

(1950) 09 CAL CK 0009

**Calcutta High Court****Case No:** Appeal from Appellate Order No. 58 of 1948

Monomohan Moitra

APPELLANT

Vs

Gobinda Das Chowdhury

RESPONDENT

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**Date of Decision:** Sept. 7, 1950**Acts Referred:**

- Calcutta Rent Ordinance, 1946 - Section 12

**Citation:** 55 CWN 6**Hon'ble Judges:** Mookerjee, J; Lahiri, J**Bench:** Division Bench

**Advocate:** Nirmal Chandra Sen, Rabindra Narayan Chakravorty and Purna Chandra Basil, for the Appellant; Atul Chandra Gupta, Hem Chandra Dhar and Bhabani Prasanna Chatterjee, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Lahiri, J.

This is an appeal by the Defendant who is a monthly tenant in respect of Premises No. 215, Lansdowne Road and it arises out of an action in ejectment on determination of the tenancy by a notice to quit. The case of the Plaintiff is that the tenancy of the Defendant commenced on the 16th November, 1943, at a monthly rent of Rs. 150 under an order of the Rent Controller dated 26th November, 1943, that the Plaintiff served a notice asking the Defendant to vacate on the expiry of 15th September, 1944, but as the Defendant did not vacate the Plaintiff instituted the suit on 23rd April, 1945, on which date the Calcutta House Rent Control Order was in operation. The Plaintiff alleged that as the Defendant was a defaulter he was not entitled to the protection of the Calcutta House Rent Control Order and that the permission of the Rent Controller had been obtained. The defence of the Defendant so far as it is material for the purposes of the present appeal was that he was not a defaulter inasmuch as he had deposited the rent with the Rent Controller. At the time the suit was brought to trial the Calcutta House Rent Control Order had been

replaced by the Calcutta Rent Ordinance (Bengal Ordinance No. V of 1946) which came into operation on 1st October, 1946.

2. Sec. 12 of the Calcutta Rent Ordinance provides that no decree for ejectment shall be made so long as the tenant pays rent to the full extent "allowable by this Ordinance" and sub-sec. (4) (b) provides that no tenant shall be entitled to the benefit of that section unless in the case where any rent has accrued due before the commencement of the Ordinance he has paid within one month of such commencement all arrears of rent due by him to the full extent allowable by that Ordinance.

3. The learned Subordinate Judge who tried the suit held that the Defendant was technically in default under the Calcutta House Rent Control Order because, on one occasion he deposited rent for two months and on another occasion he deposited rent for four months whereas under the House Rent Control Order rent for every month was payable on the date fixed by the agreement between the parties and in the absence of any agreement, on the 15th day of the following month. But the Learned Subordinate Judge further held that under sec. 12 (4) (b) of the Calcutta Kent Ordinance the Defendant was entitled to pay up all arrears within one month from the commencement of the Ordinance from 1st October, 1946, and as the Defendant had paid up all arrears within that time he could not be said to be a defaulter under the Rent Ordinance. In this view of the case the learned Subordinate Judge dismissed the suit. On appeal by the Plaintiff the learned Additional District Judge has reversed that decision and remanded the case for fresh trial on the footing that the rights of the parties are to be governed not by the Calcutta Rent Ordinance but by the Calcutta House Rent Control Order which was in force on the date of the institution of the suit. Against this decision the tenant Defendant has filed the present appeal. Mr. Sen appearing in support of the appeal has raised the following points before us :-

(1) The Calcutta House Rent Control order lapsed alter 30th September, 1946, and after the lapse of the House Rent Control Order the rights of the parties could not be determined thereunder and must be determined by the Kent Ordinance of 1946 or by the West Bengal Premises Rent Control Act (An XXXVIII) of 1948.

(2) The Calcutta House Rent Control Order is merely an executive order and as such it cannot affect the substantive rights of the parties created by statutes.

(3) The Calcutta House Rent Control Order is invalid inasmuch as it was promulgated under Rule 81 (2) (b) of the Defence of India Rules which in its turn Was framed under sec. 2 (1) of the Defence of India Act and it is argued that sec. 2 (1) of the Defence of India Act is invalid inasmuch as it provides for devolution of legislative power by the Central Legislature to the Central Government which is not permissible under the law.

