(1955) 02 CAL CK 0024

Calcutta High Court

Case No: Civil Revision Case No. 3770 of 1954

Ashalata Mitra		APPELLANT
	Vs	
A.D. Viz		RESPONDENT

Date of Decision: Feb. 2, 1955

Acts Referred:

- West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Section 14(4)

Citation: 59 CWN 692

Hon'ble Judges: Guha, J; Das Gupta, J

Bench: Division Bench

Advocate: Atul Chandra Gupta, Chandra Nath Mukherji and Alak Gupta, for the Appellant;Jitendra K. Sen Gupta and Ashutosh Ganguly, for the Respondent

Judgement

Das Gupta, J.

The petitioner is the plaintiff in a suit for ejectment, her case being that the tenant had made default in payment of rent for eight months from September, 1953, to April, 1954. The defendant contested the suit and pleaded inter alia that as the landlord had dispossessed him from two of the rooms comprising the tenancy and in other ways interfered with his occupation, he was entitled to suspension of rent for the entire period and so he could not be held to have made any default. Thereafter, an application was filed by the landlord for an order under sub-section (4) of section 14 of the Rent Control Act of 1950. The learned Court below has rejected that application in view of the plea for suspension of rent raised by the defendant. It has relied on the observations made in Bidyapati Ghosh Vs. Raj Kumar Pal, , in these words:

Under section 14(4) of the West Bengal Premises Rent Control Act. 1950, it will be impossible to say that arrears of rent were due or that any rent was due from month to month unless the question as to whether or not the tenant had been unlawfully dispossessed from a portion of the premise''s is decided. The Court must be

satisfied that rent was due and owing from the tenant. If the Court is left in any doubt about it, no order should be made u/s 14(4) of the West Bengal Premises Rent Control Act, 1950. u/s 14(4) of the Act, the Court is not bound to make an order. Section 14(4) merely allows the Court to make an order.

I respectfully agree with the view expressed but I do not see how the mere fact that a defence has been taken for suspension of rent can justify the rejection of an application u/s 14(4) of the Act. If that Were the position of law, it is not difficult to see that in every case an objection of this nature will be taken whether there be any foundation for it in fact or not. When Harries, C. J., was saying that If the Court was left in any doubt about it "it appears to me that no order should be made u/s 14 (4) of the Rent Control Act", he certainly could not have meant that the Court should feel doubt merely because a plea has been taken in the written statement. What had happened in that case was that though this plea was taken, the learned Subordinate Judge refused to consider the plea when considering the application u/s 14(4) and made an order for payment of rent current and arrears under the provisions of the Act without at all considering the plea taken. That course could certainly not be justified and it was in view of that action of the learned Subordinate Judge that the observation "I cannot see how he could make an order unless he was satisfied that rent was due and owing from the petitioner," was made.

2. In my judgment, it is the Court''s duty when an application is made u/s 14(4) to decide for the purpose of the application, first that there is relationship of landlord and tenant in case this is disputed; secondly, what rent, if any, is in arrears; thirdly, the rate at which rent was last paid. For the decision of that matter it may often be necessary for the Court to come to a decision on other questions, e.g., whether the tenant was entitled to total suspension of rent or to an abatement of rent or whether a claim for appropriation of an advance already paid, to rent should be allowed. The fact, that the question whether the defendant-tenant was in arrears has to be decided for the proper decision of the suit itself, is no reason for not deciding such a matter for the purpose of the application also. It often happens that in dealing with applications for temporary injunction pending disposal of suits, the Court has to come to a decision, for the purpose of deciding such an application, whether such a prima facie case exists or not. That decision never takes the place of the final decision of the suit. The fact that decision has to be made of the matter finally in the suit, cannot be a reason for refusing to consider the matter at an earlier stage, if and when this is necessary for the proper decision of an application.

3. In my opinion, it is impossible for a Court to decide whether it will exercise a discretion for making an order u/s 14(4) of the Act without coming to a decision on the questions indicated above. The mere fact that the landlord has said that there are arrears or the fact that the tenant has said that there are no arrears, cannot justify a decision, one way or the other. When the question is disputed, it is the Court''s duty to decide it has necessarily to decide it for the purpose of the

application. I would, accordingly, set aside the order passed by the learned Subordinate Judge and order that the application u/s 14 (4) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, be disposed of by the Court in accordance with law after giving both the parties opportunity to adduce evidence on the questions in dispute. The parties will bear their own costs in this Court.

Guha, J.

I agree.