

(1995) 11 CAL CK 0033

Calcutta High Court

Case No: None

Ram Balak Shaw

APPELLANT

Vs

Ramanath Pandey

RESPONDENT

Date of Decision: Nov. 28, 1995

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 47, 47(3)
- West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Section 13(2)
- West Bengal Premises Tenancy Act, 1956 - Section 12(1), 13(2), 13(3), 13(4), 14

Citation: (1997) 2 ILR (Cal) 542

Hon'ble Judges: Tarun Chatterjee, J

Bench: Single Bench

Advocate: P. Mukherjee and M. Chakraborty, for the Appellant; Nihar Chatterjee, for the Respondent

Final Decision: Dismissed

Judgement

Tarun Chatterjee J.

1. This revisional application is being moved with notice to the learned advocate for the caveator.
2. This revisional application is moved against an order passed by the learned Judge, 3rd Bench, City Civil Court, Calcutta rejecting an application for stay of all further proceedings in Execution Case No. 134 of 1992 till the disposal of an objection filed by the Petitioner u/s 47 of the CPC which has given rise to Misc. Case No. 2425 of 1995.
3. The opposite party No. 2 as a Plaintiff instituted a suit against the opposite party No. 1 for his eviction in respect of premises No. 90/1A, Indian Mirror Street, Police Station, Taltala, Calcutta 700 013 (hereinafter referred to as the said premises). The said eviction suit was decreed in favour of the opposite party No. 2. An execution

proceeding being Execution Case No. 134 of 1992 has been started at the instance of the decree holder/opposite party No. 2. Challenging the excitability of the said decree for eviction passed against the tenant/opposite party No. 1/Petitioner has filed an objection u/s 47 of the CPC which has given rise to as noted hereinabove, Misc. Case No. 2425 of 1995. In the objection u/s 47 of the CPC the Petitioner has alleged that he is a monthly tenant in respect of one room on the second floor of the said premises at a monthly rental of Rs. 50 payable according to English calendar month under the judgment debtor/opposite party No. 1. From the objection-petition it is evident that the Petitioner has claimed that he was inducted as a sub-tenant by the tenant/opposite party No. 1 on and from March 1, 1980. It is also evident from the said objection that due intimation of the creation of the sub-tenancy in favour of the Petitioner was given to the landlady the present decree holder/opposite party No. 2 as such it must be said that sub-tenancy was within the knowledge of the decree holder/opposite party No. 2. Therefore, the Petitioner being a representative of the original tenant within the meaning of Section 47 of the CPC is entitled to raise the question of excitability of the decree passed against the tenant opposite party No. 1. An application for stay of the execution proceeding was filed by the objector/Petitioner till the disposal of the aforesaid Misc. case filed u/s 47 of the Code of Civil Procedure. By the impugned order, as noted hereinabove, the said petition was rejected.

4. Feeling aggrieved by this order of the Executing Court, the Petitioner has come up to this Court in revision.

5. I have heard Mr. Mukherjee, the learned advocate for the Petitioner and Mr. Chatterjee the learned advocate for the decree holder/opposite party No. 2 at length and after going through the materials on record and also after giving my anxious considerations to the submissions made on behalf of the respective parties I am of the view that the learned Judge was perfectly justified in rejecting the application for stay of the aforesaid execution case till the aforesaid Misc. case filed u/s 47 of the CPC by the Petitioner was disposed of.

