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Dwijesh Chandra Maity Vs Balai Chandra Ghose

Court: Calcutta High Court

Date of Decision: Aug. 1, 1958

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 151
Court Fees Act, 1870 â€" Article 1, 3, 7
Suits Valuation Act, 1887 â€" Section 8
West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 â€" Section 10, 9(1)
West Bengal Premises Tenancy (Amendment) Act, 1956 â€" Section 29, 5, 8, 8(1)
West Bengal Premises Tenancy Rules, 1958 â€" Rule 23

Citation: (1959) 2 ILR (Cal) 511

Hon'ble Judges: Banerjee, J

Bench: Single Bench

Advocate: Saroj Bagchi, for the Appellant;Sanat Kumar Mukherjee and Amiya Lal Chatterjee and Nirmal Chandra Chakravartty, Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

Banerjee, J.
An interesting question regarding court-fee, payable on a memorandum of appeal filed against an order dismissing an

application for fixation of rent, has been raised in this application.

2. Regard being had to the public importance of the question and also its importance from the point of view of Government revenue, I directed that

the notice of the Rule be given to the Government Pleader, Mr. N.C. Chakravartty. The learned Government Pleader, appeared in this case and

assisted me in deciding the question raised.

3. The Petitioner is a tenant in respect of a portion of premises No. 169A, Upper Circular Road, Calcutta. The rent which was being last paid was

at the rate of Rs. 60 per month. On August 27, 1956, the tenant Petitioner filed an application before the Rent Controller, Calcutta, for fixation of

fair rent. The material portion of the said petition is quoted below:

2. That the tenancy of the applicant tenant commenced since December, 1939, at the rental of Rs. 47 per month. The said rent was reduced to Rs.

25 per month in December, 1941; subsequently the rent was raised to Rs. 47 per month and since January, 1951, it has been raised to Rs. 60 per

month which rent has been continued at the present time.

3. That the said rent of Rs. 60 is above the standard rent u/s 5 of the Act, West Bengal Act 18 of 1956, by which the privileges and remedies

under West Bengal Act, 1950, are saved and is therefore unfair and unreasonable.

The applicant tenant therefore prays for fixation of fair rent with retrospective effect and also prays for refund of the excess rent realised by the

landlords from he tenant and for other reliefs as the court may think proper and fit.

4. Before the Rent Controller it was urged, on behalf, of the Petitioner, that his case should be heard u/s 9(1)(a) of the West Bengal Premises Rent

Control (Temporary Provisions) Act, 1950, and evidence was adduced to show that the rental in December, 1941, was payable at the rate of Rs.

47 per month. According to the Petitioner he had a right to apply for standardisation of rent under the provisions of the West Bengal Rent Control

(Temporary Provision) Act of 1950 and such right, according to the Petitioner, was preserved even after the repeal of the Act of 1960, by virtue

of the provisions contained in Section 5 of the West Bengal Premises Tenancy Amendment Act (Act XVII of 1956). The Rent Controller

overruled the contention advanced on behalf of the Petitioner and dismissed the application for fixation of standard rent with the following

observation:

Under Section 5 of the amending Act, 17 of 1956, proceedings or remedy may be instituted with regards to rights, privileges, etc., acquired under

the Act of 1950 and that must relate to the period before such repeal. The fair rent which the applicant wants me to fix will come into force with

effect from the month next following the filing of the application. There is no mandatory provision either in the Act of 1950 or in the Act 12,1956,

to give such fixation with effect from a date prior to the filing of the application for fixation. The present proceeding and fixation that may be made

here will not relate to a period before the repeal of the Act of 1950 and as such Section 5 of the Act 17 of 1956 as relied upon by the applicant is

of no avail to him. I find that the present application cannot be heard under the provisions of the Act of 1950.

If this application is to be heard u/s 8 of the Act of 1956, then there is no material for fixation of fair rent according to the provisions of Section

8(1)(e) of that Act and the application is to be thrown out. At any rate this application is to be rejected.

5. Against the order of the Rent Controller the present Petitioner filed an appeal before the Chief Judge of the Court of Small Causes, Calcutta,

and on the memorandum of appeal affixed court-fee stamps of the total value of Rs. 4 only.

