(1955) 07 CAL CK 0026

Calcutta High Court

Case No: Civil Revision Case No. 559 of 1955

National Model Industries Ltd.	APPELLANT
Vs	
Birendra Nath Mitra and Others	RESPONDENT

Date of Decision: July 22, 1955

Citation: 60 CWN 547

Hon'ble Judges: Guha, J; Das Gupta, J

Bench: Division Bench

Advocate: Jitendra Kumar Sen Gupta and Rabiranjan Das Gupta, for the Appellant;Rabindra Nath Mitra and Indu Bhusan Ghose, for the Respondent

Judgement

Das Gupta, J.

This Rule is directed against an order under sec. 14(4) of the West Bengal Premises Rent Control Act. The main objection of the tenant to the landlord''s prayer for the order under sec. 14(4) of the Act with which we are concerned now is that there should be suspension of rent because of the landlord''s failure to carry out repairs which were necessary to make the premises habitable or useable except with great inconvenience. That a portion of the premises was in need of such repairs is no longer disputed. The learned Subordinate Judge has, however, held that the tenant is not entitled to suspension of rent because of the landlord''s failure to carry out the repairs and has directed the tenant to deposit an amount of Rs. 4631-12-0 as arrears of rent within fifteen days of the order and Rs. 143-12 annas per month as rent with effect from February, 1955, by the 15th of the following month. The first question for consideration therefore is whether tenant is entitled to suspension of rent because of the landlord''s failure to carry out the repairs. Before the enactment of section 38 of the West Bengal Premises Rent Control Act the landlord, in the absence of any agreement, express or implied, had no legal liability to carry out repairs. In the present case no such agreement is alleged. The only liability of the landlord is, therefore, u/s 38(3) of the West Bengal Premises Rent Control Act which provides that the landlord shall be bound to make such repairs without which the

premises are not habitable or useable except with great inconvenience. The landlord did not carry out the repairs and the tenant has obtained an order from the Rent Controller for carrying out the repairs himself as provided in the second sub-section of section 38 of the Act. The statute in imposing this liability of making certain repairs on the landlord has not said anything as to the remedy available to the tenant if the landlord does not carry out the repairs. In the second sub-section it has provided that where after the service of notice the landlord neglects to make repairs within a reasonable time, the tenant may apply to the Rent Controller for permission to make repairs and the Controller, after giving the landlord an opportunity of being heard and on considering the estimate of cost which the tenant has to submit along with his application, may permit the tenant to make such repairs "at a cost not exceeding such amount as may be specified in the order." The sub-section goes on to say, "it shall thereafter be lawful for the tenant to make such repairs..... and to deduct the cost thereof which shall in no case exceed the amount so specified from the rent or otherwise recover it from the landlord." A limit of one-twelfth of the rent payable by the tenant for the year is put on the amount which can be recovered except in cases of repairs which come within the third sub-section.

2. It is argued on behalf of the opposite party that the provision in the second sub-section of sec. 38 that the Rent Controller may allow the tenant to make the repairs and thereafter it shall be lawful for the tenant to deduct the cost of repairs from the rent or otherwise recover it from the landlord, is the sole remedy that is available to the tenant. It is well settled that where a new right is created and a remedy provided by the same statute for infringement of that right, the Courts should treat that remedy as the sole remedy available unless in the words of the statute it can reasonably be held that the legislature intended the ordinary remedies under the general law for infringement of such right to continue to be available. It is hardly necessary to consider this principle of law in the present case, as I do not think it is correct to say that what the second sub-section provides is really a remedy for infringement of the right. Clearly, it provides only a convenient mode of enforcing the right. The provision that the cost of the repairs can be recovered by deduction from the rent or otherwise has nothing to do with the injury caused by the infringement of the right. The fact that repairs are ultimately carried out does not undo the damage caused during the time-which may be considerable-when the repairs had not been done. It is therefore not possible or proper to consider the provisions in the second sub-section of section 38 to provide a remedy for the infringement of the right, created by the third subsection. I have therefore, come to the conclusion that if under the general law the tenant was entitled to suspension of rent for failure of the landlord to carry out repairs which he was bound in law to do, this remedy will be available to the tenant in respect of the failure of the landlord to carry out repairs coming u/s 38(3) of the West Bengal Premises Rent Control Act.

3. I find it impossible to hold, however, that the general law gives any such remedy to the tenant. Even before section 38(3) of the Act laid it down to be the duty of the landlord to carry out certain repairs to the premises, the landlord would have been bound in law to carry out such repairs as agreed upon as a term of the tenancy. There does not appear to be a single case where any court in this country has held that failure to carry out repairs which the landlord was bound to do under the covenant would entitle the tenant to suspension of rent. Mr. Sen Gupta cited a number of cases which have dealt with the question of suspension or abatement of rent in cases of the landlord''s failure to give possession of land or his later dispossessing the tenant from a part of the premises. He has argued that this principle certainly applies equally to house property and has tried to persuade us that if as the result of the failure to do the repairs the tenant lost beneficial use of the whole or part of the premises, the rent should be suspended or, at any rate, there should be proportionate abatement of rent. There is no doubt that in the case of house property, no less in those of lands if there is eviction by the landlord, the tenant will be entitled to either total suspension of rent or abatement of rent. There is, however, an essential difference between the failure to give possession of the property leased or eviction by the landlord from the property leased and the failure to carry out repairs. I do not think that it will be proper to consider the landlord''s failure to carry out repairs as an act of eviction of the tenant, even though the result may be that the tenant is, unable to use the premises. I see, therefore, no escape from the conclusion that the liability to pay rent continues even though repairs u/s 38(3) of the West Bengal Premises Rent Control Act have not been carried out. It is certainly not the position that the tenant is without any remedy whatever. If as will often be the case, the tenant has suffered injury by reason of the landlord''s failure to carry out repairs which he is bound to do, the tenant will in appropriate proceedings be entitled to recover damages in compensation for the same.

4. This question was considered in English in the case of Hart v. Rogers (1) (1916) 1 K.B. 646] and the Court came to the conclusion that the only remedy in such cases was a suit for damages. For the reasons mentioned above, I have come to the conclusion that the tenant is not entitled to suspension or abatement of rent in the present case.

5. Clearly, however, the Court in ascertaining what amount is due as arrears of rent has to take into account the provisions of the second sub-section of section 38 under which the tenant is entitled to deduct from the rent the cost of the repairs made by him. It appears that under an order of the Rent Controller directing repairs which fall u/s 38(3) to be carried out at a cost not exceeding Rs. 2308-3 annas, the tenant has started the repair work. We are informed that the repairs or, at least, the greater part of the same, has been completed. In that case an amount, not exceeding Rs. 2308-3 annas, which has been spent by the tenant in doing the repairs should be credited towards the rent of the premises. The court which has to calculate the amount due is bound to ascertain for that purpose the amount which

should be credited towards rent in accordance with the provisions of the second sub-section of section 38 of the Act. As this has not been done, I think it necessary that the case should be sent back to the court below for ascertaining the amount for the purpose of finding out the arrears of rent that should be ordered to be deposited u/s 14(4) of the Rent Control Act.

6. I would, therefore, set aside the order of the court below and direct that the application u/s 14(4) be dealt with by it in accordance with law in the light of the above directions. I make no order as to costs in this Rule.

Guha, J.

I agree.