6. The reasons are as follows:

Mr. Mukherjee appearing for the Petitioner submits that the Executing Court has acted illegally and with material irregularity in the exercise of his jurisdiction in rejecting the prayer for stay of all further proceedings in the aforesaid Execution case till the disposal of the Misc. Case filed u/s 47 of the CPC on a finding that as the Petitioner was admittedly alleging to be a sub-tenant under the tenant/ judgment debtor/opposite party No. 1 and since there was no iota of evidence to show that the Petitioner being a sub-tenant had given any notice of such sub-letting to the landlord of the premises and that the landlord had also consented to such sub-letting in writing, the exceptions provided in Sub-sections (2) and (4) of Section 13 of the West Bengal Premises Tenancy Act (hereinafter referred to as the "Act") were wanting and therefore, the mischief enjoined under Sub-Section 3 of Section

13 of the Act had come into play and accordingly the decree passed in the aforesaid ejectment suit in question must be binding on the Petitioner as he was alleging to be a sub-tenant under the tenant. Mr. Mukherjee next contends, relying on a single bench decision of this Court in the case of [Sampatraj Pagaria Vs. Delta International Ltd. and another](#), that the learned Judge is wrong in holding that the Petitioner being a sub-tenant cannot maintain an objection u/s 47 of the Code of Civil Procedure. The submissions so made by Mr. Mukherjee were contested by Mr. Chatterjee appearing on behalf of the decree holder/ opposite party No. 2. After considering the submissions so made by the learned Counsel for the parties I am of the view that the submissions of Mr. Mukherjee cannot at all be accepted. It is evident from a perusal of Section 47 of the CPC that all questions arising between the parties to the suit in which the decree was passed or their representatives relating to the execution case discharge and satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. Section 47(3) of the Code of Civil Procedure, however, says where a question arises as to whether any person is or is not the representative of a party, such question shall for the purpose of Section 47 of the CPC be determined by the Court. From a plain reading of Section 47 as it stands now it is clear that all questions arising between the parties to the suit in which the decree was passed or the representatives shall be determined by the Court executing the decree and not by a separate suit. Therefore, to maintain an objection u/s 47 of the Code it is the parties who can file such an objection u/s 47 of the Code or their representatives. Admittedly in this case the Petitioner was not a party to the suit. Therefore, that part of section where all questions arising between the parties to the suit in which the decree was passed as cannot arise in this case. Therefore, the only question needs to be decided whether a person who is not a party to the suit but is alleged to be a sub-tenant under the original tenant is a representative of the judgment debtor/tenant. If it is found that such a sub-tenant is a representative of the tenant then there cannot be any doubt that he can maintain an objection u/s 47 of the Code of Civil Procedure. It my view, the Petitioner who is alleging to be the sub-tenant under the original tenant/opposite party No. 1 cannot maintain an objection u/s 47 of the Code of Civil Procedure. It is no longer in dispute that under the general law the landlord has no obligation to implead a sub-lessee inducted by the lessee even if the lesser has given permission to sub-let. This is to say when a decree for ejectment is passed against the lessee, the sub-lessee is also evicted and the landlord in execution of such decree for eviction against a lessee can very well recover possession from the sub-lessee also. In [Jagadguru Gurushiddaswami Vs. Dakshina Maharashtra Digambar Jain Sabha](#), the Apex Court of our country has clearly held that the landlord can legitimately file a suit for eviction against the lesser without impleading the sub lessee. But proviso to Section 13(2) of the Act gives protection to some classes of sub-tenants. To elucidate the matter in detail let me now look to Section 13(2) of the Act and its proviso which is as follows:

13(2): The sub-tenant if any referred to in Section 16 who have given notice of their sub-tenancies to the landlord under the provisions of that section shall be made parties to any suit or proceeding for recovery of the possession of the premises by the landlord.

7. Therefore, from a plain reading of this section it is evident that those classes of sub-tenants who have already given notice of their sub-tenancies to the landlord u/s 16 of the Act shall be made parties to any suit for recovery of possession of any premises by the landlord. Proviso to Section 13(2) of the Act clearly says that except in cases covered by Clause (f) or Clause (g) of sub-section (1) of Section 13 no decree or order of eviction, shall be passed against any such sub-tenant unless any of the grounds mentioned in Clauses. (b) to (e) and (h) apply to him. It is also evident from the proviso to Section 13(2) of the Act that a sub-tenant even if intended under Sub-section (2) shall be liable to be evicted if the landlord can prove that he requires the suit premises for his own use and occupation. See *Gaifur v. S.N. Satied* AIR 1974 Cal. 81. Section 13(4) of the Act deals with the situation when the Court can invoke the jurisdiction to order partial eviction. From a plain reading of Section 13(4) of the Act it is evident that the following conditions have to be fulfilled before any partial eviction can be granted by the Court. The conditions are as follows.

