
(1992) 11 CAL CK 0027
In the Calcutta High Court

Banawari Lal Kapoor

APPELLANT

Vs

Dr. Arabinda Basu and Others

RESPONDENT

Date of Decision : 05-11-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 47

West Bengal Premises Tenancy Act, 1956 — Section 13, 13(1), 13(6)

Citation : 97 CWN 64

Hon'ble Judges : Kalyanmoy Ganguli, J

Bench : Single Bench

Advocate : A.P. Chatterjee, J.B. Bhattacharjee and A.K. Roy, for the Appellant; Probhat Kumar Mukherjee and Mekhala Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Kalyanmay Ganguly, J.—This revisional application u/s 115 of the CPC is directed against an order passed on December 21, 1991 by the learned Munsif, 2nd Court, Alipore, 24-Parganas in Misc. Case No. 73 of 1990 u/s 47 of the CPC in Title Execution Case No. 33 of 1982 arising out of Title Suit No. 517 of 1990. The Opposite Parties filed a Title Suit being T.S. No. 517 of 1990 in the 2nd Court of Munsif at Alipore against the petitioner, inter alia praying for a decree for recovery of khas possession of the tenanted portion of the petitioner on the ground of default in payment of monthly rent and for using the tenanted portion for the purpose other than residential. The suit was decreed as far back as on September 15, 1981 and thereafter various proceedings followed for about 10 years and till now the landlord has not yet been able to get possession of the premises in question inspite of the fact that the suit was decreed on September 15, 1981.

2. There were various proceedings initiated and the matter reached upto the Hon'ble Supreme Court and the tenant/petitioner lost a throughout. Then when the decree was put in execution, the landlord/opposite parties initiated Misc. Case 18 of 1989 under Order 21 Rule 97 of the Code of Civil Procedure.

Receiving notice of the said Misc. Case the tenant/petitioner filed an application u/s 47 of the CPC for challenging the falsity and excitability of the said decree inter alia on the ground of nullity of the decree. The principal contention of the tenant/petitioner in the application u/s 47 of the CPC was that the judgment did not record any satisfaction of the learned trial court as to whether any of the grounds as enunciated in Section 13(1) of the West Bengal Premises Tenancy Act. 1956 was present. The further grievance of the petitioner was that the learned trial court did not dwell upon the validity or even the existence of a notice to quit as contemplated u/s 13(6) of the aforesaid 1956 Act.

The learned executing court dismissed the application of the tenant/petitioner u/s 47 & the CPC by the impugned order. Hence the instance revisional application. Before proceeding further it may necessary to peruse the judgement itself which was passed on September 13, 1981 The judgment reads as follows :

T.S.5. 517/80

Order No. 7 dt. 15.9.81.

Plff files hazira. No steps taken by the defendant who is absent on repeated calls.

It is now 3.10 P.M. The suit is taken up of ex parte hearing. P.W.I. Amal Kumar is examined. Documents marked at ext. 1, 2, 3, and 4 for the plaintiff. Hd. considered.

This is a suit for recovery of Khas Possession on evicting the defendant therefrom.

Plaintiffs have filed this suit for ejectment against the defendant on the ground of default and on the ground that the defendant has been using the suit premises other than residential purpose.

Plaintiffs' case is proved from the expert evidence of P.W.I. Amal Kumar Basu coupled with the exhibited documents. Nothing to disbelieve. C.F. paid is correct. Hence.

ORDERED

That the suit be decreed exparte with costs against the defendant. Plaintiff do get a decree for ejectment against the defendant in respect of the premises in suit on evicting the defendant therefrom.

Defendant is hereby allowed two months time to quit and vacate the premises in suit amicably in favour of the plaintiff, failing which the plaintiff shall be at liberty to execute the decree through court."

3. Admittedly the judgment could have been a little more eloquent and the learned Judge ought to have elaborated a little more on the existence of the grounds u/s 13(1) of the 1956 Act but the question is as to whether the judgment as it is merely a bad judgment, a judgment proper is altogether a nullity for failure to observe the existence of any of the grounds contemplated under sub-section (1) of Section 13 of the 1956 Act.

