

Dipali Rani Swarnakar Vs Md. Yeasin

Court: Calcutta High Court

Date of Decision: Jan. 5, 2011

Acts Referred: Constitution of India, 1950 " Article 227
West Bengal Premises Tenancy Act, 1997 " Section 17(4B), 21, 43, 5(7), 5(8)

Citation: (2011) 267 ELT 299

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: S. Bhattacharya, for the Appellant; A.B. Rout and A.K. Chowdhury, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

Challenge is to the order dated November 17, 2006 as modified by the order dated December 21, 2006 passed by

the learned Additional Rent Controller, Barasat, District - North 24 Parganas in R.C. Fair Case No. 8 of 2004/97.

2. The short fact is that the opposite party herein filed an application u/s 17(4B) read with Section 5(7) and 5(8) of the West Bengal Premises

Tenancy Act, 1997 for determination of the fair rent of the premises in the application as described therein. The Petitioner herein was paying

regular rent to the opposite party and the rent was increased from Rs. 71/- to Rs. 80/-, then to Rs. 100/- and lastly to Rs. 125/- per month. On

two occasions earlier in 1998 and 2003, the Petitioner had to file two applications under to deposit rents before the rent controller since the

opposite party refused to accept the same. The said applications were allowed in both the occasions and as such, the Petitioner has been

depositing the rent with the Rent Controller at the rate of Rs. 125/- per month. Suddenly in 2004, the opposite party filed an application before the

learned Additional Rent Controller under the said Sections for fixation of fair rent along with other charges and that application was allowed by the

impugned orders. Being aggrieved, this application has been preferred.

3. Now, the point for decision is whether the impugned order should be sustained.

4. Upon hearing the submission of the learned Counsel for the parties and on perusal of the materials on record, I find that the impugned order

dated November 17, 2005 clearly lays down the ground for enhancement of rent. It is clearly stated that the tenanted premises is to the extent of

96 square feet and is being used for commercial purpose. Moreover, the tenancy is more than 10 years but less than 20 years and the rent was Rs.

100/- as on July 1, 1986. Notice was issued upon the Petitioner herein but the opposite party refused to accept the notice and she failed to appear

before the rent controller.

5. This being the position, in view of the provisions of Section 17(4B) of the West Bengal Premises Tenancy Act, 1997 fair rent of that premises

was determined according to the formula as laid down in the said Section. Accordingly, the fair rent was assessed at Rs. 400/- per month. The

Petitioner was also directed to pay the charges for maintenance and amenities and the share of municipal tax as per provision of Section 5(7) and

5(8) of the said Act of 1997 in addition to the fair rent.

6. Thus, I find that before determining the fair rent, notice was issued upon the Petitioner. But she did not place her defense in the said fair rent

case and ultimately, the Rent Controller passed the impugned orders as per provisions of the 1997 Act.

7. When the Petitioner felt aggrieved, the remedy lies before the learned Tribunal by preferring an appropriate appeal within a period of 30 days

from the date of passing of the order, u/s 43 of the said 1997 Act. The Petitioner did not avail of that opportunity within the stipulated period. Even

she filed this application at the belated stage before this Hon'ble High Court under Article 227 of the Constitution of India.

8. Mr. Bhattacharya, learned Advocate appearing on behalf of the Petitioner, submits that since an appeal lies against the order of the rent

controller, this Court may give appropriate directions for filing an appeal before the appellate tribunal u/s 43 of the said Act of 1997.

9. Mr. Rout, learned Advocate appearing on behalf of the opposite party, raises vehement objection against such proposal on the ground that the

Petitioner did not pray for appeal within 30 days from the date of passing of the order and in fact, there is no material irregularity or illegality in the

order impugned and so no such direction should be issued for preferring an appeal.

10. Upon due consideration of the rival contentions of the learned Advocates of both the sides and in view of the above facts, I am of the view that

there is no ground for interference with the impugned order because the Additional Rent Controller has determined the fair rent as per formula u/s

17(4B) of the 1997 Act. The order is not without any jurisdiction. So, there is no scope for interference at all. So far as preferring of appeal, I find

that this Court is not in a position to grant any leave to prefer an appeal at this belated stages. However, if the Petitioner is so advised to prefer an

appeal, she may do so in accordance with law.

11. With these observations, this application is dismissed. Considering the circumstances, there will be no order as to costs.

12. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.