

(2012) 08 CAL CK 0137

Calcutta High Court

Case No: C.O. No. 1713 of 2009

Smt. Bela Ghosh

APPELLANT

Vs

Swapan Kr. Ganguly
and Others

RESPONDENT

Date of Decision: Aug. 8, 2012

Acts Referred:

- Constitution of India, 1950 - Article 227
- West Bengal Premises Tenancy Act, 1956 - Section 13(3A)
- West Bengal Premises Tenancy Act, 1997 - Section 6(2), 6(2)

Hon'ble Judges: Subal Baidya, J

Bench: Single Bench

Advocate: Siva Prasad Ghosh, for the Appellant; Siddhartha Lahiri, for the Respondent

Final Decision: Dismissed

Judgement

Subal Baidya, J.

This Civil Revisional application filed under Article 227 of the Constitution of India on 22.5.2009 by the petitioner/ defendant is directed against the order dated 16.04.2009 passed by the learned Civil Judge (Jr. Division), 2nd Court, Sealdah in Ejectment Case No. 170 of 2006 whereby the learned Civil Judge allowed the application dated 05.12.2007 filed by the O.P./Plaintiff praying for amendment of the plaint of the said Ejectment case. Being aggrieved by the impugned order dated 16.04.2009 the petitioner/defendant has filed the instant revisional application before this Court.

2. Heard the learned Advocate for the petitioner/ defendant and the learned Advocate for the O.P/Plaintiff. Considered the submissions made by the learned Advocates of the both sides including the materials on record and order impugned.

3. Let this court consider the merit of this revisional application in the facts of the instant case.

4. The Plaintiff/O.P herein filed a suit for eviction on 06.07.2006 against the defendant/petitioner herein on the ground of default in payment of rent and subletting under the West Bengal Premises Tenancy Act, 1997 which was registered as Ejectment Case No. 170 of 2006.

5. The defendant was contesting the said suit by filing written statement therein denying the allegations made out by the plaintiff in the plaint. But subsequently the plaintiff filed an application on 05.12.2007 praying for amendment of the plaint for introducing one additional ground of eviction in the said plaint. On perusal of the proposed amendment it appears that the plaintiff wanted to introduce that the suit premises requires for accommodation of the plaintiff as well as for the other members of his family. The Defendant/Petitioner herein contested the said amendment application by filing the written objection.

6. It transpires that the learned Trial Judge considering the materials and the submissions allowed the application for amendment of the plaint by the impugned order.

7. The learned Advocate for the petitioner submits that the O.P./Plaintiff purchased the suit premises on 29.09.2005 and the Ejectment notice was issued on 06.05.2006 and the Ejectment Case/Suit has been instituted on 06.07.2006. It is also contented that by the learned Advocate for the petitioner that the plaintiff has filed this Ejectment Suit on the ground of default in arrear of rent and also subletting, but the plaintiff as landlord has acquired his interest in the suit premises by way of purchase only on 29.09.2005. It is also submitted that according to Section 6 (2) of the West Bengal Premises Tenancy Act, 1997, no suit for the recovery of possession of the premises on the ground of requirements for building or re-building or addition or alteration or requirements for own occupation shall be instituted by the landlord before the expiration of period of one year from the date of acquisition of such interest. The learned Advocate for the petitioner further submitted that the Plaintiff/O.P. has filed the Ejectment Suit within the prohibitory period of one year, but the landlord cannot seek eviction of his tenant on any ground which did not exist on the date of issuance of the eviction notice as the eviction notice is a part of cause of action of an Ejectment Suit. The learned Advocate for the petitioner further submitted that the plaintiff could institute a fresh suit on the ground of said reasonable requirement as proposed in the amendment application after withdrawing the present Ejectment case and as such the learned Trial Judge ought not to have permitted the plaintiff to incorporate the additional ground i.e. for reasonable requirements of the suit premises for the use and occupation of the plaintiff as well as the members of his family by way of amendment. In this regard the learned Advocate for the petitioner relied upon the decisions reported in [Smt. Sudha Mukherjee Vs. Sankar Chatterjee](#), and also reported in 1990 (1) CLJ 455 in the case of Geeta Bhose & Anr. Vs. Machine Tools of India Ltd. and also in the decision reported in [Anandilal Bhanwarlal and Another Vs. Smt. Kasturi Devi Ganeriwala and Another](#),

8. On perusal of the decisions reported in 1990 (1) CLJ 455 this court finds that the Hon"ble Division Bench of the High Court at Calcutta held that u/s 13 (3A) of the Premises Tenancy Act, 1956 there is a clear bar to institute a suit for Ejectment on the ground of reasonable requirements within three years of acquisition of ownership over the concerned premises. It was also held that it is not permissible to incorporate the ground of reasonable requirements after expiry of three years from the date of the suit. Similar view has been expressed in the decision reported in [Smt. Sudha Mukherjee Vs. Sankar Chatterjee](#), . Learned Advocate for the petitioner also has relied upon the decision reported in [Anandilal Bhanwarlal and Another Vs. Smt. Kasturi Devi Ganeriwala and Another](#),

9. Relying upon the above cited decision learned Advocate for the petitioner contended that since the ground of eviction which was sought to be incorporated by way of amendment is all events occurred subsequent to the issuance of the eviction notice and the decree for eviction cannot be passed on the basis of the said ground and as such the learned Trial Judge ought not to have permitted the plaintiff to incorporate this additional ground by way of amendment of the plaint.

