

(2006) 09 CAL CK 0065

Calcutta High Court

Case No: C.O. No. 1573 of 2006

Smt. Promila Mookerjee and
Another

APPELLANT

Vs

Smt. Krishna Dutta

RESPONDENT

Date of Decision: Sept. 8, 2006

Acts Referred:

- West Bengal Premises Tenancy Act, 1956 - Section 17(2)(2A)

Citation: AIR 2007 Cal 37

Hon'ble Judges: Pranab Kumar Deb, J

Bench: Single Bench

Advocate: Ashis Bagchi, Kausik Chanda and Deba Mitra Chanda, for the Appellant; Probal Kumar Mukherjee, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Pranab Kumar Deb, J.

This instant revisional application has been directed against the order (dated 6-3-2006 passed by the learned Civil Judge (Senior Division) at Alipore, whereby the application u/s 17(2)(2A) & (b) of the West Bengal Premises Tenancy Act was allowed.

2. In moving the revisional application, Mr. Ashis Bagchi, learned senior counsel has submitted that since no service was extended in the suit premises, the trial Court should not have directed the petitioner to pay the service charge to the tune of Rs. 400/- per month in favour of the landlord. Citing the case of Anita Das Gupta v. A.C. Sett reported in 1984 (88) C.W.N. 242, it is submitted that if the service charges are really independent of the tenancy, it will not be deemed to be part of the rent. The true test would be to find out whether the services which are charged for are for the independent service rendered and enjoyed not as part of the tenancy. Since such independent services have not been provided, the landlord is not entitled to get

service charge from the tenant, as contended by Mr. Bagchi.

3. Challenging the quantum of arrear rent, Mr. Bagchi has submitted that the amounts spent by the tenant for drawing water through a "Vari" ought to have been adjusted against the rent. Notwithstanding the furnishing of the receipts showing payment to the "vari", the trial Court rejected the prayer for adjustment of the rent. Had these aspects been taken into consideration, the trial Court would not have fixed the quantum of arrear rent to the tune of Rs. 66,000/-, as contended by Mr. Bagchi.

4. Challenging the contention of the petitioner, Mr. Probal Kr. Mukherjee, learned Counsel, has submitted that the term "rent" is wide enough to cover the service charges for the service extended to the tenant. It is contended that in view of the amenities being extended to the tenant, he is liable to, pay the service charge. Referring to the case of [Puspa Sen Gupta Vs. Susma Ghose](#), it is submitted that the word "rent" includes not only what is strictly understood as rent, but also payment in respect of the amenities or services provided by the landlord under the terms of the tenancy. In view of all sorts of service and amenities being extended, such service charges are liable to be paid in the form of the rent.

5. Commenting on the claim for adjustment of the amount against the rent for non supply of water, Mr. Mukherjee has submitted that the petitioner before the trial Court failed to adduce evidence that substantial amount was incurred for defraying the expenses of a "vari".

6. From the documents placed before the Court, it appears that following the non supply of water, the tenant made an application before the rent controller. It was alleged that stop cork was placed so as to diminish the supply of water to the tenanted portion. The controller permitted the petitioner to repair the supply line at his own cost. The mere presentation of receipts does not in any way establish that substantial amount had been incurred for payment to the "vari" during the intervening period. The trial Court observed that in the absence of examination of such person receiving payment, it could not be concluded that a certain amount had been spent to meet the expenses of a "vari" for supplying water to the tenanted portion. Right from the beginning the tenant/petitioner continued to pay the service charges. All the services that are required in a tenanted premises have been extended. There was no other independent service for which separate service charge was required to be paid. The term rent includes all that is payable as consideration for the tenancy. The essential services having been ensured, the tenant is liable to pay it by way of service charge. It is thus duly considered as part of the rent. For the use of the tenancy certain amount has been realized in the form of rent and service charges. Although separate receipts were issued, the service charges are nothing but the integral part of the rent which the tenant is liable to pay. All these aspects have been considered and decided by the trial Court in fixing the quantum of the arrear rent. The aforesaid order thus does not call for

interference in revision.

7. In the result, the revisional application is dismissed with a direction upon the trial Court to proceed and dispose of with the suit at an early date.

8. Urgent xerox certified copies, if applied for, are to be supplied.