from the point under consideration, I am unable to accept this argument. In the view, expressed by this Court in the case just above cited, the relevant point of time for applying Section 14 would be in the circumstances of this case when the court finds that the landlords would be entitled to a decree for ejectment only on the ground of default u/s 12(1)(i) and not under any of the other clauses of Section 12(1). If, at that time it is found that the tenant is entitled to the benefits of Section 14, he would get them notwithstanding the original composite character of the grounds of ejectment. The mischief, therefore, apprehended by Mr.

Dutta, would not strictly arise and may safely be ignored. This is apart from the fact-although that by itself would not exclude the possible mischief, apprehended by Mr. Dutta, that, by including other grounds of ejectment, the landlord would be depriving himself of the special benefit u/s 14(4). I do not also find anything in Section 12 or Section 14 to justify the view that the legislature intended that the ground of default could not be tacked or pleaded with any of the other grounds of ejectment u/s 12(1) or vice versa. It would he putting an. unreasonable construction on the Act, not, in the least, justified by any of its provisions to restrict the landlord only to the ground of default, if that happens to be one of the grounds and if the landlord wants to avail of the same. That would also be putting the landlord to a very difficult choice, for which there is no warrant anywhere in the Act. Section 12(1)(i) is no: doubt subject to Section 14, but that does not necessarily place it on an altogether separate footing and in a separate water-tight apartment or compartment from the other grounds. A reasonable construction-and to my mind, the only proper construction -would be that the landlord may be entitled to ejectment on any one or more of the grounds u/s 12(1), but, if the ground of default under Clause (i) of that section happens to be the only ground, upon which he is ultimately found entitled to get a decree for ejectment, the tenant would be entitled to resist eviction u/s 14 unless he is hit by the proviso to Sub-section (3) thereof. This seems to be the only proper and legitimate construction of Sections 12 and 14 of the Act and I find no reason to adopt a different view. Section 14 was apparently intended to grant a limited relief (vide the proviso to Sub-section (3) of that section) against what may quite properly be called "forfeiture on account of default or nonpayment of rent". Such forfeiture has never been held to be exclusive so as to forbid its joinder with any other ground of ejectment and I find no reason why a different view should be taken under the Rent Control law. I would, accordingly, reject Mr. Dutta"s argument.

4. A minor point was also raised in the trial court, namely, that the present suit was bad on account of non-joinder of the transferee of the landlords" interest. It appears, however, that this transfer took place during the pendency of the present suit. It would, therefore, be hit by lis pendens and, on that ground alone, apart from anything else, the present suit cannot be held to be defective on account of non-joinder of the transferee. The transferee, Sm. Bina Mitra, would, indeed, be bound by the result of the present litigation. I do not, therefore, find any substance in this point which, to state the actual fact, and I must say this in fairness to the tenant-Defendant, was not pressed either before the lower appellate court or before this Court.

5. In the above view of the matter, I would dismiss this appeal but, as the ejectment is being decreed only on the ground of technical default in the payment of rent and all rents up to date appear to have been paid or deposited, I would grant the tenant-Appellant time till the end of January, 1956, to vacate the disputed premises. The Appellant, however, must go on depositing regularly in the trial court to the credit of the decree-holders-Respondents on account of mesne profits a sum of Rs. 30 every month within the 15th of the next succeeding month according to the English calendar, the first

of such deposits to be made for the month of July, 1955, within the 15th of August next. In default, this decree for ejectment will become executable at once. If any deposit is made in pursuance of this order or if any deposit has been made on account of rent as mesne profits, the decree-holders-Respondents would be entitled to withdraw the same without furnishing any security but only after notice to the transferee Sm. Bina Mitra.

6. Subject as above, this appeal fails and it is dismissed.

7. There will be no order for costs either in this Court or in the lower appellate court. The trial court''s decree for costs will, however, remain.