
94 CWN 1069

Calcutta High Court

Case No: C.O. 617 of 1988

Kalipada Sinha

APPELLANT

Vs

Dilip Kumar Mondal

RESPONDENT

Date of Decision: April 19, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 4, 115, 144, 151
- West Bengal Premises Tenancy Act, 1956 - Section 17(1), 17(2), 17(2A)(b), 2, 2(h)

Citation: 94 CWN 1069

Hon'ble Judges: Niren Mitra, J

Bench: Single Bench

Advocate: S.P. Ghosh and A.K. Bhattacharya, for the Appellant; Tarun Chatterjee and Jiban Ratan Chatterjee, for the Respondent

Judgement

Niren Mitra, J.

The opposite party filed Ejectment Suit No. 257 of 1982 against the petitioner for his eviction from the suit premises in the City Civil Court at Calcutta on the ground of default and for the act of nuisance and annoyance. The petitioner contested the said suit by filing written statement denying and disputing the allegations as made in the plaint and also filed applications under Sections 17(2) and 17(2A) (b) of the West Bengal Premises Tenancy Act, 1956, raising therein inter alia the dispute regarding relationship of landlord and tenant between the parties. Before the disposal of the said applications under Sections 17(2) and 17(2A)(b) the said suit was decreed ex parte in June 1982 and the petitioner was dispossessed in February, 1983 with the help of the police from the disputed premises. Subsequently, on an application under Order IX Rule 13 of the CPC filed by the petitioner for setting aside the said-ex-parte decree, which was registered as Miscellaneous Case No. 165 of 1983, the trial court set aside the said ex-parte decree and restored the suit to file. Thereafter the petitioner filed an application u/s 151 of the CPC in the trial court praying for an injunction restraining the opposite party from transferring, and/or letting out the suit premises and obtained an interim order on 23rd

February, 1983. An application u/s 144 of the CPC was also filed by the petitioner for restoration of possession in respect of the suit premises which gave rise to Misc. Case No. 982 of 1983 and the same was ultimately allowed on 5th February, 1986. Ore Rabi Dey, however, filed a title suit in the City Civil Court at Calcutta making petitioner and the opposite parties herein as parties in the said suit inter alia, for declaration that he was a tenant in respect of the disputed premises since 8th February, 1983 and also for injunction restraining the petitioner from executing the order passed on his application u/s of the CPC as referred to above and brained an ad-interim order. The petitioner filed an application under Order XXXIX Rule 4 of the CPC in the said suit subsequently, and at the time of moving the present revisional application the said application was still pending. After the suit was restored to file, the learned Judge by the impugned order dated 4th of August, 1985 disposed of the aforesaid application u/s 17(2) and 17(2A)(b) filed by the petitioner holding inter alia, that there was relationship of landlord and tenant between the parties and the petitioner was a defaulter in payment of rents since January, 1981, to 6th February, 1983 as the petitioner admittedly was dispossessed from the suit premises on 7th February, 1983. Mr. Ghosh, learned Advocate for the petitioner in this present Civil Order, has challenged the impugned order contending inter alia, that the findings arrived at by the learned judge of the court below that there was relationship of landlord and tenant between the parties is based on surmises and conjectures and on a clear mis-appreciation of the facts and circumstances of the case and that the period of default as calculated by the learned Judge was also not properly decided inasmuch as, the moment an ejectment decree was passed against the petitioner in respect of the disputed premise, he ceased to be a defaulter still he was evicted from the suit premises in tenant in respect thereof and as such, even if, he was a defaulter in payment of rent, he could not, in such circumstances of the case, be held to be a execution of the said decree and his liability to pay rent u/s 17(1) and 17(2) of the West Bengal Premises. Tenancy Act also ceased to exist from the date of the said ejectment decree and it only revived after the said decree was set aside. In support of his said contention, Mr. Ghosh refers to a decision of this Hon"ble Court in the case of Lakhpart Rai Marwari v. Radheshyam. (69 C.W.N. 858).

2. Mr. Chatterjee, learned Advocate, appearing for the opposite parties, however, has supported the impugned order on the basis of the Special bench decision of this Hon"bie Court in [Srinivas Sureka Vs. Madanlal Sekhsaria and Others](#),

3. Having heard the learned Advocates for the parties, so far as the finding of the learned trial judge regarding the question of relationship of landlord and tenant between the parties, I find on reason to interfere u/s 115 of Code of Civil Procedure. Regarding the last submission of Mr. Ghosh however, I am of the view that the leaned judge of the court below had acted with material irregularity and also in excess of his jurisdiction in holding that the petitioner was liable to pay rent, even after the ejectment decree was passed against, him still he was actually dispossessed from the suit premises.

4. The word "tenant" has been defined in Section 2(h) of the West Bengal Premises Tenancy Act, 1956 as follows:

2(h) "tenant" (means) any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be payable and (includes any person continuing in possession after the termination of his tenancy or in the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death) but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction.

5. From the above definition it is quite clear that a tenant shall not include a person against whom an ejectment decree has been passed. Accordingly, the moment an ejectment decree is passed against a tenant, he ceases to be a tenant and also is not liable to pay rent for the disputed premises under Sections 17(1) or 17(2) of the West Bengal Premises Tenancy Act, 1956, in other words, his liability under the said Sections also ceases from that moment and it only revives if the said ejectment decree is set aside and the suit is restored to file. Reference may be made to the several decisions of this Hon"ble Court on this issue in the cases of Kanatlal Dutta v. Kanailal Patra (67 CWN. 334); Radharani Dassi v. Angurabala Dassi (67 CWN. 501) and Lakhpat Rai Marawari v. Radhashjam (69 CWN 858).

6. So far as the Special Bench decision in Srinivas Sureka (supra) is concerned, the said decision, in my view, does not support Mr. Chatterjee in any way as the facts of that case were quite different. On the contrary, some of the observation of the Special Bench made in that decision, however, may be held to be supporting Mr. Ghosh's contention on the question of the liability of a tenant to pay rent in terms of Section 17(1) of the West Bengal Premises Tenancy Act, 1956 after the tenant suffered an ejectment decree inasmuch as The Hon"ble Mr. Justice Sabyasachi Mukherji (as His Lordship then was) delivering the judgment in that case, held inter alia in paragraph 6 at page 17 of the said decision as follows:

The liability u/s 17(1) is the liability of the tenant as defined in clause (h) of Section 2 of the Act. Taking the scheme of the Act and construing the expression used in the light of the above considerations, it appears to us that the liability u/s 17(1) to deposit rent does not continue during the pendency of the appeal after a decree for eviction has been passed even though the tenant continues to be in possession by virtue of an order of the appellate court during the pendency of the appeal.

The Special Bench in the said decision also relied on all the above decisions in the cases of Kamiial Dutta (supra), Radharani Dassi (supra) and Lakhpar Rai Marwari (supra). In such view of the matter, the finding of the learned judge of the court below that the petitioner is liable to pay rent, even if the ejectment decree was passed, upto the date when he was actually dispossessed from his tenancy, cannot be sustained in law and is, therefore, set aside and the matter is remanded back to the learned judge for re-hearing

of the applications under Sections 17(2) and 17(2A)(b) of the West Bengal Premises Tenancy Act, 1956, in the light of the observations made above and the learned judge shall make all endeavours to dispose of the same at an early date preferably within three months from the date of communication of this order.

The Civil Order is disposed of as above without any order as to costs. Let this order be communicated to the court below forthwith.