(2010) 12 CAL CK 0114

Calcutta High Court

Case No: C.O. No. 2687 of 2006

Prafulla Sardar		APPELLANT
	Vs	
Mamata Saha		RESPONDENT

Date of Decision: Dec. 14, 2010

Acts Referred:

- Constitution of India, 1950 - Article 227
- Limitation Act, 1963 - Section 5
- West Bengal Premises Tenancy Act, 1956 - Section 17(2), 17(2A)

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Hiranmoy Bhattacharya, for the Appellant;Sabyasachi Bhattacharya and Chandraday Roy, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

This application is at the instant of the Defendant and is directed against the order No. 48 dated June 29, 2006 passed by the learned Civil Judge (Junior Division), Fourth Court, Alipore in Title Suit No. 21 of 1998 directing the Petitioner to deposit arrears of rent by 4 equal monthly instalments at the rate of Rs. 950 per month.

2. The short fact is that opposite party instituted a suit being Title Suit No. 21 of 1998 for eviction and recovery of possession on the ground of default, reasonable requirement, causing damages, etc. In that suit, the Defendant/Petitioner filed an application u/s 17(2) and 17(2A) of the West Bengal Premises Tenancy Act, 1956. That petition was disposed of by the learned Trial Judge holding that whether the opposite party is a thika tenant or not shall be decided at the time of trial and for disposal of the application u/s 17(2) and 17(2A) of the Act of 1956, it was held that the Petitioner was a defaulter in payment of rent from July, 1998 to May, 2006 at the rate of Rs. 30 per month payable according to English calendar month. Accordingly,

the learned Trial Judge held that the Petitioner was to pay the sum of Rs. 3,800/- as arrears of rent by four equal monthly instalments commencing from the month of July, 2006. Being aggrieved by the impugned order, this application has been preferred.

3. The question is whether the impugned order can be sustained.

4. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that admittedly, the premises in suit being 165/1A of the Kalighat Road originally belonged to three persons, namely, Samarendra Nath Halder, Sourendra Nath Halder and Sailendra Nath Halder having 1/3rd share each. One Rani Bala Dasi was the thika tenant of the said premises and she sold her interest in the said premises to one Angur Bala Dasi. Thereafter, Sailendra Nath Halder sold her undivided 1/3rd share to one Rukshmini Devi in 1962. Then in 1968 Angur Bala Dasi purchased the interest of Rukshmini Devi and the undivided share of Sourendra Nath Halder. Thus, she (Angur Bala Dasi) became the owner of 2/3rd share in the premises in suit. All these happened in 1968, i.e., long before the date of enactment of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981. Admittedly, the father of the Petitioner was a Bharatia under Angur Bala Dasi. Admittedly, the rent is at the rate of Rs. 30/- per month payable according to English calendar month. Thereafter, in 1993, the opposite party disclosed that he had purchased the interest of Samarendra Nath Halder and the rent was demanded from the Petitioner. The Defendant paid rent up to May, 1997. Thereafter, on refusal, he deposited the rent up to June, 1998. Then in July, 1998, Angur Bala Dasi demanded rent from the Petitioner contending that the purchase of the property by the Plaintiff was illegal.

5. From the above facts, there is no dispute that rent was paid by the Petitioner up to June, 1998 at the rate of Rs. 30 per month payable according to English calendar month. The learned Trial Judge has observed that the Petitioner could not show that since July, 1998, she paid any rent to the landlord. Accordingly, it calculated the arrears of rent up to May, 2006 and passed the impugned order as stated earlier.

6. At the time of disposal of the application u/s 17(2) of the West Bengal Premises Tenancy Act, the Court observed that the question whether the Angur Bala Dasi was a thika tenant or not shall be decided at the time of final hearing of the suit. I think since the question of law is involved and evidence may be required to come to such a finding at the time of passing the impugned order, the learned Trial Judge was quite justified in keeping the issue open for final decision at the time of full fledged hearing of the suit.

7. In appropriate situations, the Court might well condone the delay in filing the application u/s 17(2) and 17(2A) of the Act and in the instant case though no reasons have been assigned, the learned Trial Judge has condoned the delay upon consideration of the application and its objection. Copy of the application u/s 5 of

the Limitation Act has not been annexed to the application and this is not a ground at all in the application under Article 227 of the Constitution of India.

8. In view of above facts and circumstances, I am of the view that since the learned Trial Judge has kept the relationship of landlord and tenant open for decision at the time of full-fledged hearing and for the purpose of disposal of the application u/s 17(2) and 17(2A) of the Act, he has held that there is a landlord and tenant relationship, prima facie, at least, for disposing of the Petitioner u/s 17(2) of the West Bengal Premises Tenancy Act, 1956, there is no ground for interference with the order impugned. I also hold that the impugned order does not suffer from any perversity at all.

9. Therefore, this application is devoid of merits. It is, therefore, dismissed.

10. However, since the time for making deposits by four instalments, has already lapsed, the Petitioner is directed to make deposits by four equal monthly instalments as per direction of the learned Trial Judge commencing from the month of January, 2011.

11. 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 Advocates for the parties on their usual undertaking.