4. With regard to the first point raised by Mr. Sen it is to be noticed that the ordinary rule of law is that a suit is to be tried by the law as it stood on the date of the institution of the suit unless some new law applies expressly or by necessary intendment. See *Colonial Sugar Refining Co. v. Irving* (1905) A. C. 369, *Delhi Cloth Co. v. Income Tax Officer* L.R. 54 IndAp 421 : 32 O. W. N. 287 (1927) and *Sylhet Loan and Banking Co. Ltd. v. Syed Ahmad Mojtaba* 50 C. W. N. 417 (1946). It is, therefore, clear that the rights of the parties in the case before us will be governed by the Calcutta House Rent Control Order unless there is anything in the Calcutta House Rent Ordinance or the West Bengal Premises Rent Control Act which makes its provisions applicable to pending actions either expressly or by necessary implication. Sec. 12 of the Ordinance has been relied upon by the Appellant in this connection; but we find nothing in sec. 12 to make it applicable to pending actions. Sec. 12 (4) (b) no doubt gives a period of one month from the date of the commencement of the Ordinance to pay up all arrears which accrued due before the commencement of the Ordinance; but this provision evidently applies to a case where no suit has been instituted prior to the commencement of the Ordinance. Moreover, sec. 12 protects tenants who pay rent to the full extent "allowable by the Ordinance." It does not say anything in respect of a tenant against whom a suit for ejectment has already been instituted. The only other section of the Ordinance to which reference has been made by the learned Advocate for the Appellant is sec. 26 which provides that proceedings commenced under the Calcutta House Rent Control Order shall on the said Order ceasing to be in operation, be deemed to have been commenced under the corresponding provision of the Ordinance. A suit for ejectment against a tenant cannot, in our judgment, be said to be a proceeding under the Calcutta House Rent Control Order but a suit under the general law. In this view of the matter we cannot hold that sec. 26 of the Ordinance has any application to the facts of the present case.

5. It remains for us to consider whether the tenant is entitled to the benefit of any of the provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act of 1948, which came into operation on the 1st December, 1948. Sec. 12 (1) (b) of the Act gives a period of one month to the tenant to pay up all arrears which accrued due before the commencement of the Act and sec. 12 (1) provides that no tenant shall be entitled to the benefit of the provisions of the Act unless he pays the rent "allowable by the Act." The language of the relevant provisions of sec. 12 of the West Bengal Premises Rent Control Act very nearly corresponds to the language of sec. 12 of the Calcutta House Rent Ordinance and for the reasons we have already given in respect of the latter we hold that sec. 12 of the Act of 1948 does not apply to the facts of the present case. Sec. 18 of the Act of 1948 confers upon the Court the power to rescind or vary a pre-Act decree for ejectment to give effect to the provisions of the Act if the Court is of opinion that the decree would not have been made if the Act had been in operation on the date of the decree. In the case before us there has been no decree for recovery of possession; the suit has been remanded by the Appellate Court to be

tried under the provisions of the Calcutta House Rent Control Order. We accordingly hold that sec. 18 of the Act of 1948 has no application to the facts of the present case. For the reasons given above we hold that the decision of the lower Appellate Court to the effect that the suit is to be tried under the Calcutta House Rent Control Order is correct and the first point raised by the Appellant fails.

6. We have now to consider the second and third points raised by the Appellant. Before proceeding to discuss the merits of these points we must confess that we fail to see how the Appellant will be benefited if these points are accepted by the Court. The House Rent Control Order makes serious encroachments on the rights of the landlord and was promulgated entirely for the protection of the tenant. We cannot realise what advantage the tenant will gain by challenging the validity of the provisions which are entirely meant for his protection. But as the points have been argued before us we proceed to record our views on the merits of those points.

7. With regard to the second point raised by the Appellant it is to be observed that the Calcutta House Rent Control Order is undoubtedly an executive order but at the same time it is an order made by the executive in exercise of delegated authority and if the delegation be valid the orders promulgated by the executive authority of the Province will have the force of law. Therefore the real question is whether the delegation of legislative authority to the executive Government under sec. 2 (1) of the Defence of India Act (1939) is valid. This brings us to the consideration of the third point raised by the Appellant. The Appellant has argued that sec. 2 (1) of the Defence of India Act which delegates legislative power to the executive and Rule 81 of the Defence of India Rules which was framed in exercise of the delegated authority are invalid. This attack on the validity of sec. 2 of the Defence of India Act cannot in our judgment be maintained. The point was elaborately considered by Kania, J., in the case of *Haveliram Chetty v. Maharaja of Morvi* 46 Bom L. R. (1948) 877 F.R., At p. 902, Kania, J., after reviewing all the relevant authorities observes as follows:-

These authorities clearly show that the Central Legislature having plenary power, within the limits prescribed, by the Constitution Act, has authority to empower the Central Government to make rules and such action is not considered invalid. They further show that the contention urged on behalf of Respondent No, 1 that there can be no delegation or devolution of legislative power is unsound." This view of sec. 2 was also taken by the Full Bench of the Lahore High Court in the case of AIR 1944 33 (Lahore) .

8. In the case of *King-Emperor v. Shibnath Banerjee* L. R. 72 I. A. 241; 50. W. N. 25 (19(sic) (6) the Judicial Committee held that Rule 26 of the Defence of India Rules was validly framed under sec. 2 (1) of the Defence of India Act.

9. In view of the authorities cited above we cannot accept the third point urged by the appellant. As all the points raised by the appellant fail, this appeal must be

dismissed with costs.

Mookerjee, J.

I agree.