10. The learned Advocate for the Opposite Party contended that in view of the series of decision of this Hon"ble Court it cannot be held now that the grounds which are made available to the plaintiff for eviction of his tenant due to occurrence of certain events subsequent to the filing of the suit cannot be introduced in the plaint by way of amendment. In support of his submission the learned Advocate for the opposite party has relied upon the decision reported in 1992 (2) CHN 407 in the case of Uma Mishra (Sanyal) Vs. Monoranjan Sinha and also on the decision held in C.O. No. 1859 of 2009 in the case of Dr. Shekhar Roy Chowdhury Vs. Syed Bahauddin and Ors.

11. On perusal of the judgement passed in C.O. No. 1859 of 2009 this court finds that the learned Single Judge relying on an unreported decision of the Hon"ble Supreme Court in the case of Civil Appeal No. 1521 of 1984 in the case of Smt. Prova Rani Chakraborty and Anr. Vs. Inder Sengupta and also on the decision reported in 1992 (2) CHN 407 (Division Bench) in the case of Smt. Uma Mishra (Sanyal) Vs. Monoranjan Sinha, in 1989 (1) CLJ 256 in the case of Satya Gopal Saha Vs. Snehalata Saha and in 1990 (1) CHN 107 in the case of Samar Kr. Sarkar Vs. Asit Kr. Sarkar allowed the application for amendment of the plaint regarding the incorporation of the additional ground of reasonable requirement of the landlord for eviction of his tenant.

12. On perusal of the decisions referred to above by the learned Advocate for the petitioner it appears that the said cases were disposed of on the basis of the principle of law enunciated u/s 13 (3A) of the West Bengal Premises Tenancy Act, 1956. Under the said section there was a prohibitory period of three years from the date of acquisition of interest by the landlord within which the landlord was debarred from instituting the suit for eviction of tenant on the ground of reasonable requirement and also on the ground of building and rebuilding. Barring the extent of prohibitory period the said law has been

incorporated u/s 6(2) of the West Bengal Premises Tenancy Act, 1997. Under this Section the prohibitory period is one year from the date of acquisition of interest by the landlord. It has been held in the decision reported in [Anandilal Bhanwarlal and Another Vs. Smt. Kasturi Devi Ganeriwala and Another](#), that if the suit is instituted by the landlord within three years from the date of purchase of the disputed premises, the suit is incompetent in view of Section 13 (3A) of the West Bengal Premises Tenancy Act, 1956. But in the instant case the O.P./Plaintiff purchased the suit premises on 29.9.2005 and the application for amendment of the plaint for incorporating the ground of reasonable requirement was filed on 05.12.2007. It means that the amendment application has been filed after the expiry of the prohibitory period of one year as provided u/s 6 (2) of the Said Act of 1997. That being the position the principle of law enunciated in the decision reported in [Anandilal Bhanwarlal and Another Vs. Smt. Kasturi Devi Ganeriwala and Another](#), is not applicable in the instant Case. But it has been held in the decision reported in 1992 (2) CHN 407 relying on the decision of the Hon"ble Supreme Court in the case of Smt. Prova Rani Chakraborty and Anr. Vs. Inder Sengupta held in connection with Civil Appeal No. 1521 of 1984 that the eviction suit was instituted within the prohibited period u/s 13 (3A) of the West Bengal Premises Tenancy Act on other grounds, but after the expiry of the prohibited period from the date of acquisition of interest by the landlord, application for incorporation of the ground of reasonable requirement for eviction of the tenant was permissible. Following the said decision of the Hon"ble Apex Court all the subsequent decisions of this Hon"ble Court mentioned earlier have been pronounced holding in favour of allowing the amendment application of the plaint for incorporating the ground of reasonable requirement after the expiry of the prohibitory period of three years under West Bengal Premises Tenancy Act, 1956 or the prohibitory period of one year under the West Bengal Premises Tenancy Act, 1997, as the case may be, from the date of acquisition of the interest in the suit premises by the landlord.

13. It is now a settled principle of law that the plaintiff is entitled to bring the subsequent events in the plaint by way of amendment, if not otherwise barred by law, on the basis of the principle of avoiding the multiplicity of litigations. In view of the above it is crystal clear that that decision reported in 1990 (1) CLJ 455 and [Smt. Sudha Mukherjee Vs. Sankar Chatterjee](#), referred to by the learned Advocate for the petitioner/defendant is not acceptable.

14. In view of the circumstances and also on the basis of the principle of law enunciated in the decisions quoted above this Court holds that the learned Trial Judge did not commit any illegality allowing the application for amendment by the impugned order in the facts of the case. The impugned order is, therefore, affirmed.

15. The revisional application thus, stands rejected.

16. The O.P./ Plaintiff is directed to serve the copy of the amended plaint to the petitioner/defendant within two weeks from this date if not served in the mean time.

17. The petitioner/defendant is directed to file the additional written statement to the amended pleadings of the plaint in the said Ejectment Suit/ Case within two weeks from the date of service of copy of the amended plaint.

18. The learned Trial Judge is requested to expedite the hearing of the suit as far as possible.

19. The revisional application is, thus, disposed of. The urgent xerox certified copy of this order, if applied for, be supplied expeditiously after complying with all formalities.