(1960) 07 CAL CK 0029

Calcutta High Court

Case No: Civil Revision Case No. 845 of 1960

Bimla Devi	APPELLANT
Vs	
Rash Mohan Chatterjee	RESPONDENT

Date of Decision: July 6, 1960

Acts Referred:

- West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Section 14(4)
- West Bengal Premises Tenancy Act, 1956 - Section 17(1), 17(3)

Citation: (1961) 2 ILR (Cal) 208

Hon'ble Judges: P.N. Mookerjee, J; N.K. Sen, J

Bench: Division Bench

Advocate: Abinash Chandra Bose, for the Appellant;Amarendra Mohan Mitra, Arunendra Nath Basu and Narigopal Ganguli, for the Respondent

Judgement

P.N. Mookerjee, J.

This Rule is directed against an order which, ostensibly, is, in effect, an order, refusing the Defendant-Petitioner''s prayer for adjournment in the pending suit for ejectment, arrears of rent and mesne profits. In the order, however, some opinions have been expressed by the learned Subordinate Judge as to certain aspects of the matter in dispute in the suit between the parties, which might create difficulties in future, and the Defendant Petitioner, feeling aggrieved by those expressions of opinion and also by the rejection of her application for time, has moved this Court and obtained the present Rule.

2. A preliminary objection was at first, taken by Mr. Mitra, to the competency or maintainability of this Rule upon the ground that, in effect, as we have said above, the order, complained against, is nothing more than an order, rejecting a prayer for adjournment. There was, apparently, at least,-much substance in this preliminary objection, but, on further consideration, in the interest of his clients, Mr. Mitra asked us to dispose of this Rule, clarifying certain matters, so that further or future

complications may be avoided and this litigation may not be protracted. We may also say that the purpose of this application was substantially achieved by the issue of the Rule, as the hearing of the suit has, since the date of that issue, remained stayed.

3. The Rule thus, has, practically, served its purpose and it is only necessary that the position in regard to certain matters, which may arise in the course of progress of the suit and its farther stages, should be clarified.

4. The suit ill question, as we have seen above, is a suit for ejectment and recovery of arrears'' of rent and mesne profits. In the, suit, in which there were two Defendants, including the Petitioner at Defendant No. 2, written defence was filed by her alone namely, the present Defendant Petitioner. In the course of the proceedings before the trial court, the Plaintiffs applied for an order u/s 17(3) of the West Bengal Premises Tenancy Act, 1956, for striking out the defence against delivery of possession upon the allegation, inter alia that the requisite deposits u/s 17(1) of the Act had not been made. This application, also, was opposed by the present Petitioner by filing a written objection, contending, inter alia, that from the Plaintiffs'' claim of arrears of rent, should be deducted: a considerable amount on account of cost of repairs of the suit premises, already incurred by or on behalf of the Defendants, and that, on such deduction, the alleged defaults. complained of by Plaintiffs, would disappear.

5. The Plaintiffs'' above application, however, was eventually heard ex parte and it was allowed, striking out the defence, which obviously, meant the defence against the Plaintiffs'' claim for ejectment.

6. Thereafter, the suit was posted for ex parte hearing, presumably so far as ejectment was concerned. The present Defendant Petitioner, however, applied for time on the date, fixed for such hearing, and. this application was rejected by the learned trial Judge and, in the course of his order, he also made certain observations to the effect that, as the Defendant''s claim as to costs of (Sic) as against the arrears of rent had not been accepted in the ex parte order u/s 17(3) of the West Bengal Premises Tenancy Act, 1956, striking out the defence that matter was final as between the parties and could no longer be re-opened in the suit, even at its final hearing as regards the Plaintiffs'' said claim for arrears of rent. Against this order the present Rule was obtained by the Defendant Petitioner.

7. In our opinion, the position in law between the parties should be clarified. The order u/s 17(3) of the West Bengal Premises Tenancy Act, 1956, was passed ex parte and the Plaintiffs'' application under the section was allowed. There is nothing on the present record to show that that order was not properly passed,�of course, on the materials, which were then before the court. In that view, the Petitioner''s defence against ejectment was rightly struck out by the learned trial Judge. So far, therefore, as ejectment is concerned, the Petitioner cannot be permitted to contest

