

(1956) 02 CAL CK 0014

Calcutta High Court

Case No: Civil Revision Case No. 2780 of 1955

Bimal Chatterjee, Landlord

APPELLANT

Vs

Annada Prosanna Bhaduri,
Tenant

RESPONDENT

Date of Decision: Feb. 22, 1956

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115, 141, 144, 151

Citation: 60 CWN 867

Hon'ble Judges: Bachawat, J

Bench: Single Bench

Advocate: Nagendra Mohan Saha and Birendra Nath Banerjee, for the Appellant; Bijan Behari Das Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Bachawat, J.

This revision petition is directed against an order of the Subordinate Judge, Tenth Court, Alipore, ordering refund of Rs. 1287-7-0 under sections 151 and 141 of the CPC read with section 32(5) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950. The dispute relates to SO, Station Road, Dhakuria, of which the petitioner is the landlord and the opposite party is the tenant. The contractual rent was Rs. 1301- per month. On February 25, 1949 the tenant applied for fixation of the standard rent and for refund and adjustment of the amount paid in excess. On November 7, 1949 the Rent Controller fixed the standard rent at Rs. 97-8-0. On the 10th July, 1950 on appeal the Additional District Judge fixed the standard rent at Rs. 48]- per month. On January 30, 1951 this court set aside both the orders and remanded the case to the Rent Controller for retrial. On September 9, 1952 the Rent Controller fixed the standard rent at Rs. 27-8-0 with effect from March, 1949 and directed adjustment of the excess rent paid from March, 1949 against future rent. On January 14, 1953 on appeal the District Judge fixed the standard rent at Rs.

30-13-0 with effect from March, 1949 and directed adjustment of the excess rent paid from the 1st April, 1950 against future rent. This court upheld the order in revision. On February 14, 1953 the tenant deposited with the Rent Controller Rs. 1078-7-0 towards rent for 35 months from April, 1950 to February, 1953.

2. The tenant next applied to the Rent Controller for an order directing the landlord to refund Rs. 1287-7-0 on the ground that the landlord had recovered that sum in excess of the legal rent for the period from March, 1949 to March, 1950.

3. The learned Rent Controller has found that the tenant had deposited rent at Rs. 1301- per month during the period from February, 1949 to November, 1949. He also found that again up to March, 1950 the tenant deposited rent at the rate of Rs. 1301- per month. It appears, therefore, that the excess rent of which the tenant claims refund was paid during the period from February, 1949 to November, 1949 and again during the period from December, 1949 up to March, 1950.

4. By virtue of section 17(1) read-with section 3 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, the amount paid in excess of the standard rent made on or after the 31st March, 1950 on account of rent from April, 1950 is irrecoverable. In other words, under the 1950 Act the standard rent takes effect for purposes of refund and adjustment from the 1st April, 1950 (See *Nirmal Chandra Dutta v. Gopal Chandra Dey* (1) (56 C.W.N., p. 291, 296). Again the landlord may be directed to refund the amount received in excess of the standard rent only on an application made to him within a period of six months from the date of such payment u/s 7 of the 1950 Act. The Rent Controller has no power u/s 7 to direct refund of the excess amount if the application is made after the expiry of six months from the date of the payment.

5. On the facts of the case clearly the tenant was not entitled to refund of the excess amount u/s 7 because the excess payment was made in respect of the rent for the period prior to the 1st April, 1950 and also because the application was made long after the period prescribed by section 7.

6. Section 7, however, does not limit the powers of the Rent Controller to direct restitution of the benefits received under an erroneous order which has been subsequently reversed or modified.

7. The tenant has, therefore, invoked the inherent powers of the Rent Controller and asked for restitution of the sums alleged to have been paid by the tenant under the colour of the erroneous order passed by the Rent Controller and dated November 7, 1949.

8. If the excess payments were, in fact, made on the footing and under the colour of erroneous orders passed by the Rent Controller I am clearly of the opinion that the order of the learned District Judge, dated the 14th January, 1953 does not bar the present application. That order was passed on an application which asked for refund

of the excess amount paid on the footing of the subsisting contract. In the previous application restitution was not asked for on the basis that the monies were paid on the footing of the erroneous orders and the order dated the 14th January, 1953 cannot and does not bar the present application

9. The principles on which courts of law grant restitution are well-known and admit of no doubt. In the case of *Jai Berham v. Kedar Nath Marwari* (2) (L.R. 49 I.A., 351 at page 356) their Lordships of the Privy Council said: "It is the duty of the Court u/s 144 of the CPC to place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed. Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the court to act rightly or fairly according to the circumstances towards all parties involved. As was said by Cairns, L.C., in *Rodger v. Comptoir D'Escompte de Paris* "one of the first and highest duties of all courts is to take care that the act of the court does no injury to any of the suitors x x x". " This principle was reiterated and followed by the Supreme Court in the case of [Lal Bhagwant Singh Vs. Rai Sahib Lala Sri Kishen Das](#), .

