

Sri Bimal Kumar Nopany Vs Sri Akhil Chandra Moitra and Another

Court: Calcutta High Court

Date of Decision: Aug. 4, 2011

Acts Referred: Transfer of Property Act, 1882 " Section 114

Hon'ble Judges: Raghunath Bhattacharya, J

Bench: Single Bench

Advocate: Ashok Banerjee, Saptangsu Basu, Sudip Deb and Subhojit Roy, for the Appellant; Sudhis Das Gupta, Sibasis Ghosh, Sibsankar Das and Hamanta Kr. Das, for the Respondent

Judgement

Raghunath Bhattacharya, J.

The hearing stems from an application filed by the Petitioner/Defendant praying for revision of order No. 43

dated 27.01.2000 passed by Smt. A. Roy Saraswati, Learned Civil Judge, 4th Court (Senior Division), Alipore in Title Suit No. 132A of 1994 by

way of setting aside the same, inter alia on the ground that the learned Court below erred in law in not appreciating the true spirit of the order and

passed an order which is contrary to the provision of the law.

2. The Plaintiff/opposite party filed a title suit No. 132A of 1994 before Assistant District Judge, at Alipore, 4th Court against the

Defendant/Petitioner for recovery of khas possession of the suit premises on the ground that the Defendant has paid the monthly rent of Rs. 3000/-

. It is alleged by the Defendant/Petitioner that during the pendency of the suit filed an application u/s 114 of the Transfer of Property Act, 1982

praying for a direction from the Court to allow the Petitioner to deposit all arrear rent from December, 1983 to August, 1998. According to the

Petitioner a sum of Rs. 1,32,000/- was deposited towards rent with the income tax Authority in terms of the order of attachment issued by the

income tax authority. At the time of hearing of the said application it was contended on behalf of the Petitioner that the Plaintiff chose not to file any

objection to the application of the Defendant. It is further contended by the Petitioner that the Defendant is always ready and willing to pay the

arrear rent and he also tendered arrear rent from his advocate-on-record but same was refused by the Plaintiff.

3. The matter was heard by the learned Court below and learned Court below came to a finding to the effect that the Plaintiff at the time of hearing

did not file any written objection but strongly opposed the petition at the time of hearing stating inter alia that the Plaintiff has initiated the present

suit for eviction to the Defendant. It was the contention of the Plaintiff that the Defendant has violated the terms of the lease including the ground of

forfeiture on nonpayment and according to the Plaintiff Defendant is defaulter in payment of rent for last ten years so the Defendant cannot get any

relief u/s 114 of the Transfer of Property Act as contended by the learned Lawyer for the Plaintiff.

4. At the time of hearing the learned Counsel for the Petitioner Mr. Basu submitted that his client is willing to pay all the arrears of rent till this date

and in the plaint order itself it was stated that the Defendant is willing to pay all the arrears rent including the interest. The Learned Counsel Mr.

Dasgupta appearing for the opposite party/Plaintiff has contended that Defendant had categorically violated the terms and conditions of Section

114 of the Transfer of Property Act. Moreover, he referred to some decisions reported in Radhey Shyam and Another Vs. Chhabi Nath and

Others, : Namdeo Lokman Lodhi Vs. Narmadabai and Others, . I have gone through the said decisions carefully. In my opinion the instant revision

application is not a jurisdictional error. In my opinion there are errors contemplated relate either breach of some provisions of law or to material

defect of procedure affecting the ultimate decisions and not to errors either of fact or of law after prescribed formalities even complied with. In

other words the instant revisional application is not jurisdictional error so, revisional Court has every right to interfere with and the ruling cited by

the learned Lawyer for the opposite party is not at all applicable in the instant case.

5. At the time of submission the learned Lawyer appearing for the Petitioner/Defendant has categorically submitted that Defendant was ready and

willing to tender of the arrear rents including the statutory interest @ 8.33%. In the impugned order I find that there is observation in the order of

the learned Court which runs as follows: -

The income tax authority directed the Defendant to pay rent to the income tax department and the Defendant deposit the same with the Tax

Recovery Officer by 11 installments aggregating Rs. 1,32,000/-. The Petitioner is ready and willing to pay the entire arrear rent @ 3000/- per

month together with interest @ 6% per annum excluding the amount which was paid before the income tax department.

6. In my humble opinion for the purpose of seeking relief u/s 114 of the Transfer of Property Act the lessee had to tender the entire arrear rent

along with statutory interest @ 8.33%. At the time of argument learned Lawyer Mr. Basu appearing for the opposite party and his junior was

categorically submitted that Defendant was ready and willing to pay the entire arrear rent. Though the same was vehemently opposed by the

learned Lawyer Mr. Das Gupta appearing for the Plaintiff/opposite party.

7. In view of aforesaid discussion I think that Defendant should have given the opportunity to pay arrear rent as he was willing to pay the same.

Thus the order passed by the learned Court below is hereby set aside. Learned Court below is hereby further directed to hear the application

afresh and come to a decision in accordance with the law.

8. In view of aforesaid discussion the Civil Revision is thus disposed of. Order passed by the learned Court is hereby set aside. The learned Trial

Court is hereby directed to hear the application u/s 114 of the Transfer of Property Act filed by the Defendant within a month from the date of

communication of the order to the Court below and passed a reasoned order as he deemed fit and proper without being influenced by the finding

of this Court.

9. Urgent photostat certified copy, if applied for, be handed over to the parties as early as possible.