

**(1922) 11 CAL CK 0013**

**Calcutta High Court**

**Case No:** None

Damania Brothers and Co.

APPELLANT

Vs

V. Jorton and Co.

RESPONDENT

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**Date of Decision:** Nov. 21, 1922

**Citation:** AIR 1923 Cal 180 : 73 Ind. Cas. 47

**Hon'ble Judges:** Panton, J; C.C. Ghose, J

**Bench:** Division Bench

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### **Judgement**

1. The petitioners before us are lessees of certain premises in Calcutta, No. 40/1, Strand Road, and the opposite parties are sub-tenants under the petitioners occupying, to use a neutral expression, a certain room on the ground floor of the said premises. The petitioners allege that the room in question is a godown and that the opposite parties executed on the 29th August 1919 a letter of attornment in their favour whereby they agreed "to pay rent at the rate of Rs. 70 a month to the petitioners. It is alleged that in the letter of attornment, the room was described by them as a godown on the ground floor of premises No. 40/1, " Strand Road. It is further alleged by the petitioners that, on or about the 29th January 1920, the opposite parties agreed to pay enhanced rent at the rate of Rs. 99 per month from January 1920 in respect of the said godown. It appears that on the 31st of May 1920 the opposite parties filed an application before the Controller of Rents in Calcutta for fixing a standard rent of the said room, alleging that the room, in question constituted an office and that the standard rent thereof could not be more than Rs. 77 per month. The petitioners on being served with notice of this application contended before the Controller of Rents that the subject-matter of the demise was a godown and not an office and that the same could not be described as "premises" within the meaning of the Calcutta Rent Act and that as such the application of the opposite parties before the Controller of Rents was incompetent. The Controller of Rents inspected the room in question and came to the conclusion that the same was an office, that it was used "as a shop, an office as well as for the purpose of storing goods for sale in a portion " and fixed the standard rent thereof at Rs. 70. The

petitioners being dissatisfied with the order of the Controller of Rent fixing the standard rent of the said room at Rs. 70 applied to the learned President of the Calcutta Improvement Tribunal for revision of the order of the Controller of Rent, fixing the said standard rent, u/s 18 of the Calcutta Rent Act. The learned President held that inasmuch as the petitioners before him had contended in their application for revision that the Controller of Rent had no jurisdiction, whatsoever to fix a standard rent in respect of the subject-matter of the demise the same not being "premises" within the meaning of the Act, the petitioners on their own showing were disentitled to any relief by way of revision u/s 18 of the Act. The argument of the President is that, inasmuch as the Controller of Rents had, according to the petitioners, no jurisdiction to interfere in the matter, the President had equally no jurisdiction because, in his opinion, Section 18 of the Calcutta Rent Act is only attracted to cases where admittedly the Controller has jurisdiction to fix a standard rent. We are unable to assent to this view of the matter. We are of opinion that u/s 18 of the Calcutta Rent Act, the landlords, in this case the petitioners, were entitled to a decision from the President of the Calcutta Improvement Tribunal as to whether or not the Controller of Rent had jurisdiction to fix any standard rent in the case which was brought before him. In our opinion, the fact that the petitioners before the President of the Tribunal contended that the Controller had no jurisdiction in the matter, could not be construed to be a point against the petitioners disentitling them to any relief at the hands of the President u/s 18 of the Calcutta Rent Act for revision of an order fixing a standard rent, because if that reasoning were held to be sound, then in no case of this description, could relief be given u/s 18 of the Calcutta Rent Act. We think that the President has taken an unduly narrow view of Section 18 of the Calcutta Rent Act. In this view of the matter, we set aside the order of the President of the Calcutta Improvement Tribunal and remit the case to him for consideration of the questions urged in the petition of the petitioners before us. There will be no order as regards the application u/s 115 of the Code of Civil Procedure.

2. The petitioners will get their costs of the first Rule which we assess at three gold mohurs.