
Abanindra Mohan Bose and Another Vs Khazanamull Sardar**Civil Revision Case No. 1975 of 1947**

Court: Calcutta High Court**Date of Decision:** Jan. 21, 1948

Judgement

Biswas, J.

The Petitioners in this case are the lessees of a Cinema House at Kalimpong under the Opposite Party. On the 17th of March, 1943, the Opposite Party instituted a suit in the Court of the Subordinate Judge at Darjeeling for ejectment of the Petitioners on service of a notice

to quit. The suit was dismissed by the trial Court on the 31st of March, 1944. An appeal was then taken to the learned District Judge at Darjeeling

on the 24th of April, 1945. The learned Judge in reversal of the decision of the trial Court held that the lease had finally expired on the 31st of

January, 1943, and no notice to quit was required by law. At the Appellate stage a further point was taken on behalf of the Petitioners under the

amended provisions of the Bengal House Rent Control Order, 1942, which had come into operation in the meantime. A new issue was raised as

to whether clause 10 of that Order was a bar to the passing of a decree for ejectment. On the 27th of July, 1945, by his final judgment, the learned

District Judge held against the Petitioners and made a decree for ejectment. Against that judgment the Petitioners preferred a second appeal to this

Court which is still pending. It appears that thereafter in May, 1946, the Bengal House Rent Control Order, 1942, was further amended and

certain new paragraphs were added after paragraph 10A. One of the paragraphs so added, was paragraph 10AA, cl. (3) whereof provided in

effect that where a decree for ejectment had been made before 20th of May, 1946, on the ground that the tenant was not entitled to the benefit of

paragraph 10 by, reason of non-compliance with the requirements of the Order as to the payment of rent, the Court by which the decree was

made shall set aside the decree, if an application was made in that behalf by the tenant not later than the 20th of June, 1946, and also paid to the

decree-holder or deposited in Court all arrears of rent and costs. It will be seen that this was a new provision by which an absolute right was

created in favour of a tenant to set aside a decree for ejectment on application made before a certain date and on payment of all arrear dues. The

condition required was that the decree in question must have been made on the ground that the tenant was not entitled to the benefit of paragraph

10, because he had failed to comply with the provisions of the Order as to payment or deposit of rent. In view of this new amendment the

Petitioners made an application on the 14th of June, 1946, to the learned District Judge to set aside the decree which had been made on the 27th

of July, 1945. Before making this application the Petitioners by way of abundant caution applied for and obtained leave of this Court where as

stated above, a second appeal against the decree was pending. Before the application could be heard, the Bengal House Rent Control Order,

1942, however, ceased to be in operation. Its place was taken by an Ordinance, namely, Bengal Ordinance No. V of 1946, called the Calcutta

Rent Ordinance of 1946, which came into force on the 1st of October, 1946. In view of this Ordinance the Petitioners filed a fresh application in

continuation of their previous application of the 14th of June, 1946, made under the Rent Control Order. This fresh application was made under

the provisions of sec. 17 of the Ordinance read with sec. 26 thereof. Sec. 17 was analogous to cl. (3) of paragraph 10AA of the Rent Control

Order but expressed in different terms. Paragraph 10AA made it compulsory for the Court which had passed the decree for ejectment to set it

aside, if the conditions laid down therein were satisfied. Sec. 17, on the other hand, conferred a discretion on the Court and further provided that

the Court may rescind or vary the decree in such a manner as it may think fit for the purpose of giving effect to the provisions of this Ordinance.

The ground on which the Court might take action under sec 17 was also not quite the same as that in cl. (3) of paragraph 10AA of the Rent

Control Order. According to sec. 17, the decree for ejectment could be rescinded or varied if the Court was of opinion that the decree would not

have been made if the Ordinance had been in operation at the date of the making of the decree.

2. The Petitioners' case was that by reason of the provisions of sec. 14 of the Ordinance, sec. 17 came into play and that they were accordingly

entitled to a rescission order. It is necessary to refer to the provisions of sub-sec. (1) of sec. 14 which are as follows:--

14 (1) No suit or proceeding by a landlord against a tenant in possession of any premises for eviction of each tenant therefrom, in which non-

compliance with the provisions of this Ordinance as to the payment or deposit of rent due by such tenant in respect of such premises to the full

extent allowable by this Ordinance within the thus specified in that behalf in this Ordinance has been taken as a ground for such eviction shall be

entertained by any court unless the landlord has been permitted by the Controller by an order in writing under sub-sec. (2) to institute such suit or

proceeding and has produced before such court proof that such permission has been granted.

3. The Petitioners contended that the ejectment order could not have been made in this case, if the Ordinance had been in operation at the date of

the making of the decree, because sec. 14 would have been a bar.