4 It is significant to note that the learned Judge at least observed that the plaintiffs case is "proved" from the "ex parte evidence of P.W. 1 Amal Kr. Basu coupled with the exhibited documents."

5 Various points were urged and case laws cited on behalf of both the parties in support of their contentions.

The principal contention of the petitioner is that unless the satisfaction as to the existence of any of the grounds as mentioned in sub-section (1) of Section 13 of the 1956 Act, is recorded in the body of the judgment itself specifically, the judgment becomes a nullity. In support of their contention Mr. A.P. Chatterjee, the learned advocate appearing for the petitioner cited the case of Sibapada Roy Chowdhury Vs. Sudhansu Kumar Sen, In the said case it was inter alia, held that unless the court is satisfied about the existence of any or more grounds contemplated in sub-section (1) of Section 13 of the 1956 Act, the judgment and for the matter of that decree would be a nullity. The same view was expressed by Mitra, J. in the case of Nandini Bala Dasi vs. Bibhuti Bhusan Mukherjee reported to 1987(1) CLJ 57. In the said case also His Lordship was pleased to observe inter alia, that unless the court comes to any finding regarding the existence of any grounds under sub-section (1) of Section 13 of the 1956 Act, the decree passed by the court should be treated as a nullity being without jurisdiction.

6 Both the cases cited at the bar do not say specifically that the satisfaction of the court as to the existence of any such ground/grounds should be manifested and/or explicitly mentioned in the body of the judgement itself.

7 There is no doubt that unless there is a satisfaction of the court as to such existence of any or more of grounds of eviction, the decree would be a nullity as Section 13 provides that.

Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any court in favour of the landlord against tenant except on one or more of the following grounds, namely :--

.....

8 Section 13 does not spell out that such existence of the grounds are to be specifically and ostensibly recorded in the body of the judgment even if it can be inferred from the tenor of the judgment and from a consideration of the materials on record.

9 The law does not prescribe any pre-set format for recording such satisfaction. Some Judges are verbose, some suffer from the vice of culturing spartan brevity. The question to see is whether from the circumstances, the materials on record and the tenor of the judgment such inference as to the existence of such grounds as contemplated in sub-section (1) of Section 13 of the 1956 Act is discernible. There is no formula for recording such satisfaction and none of the case laws cited also hold that such satisfaction is to be recorded in a particular

mode or fashion. In this connection a reference may be made to the case of *Biswa Bhusan Bose & Anr. vs. Smt. Kusum Agarwal* reported in 1981 (1) CLJ 1. This is a judgment of a Division Bench of this Court prescribed over by the Hon"ble Justice Anil Kumar Sen. In the said judgment it has inter alia, been observed, after considering the various judgment of the Hon"ble Supreme Court and this court that the jurisdiction of the court is not dependent on the recording of such satisfaction in the decree itself. The absence of such recording as to the existence of any of the grounds of eviction as contemplated in Section 13(1) of the Act of 1956 does not necessary render the decree a nullity.

10 Relying on the aforesaid Division Bench judgment, A.K. Nandy, J. in the case of *Satpal Tondon Vs. Smt. Jyotsna Ghosh and others*, inter alia observed that manifestation of the ground of eviction the judgment is not necessary. The more existence and the satisfaction of the court as to such existence confer jurisdiction on the court to pass a decree and such jurisdiction is not dependent on recording such satisfaction in the decree itself. His Lordship in coming to the aforesaid conclusion relied on the Hon"ble Supreme Court case of *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others*, In the aforesaid case Their Lordships observed that "from a conspectus of the cases cited at the bar the principle that emerges is that if at the passing of the decree there was some material before the court, on the basis of which the courts could be prima facie satisfied about the existence of a statutory ground for eviction it will be presumed that the court was so satisfied and the decree for eviction though appropriately passed on the basis of compromise would be valid. Such material may take the shape either of evidence recorded or produced in the case or it may partly or wholly be in the shape of an express or implied admission made in the prima facie agreement itself." The aforesaid Division Bench judgment of this court also quoted from the judgment of the Hon"ble Supreme Court in *K.K. Chari Vs. R.M. Seshadri*, to the effect that

The Hon"ble Supreme Court expressly observed that satisfaction of the court which is no doubt a prerequisite for the order of eviction need not be by the manifestation borne out by a judicial finding. Executing court for determining such question can go behind the decree and look into the pleadings and the proceedings before the court to find out whether such a ground existed when the decree was passed.

