

(1954) 06 CAL CK 0020

Calcutta High Court

Case No: Civil Revision Case No. 2282 of 1953

Pran Ballav Saha

APPELLANT

Vs

Subodh Kumar Talukdar

RESPONDENT

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**Date of Decision:** June 15, 1954**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 43 Rule 1, Order 9 Rule 13, 104(1), 106, 4
- West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Section 16, 16(1), 32, 32(6), 47

**Citation:** 58 CWN 910 : (1956) 1 ILR (Cal) 362**Hon'ble Judges:** Debabrata Mookerji, J; Das Gupta, J**Bench:** Division Bench**Advocate:** Monohar Saha, for the Appellant; P.N. Mitra and Pashupati Ghosh, for the Respondent

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**Judgement**

Das Gupta, J.

This Rule came up for hearing before Chunder, J., who has referred it to a Division Bench. The Petitioner was the Defendant in a suit for ejectment instituted u/s 16 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950. The suit was decreed ex parte on November 4, 1952. He filed an application purporting to be under Order IX, Rule 13 of the Code of Civil Procedure. The learned Judge was of opinion that "summons was served and "that the Defendant was aware of the ejectment suit", and that "the application is hopelessly barred by limitation". Accordingly, he dismissed the Defendant-Petitioner's application. Against that decision the Petitioner preferred an appeal". The learned Judges who heard the appeal were of opinion that court was not competent to hear any appeal excepting that which fell u/s 32 of the West Bengal Premises Rent Control (Temporary Provisions) Act of 1950 and, accordingly, they dismissed the appeal.

2. In *Sahadat Khan v. Mahammad Hossain* (1953) 57 C.W.N. 948, Das, J., held that Order IX, Rule 13 of the CPC was applicable to suits filed u/s 16 of the Rent Control Act of 1950, that an order rejecting such an application was appealable u/s 104(1)(i) read with Order XLIII, Rule 1, Clause (d) of the Code and that in view of the provisions of Section 106 of the Code, the appeal would lie to the court Specified in Section 32(6) of the Rent Control Act of 1950.

3. Chunder, J., however, felt that proper weight had not been given to the provisions in Section 47(2)(g) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, and that it was desirable that the question whether any appeal would lie against such an order as was passed by the Judge on the application purporting to be under Order IX, Rule 13 of the Code of Civil Procedure, that the ex parte decree be set aside.

4. In considering the question whether an appeal would lie against an order on an application seeking to have a decree in a suit u/s 16 set aside, it is important to bear in mind the principle that has been laid down in the case of (1947) L.R. 74 I.A. 264 (Privy Council) , in these words:

The true rule is that where a legal right is in dispute and the ordinary courts of the country are seized of such dispute, the courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, if authorised by such rules notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal.

5. This principle has been applied by the Supreme Court in the case of *National Sewing Thread Company Ltd. v. James Chadwick and Bros. Ltd.* (1953) S.C.A. 610.

6. The fact that the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, does not itself sneak of any appeal from an order rejecting an application to set aside an ex parte decree is, therefore, no reason to think that such an appeal would not lie. The question whether such an appeal would lie would depend upon the fact whether under the ordinary rules of procedure applicable to the courts to which the matter is entrusted by the special Act an appeal would lie. The necessary consequence of the application of the principle laid down in *Adaikappa's* case is that an application under Order IX, Rule 13 of the CPC will lie against an ex "parte decree in a suit u/s 16 of the Rent Control Act, 1950, and an appeal will lie against an order rejecting an application under Order IX, Rule 13 of the Code of Civil Procedure, in the same manner as they lie in such cases in suits before the ordinary civil courts of the country.

7. The question has been raised whether Section 4 of the CPC read with Section 47(2)(g) of the Rent Control Act in any way affects the application of the above principle. The relevant portion of Section 4 of the CPC is in. these words:

In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

8. Section 47 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, provides in its first Sub-section for the making of rules by the State Government for carrying out the purposes of this Act and in the second Sub-section provides:

In particular and without prejudice to the generality of the power mentioned in the first Sub-section such rules may, provide for several matters including the procedure to be followed in inquiries under this Act, by the Controller, the Chief Judge of the Court of Small Causes of Calcutta and the District Judge.

9. If any rule had been made by the State Government as regards the procedure to be followed in connection with trials of suits u/s 16, the position might well have been that in so far as any special procedure of appeal was provided or it was provided that no appeal would lie against certain orders, those special rules would prevail over the corresponding rules in the Code of Civil Procedure. In fact, however, no such rules have been made.

10. It is worth mentioning also that while the generality of the rule-making power in Sub-section (1) seems to carry with it the power to make rules as regards trials of suits u/s 16 also the special provision in Sub-section (g) of Section 47 speaks of only rules for the procedure to be followed in "inquiries" under the Act. In my view, the words "inquiries under the Act" do not include trials u/s 16. As regards the power to make rules prescribing the procedure for trials also which should be held to be included in Sub-section (1) of Section 47, the fact that Clause (g) of Sub-section (2) thereof mentions "inquiries" and not trials is not of much consequence. The fact remains that no procedure has been prescribed in connection with the trials of suits u/s 16. So long as no such procedure is prescribed, I cannot see how Section 4 of the CPC can stand in the way of the application of the principle laid down in *Adaikappa's* case.

11. I would, therefore, respectfully agree with the view taken by Das, J., in *Sahadat Khan's* case and hold that an appeal does lie from an application to get aside an *ew parte* decree passed in a suit u/s 16 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, and that in view of the provisions of Section 106 of the Code of Civil Procedure, the appeal lay to the court specified in Section 32(6) of the Act.

12. I would, therefore, make this Rule absolute, set aside, the order passed by the learned court below and send the case back to the court with the directions that the appeal be disposed of in accordance with law.

13. The hearing of the appeal should be expedited.

14. There will be no order as to costs.

Debabrata Mookerjee, J.

15. I agree.