6. The appeal was hared by Shri J.N. Mondal, Judge, 4th Bench, Small Cause Court, Calcutta. At the hearing of the appeal an objection was,

inter alia, taken on behalf of the landlord opposite parties to the effect that the memorandum of appeal did not hear sufficient court-fee stamp. By

his judgment, dated September, 12, 1957, Shri J.N. Mondal dismissed the appeal on its merits. He also gave effect to the preliminary objection as

to the court-fees and observed as follows:

It appears from the record that the Appellant paid court-fees on the valuation arrived at by calculating the rent which he paid in December, 1941

and the rent that is now being paid. But there is no finding that he was actually paying Rs. 47 as rent in December, 1941. There is no dispute as to

the present rate of rent at Rs. 60 per month. But in the absence of any finding as to the rate of rent payable for the disputed premises in December,

1941, I do not think, it is open to the Appellant to value the appeal arbitrarily on the imaginary rent of Rs. 47 per month said to have been paid for

the disputed premises in December, 1941. The memorandum of appeal should have been valued at Rs. 720 and the Appellant should have paid

court-fees thereon in accordance with Article 1 of schedule I of the Court-fees Act. But he has not done so. He is, therefore, directed to pay the

deficit court-fees of Rs. 63 within September 18, 1957, failing which the rent shall be recovered as a public demand and information be sent to the

Collector, 24-Parganas, for realisation of the deficit court-fees.

7. Thereafter, Shri J.N. Mondal suo motu reviewed his judgment, dated September 12, 1957, and save as to his finding and order as regards

court-fees set aside the judgment, dated September 12, 1957. The material portion of his judgment passed on review is quoted below:

The judgment that was delivered in this appeal on September 12, 1957 (as per printed publication on the Daily Cause List of that date), is

reviewed and reconsidered u/s 151 of the CPC in view of some apparent mistake on the face of the judgment. Apparently, the mistake was due to

my indisposition on account of an attack of flu. The memorandum of appeal was found insufficiently stamped. The Appellant was directed to pay

deficit court-fees of Rs. 63 within September 18, 1957. The Appellant not having paid the deficit court-fees, the proper order should have been to

reject the memorandum of appeal, but the order was otherwise for reasons stated above. Therefore for ends of justice I review the judgment and

order and hereby vacate the order of dismissal of the appeal by cancelling the judgment save and except the finding on point No. 2 regarding the

valuation. As the Appellant did not pay the deficit court-fees which he was directed to pay within the specified date, therefore, I reject the

memorandum of appeal on that ground.

8. The order on review was made on November 15, 1957.

This Rule was obtained against both the orders, dated September 12, 1957. and November 15. 1957. The argument was however confined to the

question of court-fees payable on the memorandum of appeal.

9. Under Rule 23 of the West Bengal Premises Tenancy Rules, 1956, court-fee payable on a memorandum of appeal u/s 29 (which provides for

appeal from the final order of the Controller to the Chief Judge of the Court of Small Causes, Calcutta, to the District Judge) shall be such as

provided for in Article I of schedule I of the Court-fees Act. Article I of schedule I of the Court-fees Act provides that on plaint, written

statements, pleading set off or counter-claim or memorandum of appeal or cross-objection not otherwise provided for in the Court-fees Act,

presented to any civil or revenue court, except those mentioned in Section 3 of the Court-fees Act ad valorem court-fees shall be payable. Mr.

Saroj Bagchi, appearing for the Petitioner, argued that Article I schedule I, of the Court-fees Act applied to matters not otherwise provided for in

the Court-fees Act, or, in other words, Article I of schedule I of the Court-fees Act excepted matters for which provisions are to be found in the

Court-fees Act itself. He submitted that an appeal like the present one was governed by Article II of the schedule II of the Court-fees Act and

court-fee of rupee one only was payable on the memorandum of appeal inasmuch as the appeal was presented to the Chief Judge in his capacity

as civil court, against an order which was not a decree or an order having the force of a decree. He admitted, however, that court-fee stamp worth

rupees four was fixed on the memorandum of appeal on no principle whatsoever. Therefore, the real question is what is the exact nature of the

order passed by the Rent Controller, namely, whether the same falls in the category of exception contemplated in Article I of schedule I of the

Court-fees Act, not being a decree or an order having the force of a decree.

10. The Rent Controller is not a court. A proceeding under the West Bengal Premises Tenancy Act for fixation of standard rent is not started as a

suit with the presentation of a plaint but only by way of an application, u/s 10 of the Act. The Rent Controller does not pass a decree; he can only

fix fair rent or increase the fair rent in certain cases. That being the position, unless the analogy of a decree or an order having the force of a decree

is applied to an order passed by the Rent Controller either fixing a fair rent or dismissing an application for fixation of fair rent, such orders do not

fall within Article I of schedule I of the Court-fees Act.