- (1) The landlord files a suit eviction either on the ground of Clause (f) or Clause (ff).
- (2) The Court is of opinion that the Plaintiff/landlord reasonably requires the suit premises.
- (3) The Court is of further opinion that such requirement will be substantially satisfied by evicting the tenant or the sub-tenant from a part only of the premises and allowing the tenant or sub-tenant to continue to occupy the remaining portion.
- (4) The tenant or the sub-tenant agrees to such partial eviction.

So far as the present case is concerned Section 13(4) of the Act has no manner of application as the question of partial eviction cannot arise at this stage.

8. Section 13(3) of the Act clearly says that save as provided in Sub-sections (2) and (4), a decree or order for delivery of possession of any premises shall be binding on every sub-tenant. Therefore from a plain reading of Section 13(3) of the Act it is therefore clear that except in the cases under Sub-sections (2) and (4) of the Act a decree for delivery of possession of any premises shall be binding on every sub-tenant. Since Section 13(2) of the Act protects a sub-tenant who has given notice of his sub-tenancy u/s 16 of the Act to the landlord in the manner indicated in Section 16 of the Act. Such a sub-tenant shall be protected against delivery of possession passed against a tenant namely in this case against the opposite party No. 1. Section 16 of the Act clearly says that creation and termination of sub-tenancy are to be notified. Section 16(1) of the Act says that where after commencement of the Act any premises is sub-let either in whole or in part by the tenant with the

previous consent in writing of the landlord a tenant and the subtenant to whom the premises are sub-let shall give notice to the landlord in the prescribed manner of the creation of the sub-tenancy within one month from the date of such sub-letting and shall in the prescribed manner notify the termination of such sub-tenancy within one month of such termination. In this case, admittedly, post creation of sub-tenancy has been pleaded. There is nothing on record to show that the Petitioner became a sub-tenant under the tenant/ opposite party No. 1 by following the procedures indicated in Section 16(1) of the Act. Apart from that, Section 14 of the Act prohibits a tenant to sublet, transfer or assign his tenancy after commencement of the Act without previous written consent of the landlord. The landlord shall not recognise such sub-lessee, transferee or assignee and if a suit for eviction is filed and decree is obtained, such sub-tenant, assignee or transferee cannot claim any independent right and the tenant is therefore, liable to be evicted under Clause (a) of Section 13(1) of the Act. Therefore, the learned Judge was right in saying that there was nothing on record to show that the sub-letting was created after following provisions of Section 16 of the Act by serving notice to the landlord as to such creation of sub-tenancy within a month from the date of subletting and further by consent in writing of the landlord of the premises. Therefore, in my view, the learned judge was right in holding that since the decree was binding on the sub-tenant the question of stay of all further proceedings in execution shall not arise at all. Let now consider the other aspect of this matter. Let me see whether the Petitioner can be said to be "a representative" of the tenant/opposite party No. (1) within the meaning of Section 47 of the Code of Civil Procedure. Admittedly, the Petitioner in his petition u/s 47 has clearly stated that he is a post act sub-tenant inducted by the tenant/judgment debtor/opposite party No. 1. Even assuming that the Petitioner is the sub-tenant under the tenant opposite party No. 1, in my view, the present objection petition u/s 47 of the CPC filed by the alleged sub-tenant/ Petitioner does not come within Section 47 of the CPC and the question raised in the said objection-petition cannot be gone into in a proceeding u/s 47 of the Code. Even assuming that the Petitioner is a sub-tenant of the tenant/opposite party No. 1, even then, the right claimed by the Petitioner as sub-tenant under the tenant was independent of the right of the tenant and for that reason, a sub-tenant cannot be said to be a privy to the judgment pronounced against the tenant and therefore, he cannot be held to be a "representative" of the tenant. I have already considered different provisions namely Section 13(2), (3) and (4) of the Act and also Sections 14 and 16 of the Act. On a careful consideration of the aforesaid provisions, I am of the view that a post act sub-tenant who, if accepted by the tenant and the landlord, has complied with the requirements of Section 16(1) of the Act shall acquire independent right in respect of the whole or part of the premises where he was inducted as a sub-tenant because Section 13(3) gives protection to this type of subtenant.