it or to urge any defence against it and the said matter must be decided ex parte. So far, however, as the Plaintiffs'' other claims in the suit are concerned, including the claim of arrears of rent, the Petitioner is certainly not debarred from urging her defence, if any, at the time, when the said matter or matters will be taken up for final hearing by the learned trial Judge. To that extent she must be permitted to urge and prove her defence, if any, at the final hearing of the suit. It must also be made clear, in the interest of both the parties, that, so far as the finding in the Section 17(3) proceeding against the Defendants on the question of their alleged claim for costs of repairs is concerned, that finding cannot properly be considered to be or regarded as final between the parties for purposes of the final hearing of the suit as regards the Plaintiffs'' claim of arrears of rent and mesne profits and the observations of the learned Subordinate Judge on the point, as referred to hereinbefore, are not correct. It must be remembered, in this connection, that the proceeding u/s 17(3) of the West Bengal Premises Tenancy Act; 1956, is in the nature of an interlocutory proceeding for a particular purpose under a particular provision of the statute. It should not be extended or given a wider scope and the decision (finding) in the proceeding must be held to have been given only for purposes of the said proceeding and upon the materials, then placed before the court, and it will be final only so far as that particular proceeding is concerned. It will hardly be proper, to regard a finding in such a proceeding,&#65533;:and this must be kept distinct from the final order or decision in the particular proceeding,-&#65533;on any of the questions, which may otherwise arise in the suit itself, as a final and conclusive decision as between the parties, on that particular question. It may very well be that, at the stage of the Section 17(3) proceeding, a particular party may not have all the materials necessary for a proper and final determination of any of such questions on which the parties have joined issue in the suit, at his disposal, or for some other reasons, such materials may not be placed before the court at that stage. That, however, will hardly be a ground for refusing the party opportunity to produce such materials at the final hearing of the suit, on any such question, provided such question is otherwise open for argument of agitation or open to be urged at such final hearing. So far as we can see, there is no provision in law. which can. debar a particular party from placing such materials for the purpose of a final decision at the time of the final hearing of the suit, on that particular question. Indeed, this was the view which underlay the decision of this Court in the case of Ashalatn Mitra v. A.D. Viz. [1955] 59 C.W.N. 692 and we do not agree that that decision laid down anything to the contrary as held by our learned brother Renunada Mukherjee, J., in Bishnu Charan Mukherjee v. Basudev Banerjee [1957] 99 C.L.J. 72 in similar proceedings u/s 14(4) of the previous Act, namely, the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, and there is nothing in the new Act of 1956 (West Bengal Premises Tenancy Act 1956), which justifies any change or deviation or departure from that position. Indeed, any other view, would be extremely unjust and unreasonable&#65533;-and impractical too,&#65533;and should not be accepted or countenanced by the court.

8. It is to be noted here that the Code contemplates several stages before the suit is ready for hearing and, ordinarily, therefore, a party cannot be compelled to be ready with his evidence for matters in issue in the suit until those stages have been reached or completed. It is to be remembered also that an application u/s 17(3) of the West Bengal Premises Tenancy Act, 1956. alike the similar application under the corresponding provision [Section 14(4)] of the earlier Act, West Bengal Premises Rent Control (Temporary Provision) Act, 1950, was intended to be made, normally, at least, at an early stage of the suit, that is, shortly after the filing of the written statement. In this setting, it is hardly proper or reasonable to expect a party to be ready for the hearing of the issue in the suit at that stage and, in that context and haying regard to the nature, object and purpose of the proceeding u/s 17(3), we are disinclined to treat; it as anything but an interlocutory proceeding in the suit, similar to proceedings for injunction pendent, lite etc. where matters in controversy in the suit fall to be decided only prima facie for purposes of the particular proceeding, and we do not propose to give to any decision (finding) therein finality except for purposes of the said particular proceeding. Any other view would mean, in normal circumstances, if unjust prejudice and serious injustice is to be avoided, a considerable delay in the hearing of the Section 17(3) application, which was hardly the intention of the legislature and which would practically frustrate its object. It is true that the Code contemplates hearing of preliminary issues or hearing of. issues in the suit as preliminary issues but those usually relate to questions of law or are decided on the pleadings or are such as are necessary or more proper and convenient to he taken up for decision as preliminary issues in the sense that their decision one way may render unnecessary the decision of the other issues in the suit, but. even then, they must be heard and decided as issues in the suit with due notice to the parties as to that aspect of. the m,atter and not in or as part of an incidental or interlocutory proceeding.

9. It is important also to Dear in mind in the above connection, that a decision in a Section 17(3) proceeding would, on the authority of Sm. Ashalata Mitra Vs. A.D. Viz, be unappealable, which may well justify the view that such a proceeding is intended to be or should be regarded or dealt with as a summary proceedings so as to exclude the application of the rule of res judicata, or finality of decision except for purposes of the said proceeding.

10. In the light of the forgoing discussion, we would hold that the contrary opinion, expressed by the learned Subordinate Judge, is not correct. We would also add with respect that the view of Renupada Mukherjee J., on this particular aspect under and in relation to the corresponding provision [Section 14(4)] of the 1950 Act as expressed in the case of Bishnu Charan Mukharjee v. Basudev Banerjee (supra) is also open to the same criticism and to the further criticism that the reasons, given by the (Renupada Mukherjee J.) at p. 75 (11. 26-34) of the report, do not necessarily lead to or support his conclusion on the point recorded by him (vide P. 34-39 or the same page), apparently as a corollary.

11. It may be pertinent also to point but that our learned brother Renupada Mukherjee, J., throughout proceeded on the assumption that in the case before him a preliminary issue in the suit had been decided by the order in question, whereas in fact, that order, or the decision it embodied or purported to embody did not appear to have been given at all from that that of view. It will, of course, be wholly different, if, actually, a preliminary issue in the suit is decided, that is, an issue in the suit, taken up for hearing as a preliminary issue, along with the application u/s 17(3), involving inter alia the same question.

12. In the above view, we would bold that the instant case would have to go back to the learned Subordinate judge for an ex parte hearing of the Plaintiffs'' suit, so far as ejectment is concerned, and for hearing according to law in the presence of both parties, so far as the other claims of the Plaintiffs are concerned, in the light of the observations, made in this judgment.

13. As the matter is one of some urgency, the learned ''Subordinate Judge will take steps for an expeditious hearing of the suit, so far, at least, as ejectment is concerned, if there be any insuperable difficulty in the immediate or early hearing out of the suit as a whole, that is, on the other point or points as well.

14. Costs of this Rule will abide the final result of the Suit, hearing-fee being assessed at three gold mohurs.

N.K. Sen, J.

15. I agree.