4. The learned District Judge rejected both the applications of the Petitioners, though he does not appear to have dealt with the first application in

any detail. On the other hand, he expressed an opinion to the effect that

if the present application, had been decided before the new Ordinance was brought into being. It was quite possible for me to extend the relief to

the tenant that he has claimed.

5. On the strength of this statement the learned Advocate for the Petitioners has contended before me that the learned District Judge was in fact of

opinion that if the matter had to be decided solely with reference to the first application which the Petitioners had made on the 14th of June, 1946,

under the House Rent Control Order, the decree for ejectment would have been set aside. This is a view which has been stoutly contested on

behalf of the Opposite Party.

6. The questions which arise upon argument on both sides are these:--

(1) Whether the case should be disposed of on the basis of the earlier application of the 14th of June, 1946, or of the subsequent application made

under the Ordinance;

(2) Whether the Petitioners can claim the benefit of either of the two applications at their choice;

(3) Whether the Petitioners are entitled to any relief under either of the two applications.

7. I shall assume in favour of the Petitioners that they can fall back under either of the two applications they made. It is necessary, therefore, first to

examine their case under the application made on the 14th of June, 1946, and that raises a question whether all the requisite conditions were

satisfied. It is admitted that the decree for ejectment here had been made before the 20th of May, 1946. As regards whether the decree had been

passed on the ground that the tenant was not entitled to the benefit of paragraph 10 by reason of his non-compliance with the provisions of the

Order as to the payment or deposit of rent, the District Judge by his first order of the 24th of April, 1945, had held that the Opposite party was

entitled to a decree, because the lease had already expired, and by his subsequent judgment of the 27th of July, 1945, he decided the issue under

paragraph 10 of the Bengal House Rent Control Order against the Petitioners. In other words, the decision on this issue amounted to a finding that

the Petitioners were not entitled to the protection of paragraph 10. The further condition that the possession of the demised premises had not yet

been taken by the Opposite Party, and also the condition regarding the date by which the application had to be made and payment of arrears of

rent, had all been complied with. It would appear, therefore, that if the application of the 14th of June, 1946, under paragraph 10AA, cl. (3) of the

House Rent Control Order could be regarded as still in force, the Petitioners had made out a case and would be entitled to a rescission of the

decree.

8. On behalf of the Opposite Party it has, however, been argued that on the House Rent Control Order ceasing to be in operation, the application

lapsed. Reliance was placed on the general principle that on the expiry of a statute, all proceedings thereunder also expire. It was pointed out that

sec. 8 of the Bengal General Clauses Act, on which reliance was placed on behalf of the Petitioners, would be of no assistance to them, inasmuch

as that section related to the case of repeal of a statute and not of a statute expiring by efflux of time under the law. I think there is a good deal of

force in this contention which is supported by authority. The House Rent Control Order was in effect a statute having been made in the exercise of

the powers conferred by rule 81 of the Defence of India Rules, which rules, in their turn, had been made under the provisions of the Defence of

India Act. Unless, therefore, any express provision was made to the contrary in any other Statute or Ordinance all proceedings under the House

Rent Control Order would automatically terminate with the expiry of that Order.

9. That takes us to the question whether the second application under the Ordinance would entitle the Petitioners to any relief. I have no doubt that

the learned District Judge took a correct view on this part of the case. I do not think it can be said that if the Ordinance had been in operation at

the date of the decree, namely, the 27th of July, 1945, sec. 14 would have operated as a bar. Sec. 14, in my opinion, is not intended to be

applicable to pending proceedings. It is a bar only to the institution of a suit of the nature referred to in the section. A good deal of argument was

made as to the meaning of the word ""entertained"" but sub-sec. (2) makes it quite clear that the word could refer only to the institution of any suit or

proceeding and not to the continuing of any suit or proceeding already initiated. It is not disputed that in this case, at the date the suit for ejectment

was instituted there was no question of obtaining the previous permission of the Rent Controller as a condition precedent. Apart from this a further

reason why sec. 14 could not be relied on by the Petitioners was that the suit here was not a suit of the character contemplated in the section. The

section requires that non-compliance with the provisions of the Ordinance as to the payment or deposit of rent must have been taken as a ground

for eviction in the suit. Admittedly that was not the ground on which the suit was brought, although the ultimate decree might have been passed on

that ground. For these reasons I hold that sec. 17 would be of no assistance to the Petitioners.

10. As regards the further contention which was raised on behalf of the Petitioners that their case was covered by sec. 26 of the Ordinance, it is

necessary merely to point out that under this section a proceeding commenced under the Bengal House Rent Control Order may be continued and

may as far as possible be deemed to have been commenced under the corresponding provisions of the Ordinance. That will attract sec. 17 read

with sec. 14 but as already explained, that will not avail the Petitioners. In the result the Rule is discharged with costs--hearing-fee, two gold

mohurs.