

(1983) 03 CAL CK 0040

Calcutta High Court

Case No: A.F.O.D. No. 111 of 1977

Sadhu Saran Prasad and Another

APPELLANT

Vs

Rabindra Nath Saha and Others

RESPONDENT

Date of Decision: March 3, 1983

Acts Referred:

- Transfer of Property Act, 1882 - Section 114
- West Bengal Premises Tenancy Act, 1956 - Section 13(1)

Citation: AIR 1985 Cal 1

Hon'ble Judges: Ramkrishna Sharma, J; Pradyot Kumar Banerjee, J

Bench: Division Bench

Advocate: Amal Kumar Roy, for the Appellant; S. Chatterjee, S. Bhattacharya (2), S.N. Sanyal and Jahar Chakraborty, for the Respondent

Final Decision: Dismissed

Judgement

Banerjee, J.

This appeal at the instance of the defendant arises out of a suit for eviction on the ground of default and sub-tenancy. The suit

was filed on 11-9-71, alleging inter alia that the defendant was in default in payment of rent from March 1971. The defendant appeared on 11-11-

71. On 2-12-71, the defendant filed written statement. On 9-3-72, the defendant filed fresh power. On 3-7-72, the plaintiff filed a verified

application u/s 17(3) of the West Bengal Premises Tenancy Act and the defendant applied for time. On 26-9-72. the defendant filed a petition u/s

17(2) of the Act with a fresh power. He also filed an application u/s 17(2A)(b) on the same date as also an application u/s 5 of the Limitation Act

for condoning the delay in filing the application u/s 17(2) and 17(2A)(b) on 28-9-72. The said applications were heard on 3-4-73. The application for condonation of the delay in filing the application u/s 17(2) and 17(2A)(b) was rejected. The application u/s 17(3) of the Act filed by the plaintiff was allowed and the defence against delivery of possession was struck out. Thereafter, the suit was heard and a decree was passed on the ground of default. Being aggrieved by the said judgment the defendant preferred the present appeal.

2. Mr. Roy, on behalf of the appellant, contended that there was no cause of action for the suit and as such Section 17 of the Act has no application. In our opinion, the suit was filed after service of notice for default. It is now too late in the day to argue that the suit must go as there is no cause of action. On making a default or subletting there is a cause of action u/s 13(1) of the Act for the plaintiff to file a suit but it is always for the defendant to defend by filing written statement to controvert the statement made in the plaint. But in any case it is clear from the plaint there is a cause of action for filing the suit.

3. Next it is contended by Mr. Roy that the defendant having paid all the amount he has a right u/s 114 of the Transfer of Property Act to avoid the forfeiture of the lease. In our opinion, when the West Bengal Premises Tenancy Act applies Section 114 of the Transfer of Property Act, in so far as forfeiture against default is concerned, cannot be applied. It appears to us that even the Supreme Court goes to the extent in saying that it is not necessary for a landlord to give a notice u/s 106 of the Transfer of Property Act for determination of the tenancy in view of the special provision of the West Bengal Premises Tenancy Act, in particular Section 13(6) of the Act. In absence of such a provision the plaintiff landlord need not issue any notice determining the tenancy as no decree can be passed under a particular provision of the Act unless the landlord can bring his case within the four corners of the statute which controls the relationship between the landlord and the tenant in respect of the premises. Be that as it may, the Division Bench of our High Court in a case reported in (66) 70 Cal WN 676 overruled the Hon'ble single Judge's decision reported in Deo Chand

Singh Vs. Shah Mohammad, inter alia holding that Section 114 of the Transfer of Property Act will not apply to matters coming under the West

Bengal Premises Tenancy Act.

4. In that view of the matter, there is no substance in this contention also.

5. In the last argument Mr. Roy contended that the notice was not served. The notice was issued by registered post with acknowledgment due and

there is a presumption under the Evidence Act that the notice must have reached him. In the present case 'acknowledgment due' came back after

service though the defendant denied receipt thereof but the learned Judge himself compared the admitted signature as well as the signature in the

acknowledgment receipt and came to a finding that this is the signature of the defendant. In that view of the matter, in our opinion, it must be held

that the public act has been done in accordance with the finding of the learned Judge that the notice was duly served. It has been proved by the

plaintiff that the defendant was in default in payment of rent from March 1971 and, therefore, the plaintiff is entitled to a decree u/s 13(1)(i) of the

Act.

6. The appeal, therefore, stands dismissed. There will be no order as to costs.

7. The deponent is given time to vacate the premises by the 30th September 1983, on condition that he will go on depositing in the court below an

amount calculated at the rate of rent last paid, every month, the first of such deposits to be made by the 15th March, 1983, and, thereafter, by the

fifteenth of each succeeding month.

8. In default of making any of the deposits as hereinbefore stated the decree will be immediately executable.

Sharma, J.

9. I agree.