9. Therefore, in my view, a sub-tenant also acquires an independent right to that of the tenant in respect of the portion of the suit premises in which he occupies.

10. Therefore, the sub-tenant cannot be held to be a "representative" of the tenant. This view is expressed by me on reliance of a Division Bench decision of this Court in [Nityananda Kapuria Vs. Pa\(sic\) Nath Dutta and Others](#), the Division Bench observed as follows:

The difficulty, however, of accepting this argument is that the right which is claimed by the Appellant u/s 13(2) of the West Bengal Premises Rent Control Act, 1950, is a right which is independent of the tenant/judgment debtor. Section 13(2) of the Act provides that if the tenancy of the tenant is determined otherwise than by virtue of a decree in a suit obtained by the landlord by reason of any of the grounds specified in Clause (h) of the proviso of any of the grounds specified in Clause (h) of the proviso to Sub-section (1) of Section 12, the sub-lessee will be deemed to be a tenant in respect of such premises holding directly under the landlord of the tenant whose tenancy has been determined.

The plain reading of this provision is that if the landlord obtains a decree for ejectment against his tenant on any ground other than a ground of reasonable requirement, the sub-tenant becomes a statutory tenant directly under the landlord. It is quite clear that this right is a right which is independent of the tenant and for this reason the sub-tenant cannot be said to be privy to the judgment which was pronounced against the tenant. For this reason, we are constrained to hold that the sub-tenant cannot be said to be a representative of the judgment debtor for the purpose of asserting his rights u/s 13(2) of the West Bengal Premises Rent Control Act, 1950.

11. This Division Bench decision was also followed by another Division Bench of this Court in Khetramohan Monimohan Saha v. Parbati Nath Dutta 59 C.W.N. 289. In the aforesaid decision of this Court, it has also been held that the right claimed by a sub-tenant is a right independent of the tenant and such a right cannot be enquired into or ascertained in a proceeding u/s 47 of the Code of Civil Procedure. I am not unmindful of the Single Bench decision cited by Mr. Mukherjee in support of his submission that where a decree for eviction of the tenant is put into execution, the sub-tenant cannot challenge it as not binding upon him by filing a separate suit as the same is barred by Section 47 of the Code and is not maintainable as such. With due respect to the learned Single Judge, while deciding the said case, the aforesaid two decisions of the Division Bench of this Court were not, however, considered by the learned Single Judge. In view of the two Division Bench decisions of this Court on this point, I am unable to rely and/or follow the single bench decision cited by Mr. Mukherjee for the Petitioner. Apart from that, the single bench decision of this Court, as referred to hereinabove, considered the provisions of Order 21 of the CPC and was of the view that in view of such provision, separate suit challenging a decree is not maintainable in law. In the said decision, it was not decided that since

the sub-tenant was a representative of the judgment-debtor tenant he can maintain an objection u/s 47 of the CPC and such challenge by the sub-tenant cannot be made by filing a separate suit.

12. For the reasons aforesaid, I am not inclined to interfere with the order impugned in this revisional application and accordingly the revisional application is rejected.

13. There will be no order as to costs.