11 It has also been observed by a Division Bench of this court in the case of *Sushil Ch. Sur vs. Smt. Sadhana Bakshi & Anr.*, reported in 1982 (1) CHN 410. In the aforesaid Division Bench judgment of this court it was inter alia, observed that

From a conspectus of the decisions relied on the judgment of the learned Judge in the court below the principle that emerges is that if at the time of passing of the decree there was some material before the court, on the basis of which the court could be prima facie satisfied about the existence of a statutory ground for eviction, it will be presumed that the court was so satisfied.

12 In the decisions cited by the tenant/petitioner namely, the decision reported in Sibapada Roy Chowdhury Vs. Sudhansu Kumar Sen, (judgment by D.C. Chakraborty, J.) and 1987(1) CLJ 37 (decision of Mitra, J.), the Division Bench judgments of this court and the decisions of the Hon"ble Supreme Court were neither cited nor considered and as such, in my opinion the aforesaid judgments of the two Judges are per in curium and no reliance can be placed on the said decisions.

13 Following the Division Bench judgment and the decisions of the Hon"ble Supreme Court I am constrained to hold that a judgment or decree need not spell out specifically the fact that the court is satisfied about the existence of any of the grounds for eviction as contemplated in sub-section (1) of Section 13 of the 1956 Act. It is sufficient if such grounds in fact do exist which may appear from the materials on record.

14 In the instant case the lower court records were sent for the purpose of finding out as to whether such grounds were or were not in existence. In the suit one of the plaintiffs deposed. In his deposition the P.W. 1 has categorically stated that the tenant had defaulted in payment of rent since January 1980 and that although the tenancy of the defendant was for residential purpose the defendant was using a part of the tenanted premises as a school for dance and drama. This evidence was not shaken in any cross examination from the evidence. It also appears that notice to quit was duly served on the tenant and the tenant duly acknowledged the said receipt of the said notice and both the copy of the notice and the acknowledgement card has been exhibited in the case and marked as exhibits.

15 At this point one should remind ourself that the learned Judge observed in his judgment that the plaintiffs' case is proved from the ex parte evidence of P.W. 1 Amal Kr. Basu coupled with the exhibited document. "The conclusion is inescapable from reading together the judgment, the evidence and the exhibits that grounds for eviction were present and could be gathered from the materials on record which in its turn would impute satisfaction on the Judge.

16 Another point was sought to be raised by the tenant/petitioner in this revisional application that there is no specific finding as to the sufficiency and validity of the notice to quit. So far as that aspect is concerned it has first of all to be seen that from the evidence it appears that such due valid and sufficient notice was in fact, served on the tenant. There is another aspect to the matter. The language in sub-section (1) and Sub-section (6) of Section 13 of the 1956 Act are different and distinguishable. The language used in subsection (1) of Section 13 prohibits the court from passing any decree of eviction in the absence of any of the grounds mentioned in clause (a) to (1) of subsection (1) of Section 13 of the Act whereas sub-section (6) of Section 13 puts the embargo on the landlord for initiating any proceeding for eviction without first issuing a month's notice to the tenant expiring with a month of tenancy. In sub-section (1) of Section 13 the embargo is on the court to pass a decree whereas in sub-section

(6) the embargo is on the landlord to initiate a proceeding in eviction. Even if the suit is initiated without being preceded by a notice under sub-section (6) of Section 13 the decree will be a bad and illegal decree and not a nullity a initio. The court has a right to pass a wrong, bad and illegal decree which can be corrected in appeal but absence of a notice will not render a decree a nullity.

17 For the reasons stated above this application fails and is dismissed. Let the execution be completed as expeditiously as possible as the decree was obtained more than 11 years ago and the landlord is being deprived of the fruits of the litigation for eleven years and he must be allowed to reap the harvest of his toil. Let the records go down to the court below forthwith to enable the executing court to proceed with the execution.