10. It is the duty of every court to see that its act does no injury to the suitors and to undo any wrong which may have been caused to any suitor by an error of the court. This principle has been extended to the Rent Controller (See Civil Revision Case No. 2751 of 1954-- *Chowringhee Properties Ltd. v. Bengal Stores Ltd.*, (4) (Since reported in 60 C.W.N. 584--Ed.) and [Ram Prosad Rajgharia Vs. British Insulated Callender's Cables Ltd.](#), .

11. The suitor is entitled to be placed in the same position which he would have occupied but for the decree or the order which had been subsequently varied, reversed or modified. The suitor is entitled to claim restitution of any property which has been recovered from him in execution of the erroneous decree. Even if the property has not been recovered in execution of the erroneous decree the suitor is entitled to restitution of the property if such property has been recovered out of court under the colour of the erroneous decree. The person claiming restitution must, however, establish that the property of which he seeks restitution has been received by the other party in execution of the erroneous decree or otherwise under the colour of the erroneous decree. If the applicant has not been made to part with the property under the colour of the erroneous decree, he cannot ask for restitution of the property either u/s 144 of the CPC or under the inherent powers of the Court.

12. On the facts found by the Subordinate Judge it is impossible to hold that the tenant applicant was made to part with the excess rent on the strength and under the colour of the erroneous order dated November 7, 1949. The payments complained of were made during two periods. The payments of rent for the period February, 1949 to November 1949 were made before the date of the erroneous order. These payments, therefore, can by no stretch of imagination be said to have been received by the landlord under the colour of the erroneous order. During the

second period of December, 1949 up to March, 1950 the tenant again paid rent at the contractual rate of Rs. 130/- per month. It is true that before such payments were made the Rent Controller had passed an order fixing the standard rent at Rs. 97-8-0 per month on the 7th November, 1949. The learned Rent Controller has, however, not found that the payments at the rate of Rs. 130/- per month were made on the basis and on the footing of the erroneous order. The order fixed standard rent at Rs. 97-8-0 per month whereas the tenant paid at a higher rate, namely at the rate of Rs. 130/- per month. The payments were made voluntarily at the contractual rate and not under the compulsion of any order.

13. The learned Subordinate Judge has found that in view of the excess payments the tenant subsequently refrained from depositing rent until February, 1953. This consideration is entirely immaterial on the question under consideration. It is clear that the several payments were not made and received on the footing of an erroneous order of the Rent Controller.

14. The tenant is, therefore, not entitled to invoke the inherent jurisdiction of the Subordinate Judge and ask for restitution of the excess payments on the footing that they were received by the landlord under the colour of an erroneous order.

15. The cases relied upon by the landlord are entirely distinguishable.

16. In *Ram Prosad Rajgharia v. British Insulated Callendar's Cables Ltd.*, (5) (57 C.W.N. 540) the contractual rent was Rs. 650/- per month. The Rent Controller fixed the standard rent at Rs 920-8-0 per month from August, 1949. On appeal the order fixing the standard rent was set aside and the application for fixing the standard rent was dismissed. Meanwhile the landlord had realised rent at the rate of Rs. 920-8-0 from August, 1949 to July, 1950. The excess realised amounted to Rs. 3246/-. It is clear on the facts that the excess could not have been realised but for and except on the erroneous order fixing the standard rent. The claim of Rs. 920-8-0 had no existence apart from the erroneous order and the excess payment was, therefore, clearly recoverable on the strength and under the colour of the erroneous order.

17. In Civil Revision Case No. 2751 of 1954 *Chowringhee Properties Ltd. v. Bengal Stores Ltd.* (4) the contractual rent was Rs. 1540/- per month. The contractual rent though not mentioned in the judgment of the Division Bench will appear from the original records and the judgment of the lower court. On applications made both by the landlord and the tenant in August, 1949 the Rent Controller fixed the standard rent at Rs. 1820/- per month with effect from the 1st July, 1949. On the 2nd June, 1950 the Appellate Authority fixed the standard rent at Rs. 1820/- with effect from the 1st July, 1949 and Rs. 14951- per month with effect from May, 1950.

18. These orders were set aside and on remand on the 10th June, 1952 the Chief Judge, Small Causes Court, fixed the standard rent at Rs. 1265/- per month with effect from August, 1949.

19. A Division Bench of this Court found that the tenant had paid the entire sum due from July, 1949 to April, 1950 at the rate of Rs. 1820/- per month and the entire amount due from May, 1950 to June, 1951 at Rs. 1495/- per month. These payments were received by the landlord under the colour of erroneous orders and accordingly the Division Bench decided that the Rent Controller rightly directed restitution of the excess payments received by the landlord.

20. The learned Subordinate Judge misconceived and misapprehended the true question to be decided in this case. Without finding that the excess payments were received under the colour of an erroneous order he has directed restitution under his inherent powers. This court has clearly powers to revise his orders u/s 115 of the Code of Civil Procedure. I pass the following order. The Rule is made absolute. I set aside the order of the Subordinate Judge, dated the 11th August, 1955 and restore the order of the Rent Controller, dated the 12th August, 1954. The opposite party must pay to the petitioner the costs of this application.