11. When Rule 23 of the West Bengal Premises Tenancy Rules, 1956, laid down that Court-fees payable on memoranda of appeals u/s 29 shall

be such as provided for in Article I of schedule I of the Court-fees Act, what was meant was that the analogy of a decree or of an order having the

force of a decree should be applied to an order passed by the Rent Controller in a proceeding for fixation of fair rent and upon such analogy

Article I, schedule I was made applicable to Court-fees payable on memoranda of appeals u/s 29 of the West Bengal Premises Tenancy Act.

12. Rule 23 of the West Bengal Premises Rent Control Rules, 1950, was almost identical in language with the present Rule 23. In deciding a case

under the West Bengal Premises Rent Control (Temporary Provisions) Act of 1950, reported in Chandmul Agarwalla and Others Vs.

Lachminarayan Dalmia, where a point was raised as to valuation of applications for standardisation of rent a Division Bench of this Court held as

follows:

We have, therefore, to consider three types of cases-cases in which the landlord is the applicant and he expects an enhancement, eases in which

the tenant is the applicant and he expects a reduction and cases where neither enhancement nor reduction is specifically asked for, but what is

asked for is only the settlement of a fair and reasonable rent.

Those being the three varieties of cases which may possibly arise, it is necessary to enquire what principle would apply equally to all of them. One

possible view is that at least in the first two types of cases, the subject-matter of dispute is the difference between the contractual rent and the rent

which the applicant proposes and which he thinks will be the proper rent. In the case of an application by the landlord the subject-matter of dispute

will therefore be the difference between the contractual rent and the enhanced rent which he claims and in the case of an application by the tenant,

it will be the difference between the contractual rent and the reduced amount which, he asserts, would be the fair and reasonable rent; such cases

are not specifically provided for in the Court-fees Act and had the matter been agitated in a suit, the provision applicable would be Article I of

schedule I of the Court-fees Act, read with Section 8 of the Suits Valuation Act. The legislature, however, at least in respect of suits between

landlords and tenants of occupancy lands, seems to have made a departure from the general principle in Section 7(xi) of the Court-fees Act, and,

therefore, suits for enhancement of rent and abatement of rent have been specifically provided for. In both cases, the value is the amount of rent

payable for the year next before the date of presenting the plaint, in other words, twelve times the monthly contractual rent, except in cases where

the rent was varied during those twelve months. It seems to me, therefore, that although the other principle I have referred to appears also to be a

pertinent one, the better course to follow would be to act on the analogy of Section 7(xi) of the Court-fees Act and held that the true valuation of

applications for standardisation of rent would be an amount equivalent to the amount of rent payable for the year next preceding the presentation of

the application, in other words, twelve times the monthly contractual rent, where the rent has been uniform, and, in other cases, the total of the

actual rent for the twelve months. So far as applications of the third type are concerned, the analogy is with suits for the settlement of a fair and

equitable rent and since the value of such suits is the amount of the annual rent claimed, the value of an application of the third type will be twelve

times the contractual rent which, it is presumed, the landlord will desire to have maintained. The principle applicable is thus in effect the same.

13. I am of opinion that the aforesaid principle is also applicable to proceedings for fixation of rent under the West Bengal Premises Tenancy Act,

1956.

14. In the instant case, the tenant applied for a reduction of rent on the allegation that the contractual rent was too high. The valuation of such a

proceeding should he on the authority of the decision in Chandmul Agarwalla and Others Vs. Lachminarayan Dalmia, cited above, governed by

Section 7(xi) of the Court-fees Act and a court-fee calculated on twelve times the contractual rent at Rs. 60 per month was payable on the

memorandum of appeal. The tenant Petitioner failed to pay the amount as directed by the court of appeal below and the memorandum of appeal

was rejected and the appeal was dismissed on that ground.

15. Mr. Bagchi, appearing for the Petitioner, however, urged that the order passed on review was made at a time when the period fixed for

payment of the deficit court-fee had already expired. He, therefore, prayed that sometime be allowed to pay the deficit court-fee. That prayer is

not opposed by the learned advocate for the opposite party.

16. Therefore, although I affirm the order regarding court-fees passed by the court below I set aside the order dismissing the appeal for non-

payment of proper court-fees. I am of opinion that the Petitioner should be allowed time till September 25, 1958, to pay the deficit amount of

Court-fees.

17. I, therefore, modify the order passed by the court below to this extent that on payment of the deficit court-fee as directed by the court below

on or before September 25, 1958, the appeal will be registered and decided on its merits. In default, the appeal shall stand dismissed.

18. This Rule is made absolute to the extent indicated above. There will be no order as to costs.

19. Let this order be communicated to the court of appeal below at once.