

(1921) 08 CAL CK 0018
In the Calcutta High Court

Bata Kristo Pramanik

APPELLANT

Vs

A.K. Roy

RESPONDENT

Date of Decision : 02-08-1921

Acts Referred:

Calcutta Rent Act, 1920 — Section 74

Citation : AIR 1921 Cal 413 : 65 Ind. Cas. 177

Hon'ble Judges : N.R. Chatterjee, J; Chotzner, J

Bench : Division Bench

Judgement

1. This Rule is directed against an order of the President of the Calcutta Improvement Tribunal refusing to execute an order for costs passed by him on the ground that he had no power to execute such an order.

2. The petitioner applied to the President of the Tribunal u/s 18 of the Rent Act for revision of an order of the Rent Controller fixing the standard rent of certain premises which the opposite party occupied as tenant. The President fixed the standard rent and awarded costs, amounting to Rs. 89.8, to the petitioner against the opposite party. The petitioner thereupon applied to the President of the Tribunal for execution of the order awarding costs. The learned President held that he had no power to execute the order for costs awarded by him.

3. It appears that two contentions were raised before him by the opposite party, namely, first, that the President had no jurisdiction to pass the order about the payment of costs and, secondly, that he had no jurisdiction to execute such an order.

4. So far as the first question is concerned, the learned President held, and we think rightly, that he is a Court and that the jurisdiction exercised by him u/s 18 of the Rent Act is civil; jurisdiction, so that in proceedings under that section the President is a Court of civil jurisdiction within the meaning of the Code of Civil Procedure, and u/s 141 of that Code as well as under the specific provision of Section 24 of the Rent Act the procedure laid down in the Code in regard to suits

applies, as far as may be, to such proceedings.

5. Section 4 of the Calcutta Rent Act lays down that in revising the decisions of the Controller, the President of the Tribunal or the principal Civil Court shall follow, as nearly as may be, the procedure laid down in the Code of Civil Procedure, 1908, for the regular trial of suits. Rule 4 of the rules framed by the Local Government also provides that in making enquiries under the Act, the Controller or the President of the Tribunal shall follow, as nearly as may be, the procedure laid down in the Code of Civil Procedure, 1908, for the regular trial of suits, the substance only of the evidence being recorded as in unappealable cases, and Rule 24 lays down that in all proceedings before them under the Act, the Controller and the President of the Tribunal shall have all the powers possessed by a Civil Court for the trial of suits.

6. Now, the Tribunal being vested with all the powers of a Civil Court for the trial of suits, has certainly power to award costs, as the power possessed by a Civil Court for the trial of suits also includes the power of awarding costs. So far as the power to award costs is concerned, it is not disputed before us that the President has such power. But the learned President was of opinion that he had no power to execute the order for costs and that is also the contention of the opposite party before us.

7. The learned President relied upon the provisions of "section 4 of the Code of Civil Procedure. That section lays down that in the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit, or otherwise affect, any special or local law now in force, or any special jurisdiction or, power conferred or any special form of procedure prescribed by or under any other law for the time being in force.

8. But that section only means that the provisions of the Code would not apply if they are inconsistent with the provisions of such special or local law, nor affect any special jurisdiction or special procedure prescribed by any other law.

9. The learned President points out that u/s 77, Sub-section (2) of the Calcutta Improvement Act, every award of the Tribunal, and every order made by the Tribunal for the payment of money shall be enforced by the Calcutta Small Cause Court as if it were a decree of that Court. That merely shows that the special Act, viz., the Calcutta Improvement Act, has made a special provision for execution of decrees of the Tribunal by some other Court, namely, the Calcutta Small Cause Courts. It may be said that if the Tribunal is not to execute its order under the Improvement Act, it is not likely that the Legislature intended that it should execute its order under the Rent Act. Possibly it was a case of omission, but in the absence of any provision that the orders of the President of the Tribunal under the Rent Act are to be enforced by the Calcutta Small Cause Court, we must hold that the President of the Tribunal has the power of enforcing his own order passed under that Act.

10. On behalf of the opposite party we are referred to the case of Gobordhone

Das v. Doolli Chand 61 Ind. Cas. 210 : 25 C.W.N. 661 : 83 C.L.J. 651 : 22 CriL.J. 354. We do not think, however, that that case has any bearing on the present case. In that case the question raised was whether Rule 4 framed by the Local Government, which makes the provisions of the CPC applicable to enquiries made under the Act by the President, was ultra vires in so far as an enquiry into an offence u/s 20 of the Rent Act is concerned. Here no such question arises, as the Local Government has power to frame rules for regulating the procedure for the President of the Tribunal in matters like the present.

11. It is contended that Section 24 of the Act and Rule 24 make some portion only of the Civil Procedure Code, vis., that relating to regular trial of suits, applicable to proceedings under this Act, and not those relating to execution. But Rule 24 lays down that the President shall have all the powers of a Civil Court for the regular trial of suits. It is to be observed that u/s 18 of the Calcutta Rent Act, the application for revising the order of the Rent Controller in respect of premises outside Calcutta is to be made to the principal Court of original jurisdiction in the district. Rule 24 does not lay down the procedure to be adopted in such Civil Court, because no provision is necessary to be made with respect to proceedings in a Civil Court. A Civil Court can surely execute its own orders and it would be anomalous that an order for costs u/s 18 when passed in a case relating to premises outside Calcutta can be executed, whereas such an order with respect to a case relating to premises inside Calcutta cannot be executed.

12. In Nilmoni Singh Deo v. Taranath Mukerjee 9 C. 295; (12 C.L.R. 361 : 9 I.A. 174 : 5 Shome L.R. 130 : 4 Sar. P.C.J. 392 : 6 Ind. Jur. 547 : 4 Ind. Dec. (N.S.) 846 the question arose whether a Collector under Act X of 1859 could transfer a decree for rent for execution to a Civil Court in another district, there being no provision in that Act for such a transfer. The Judicial Committee, in deciding the question in the affirmative, observed that the Rent. Court was a "Civil Court in the sense, that it is deciding on purely civil questions between persons seeking their civil rights" and being a Civil Court in that sense it falls within the provisions of the Civil Procedure Code, and further that "there is nothing in the Act X of 1859 which provides for any execution beyond his (Collector's) jurisdiction, and there is nothing to forbid the conclusion that such executions are left to the operation of Act XXXIII of 1852, or the corresponding portion of Act VIII of 1859." In Chaitan Patiosi v. Kunja Behari 2 Ind. Cas. 207 : 38 C. 832 : 15 C.W.N. 863 : 14 C.L.J. 284 the learned Judges, referring to the above observations of the Judicial Committee in Nilmoni Singh's case 9 C. 295; 12 C.L.R. 361 : 9 I.A. 174 : 5 L.R. 130 : 4 P.C.J. 392 : 6 Ind. Cas. 547 : 4 Ind. Cas. 846 observed: "this and the other reasons given for the decision seem to leave no room for doubt that their Lordships thought that except upon points expressly provided for by Act X of 1859,"the procedure of the Revenue Courts when trying questions arising under that Act must be governed by the Civil Procedure."

13. It may be said that Act X of 1859 laid down a procedure relating to execution although it did not provide for transfer of decrees to another district, whereas

Rule 24 under the Calcutta Rent Act merely provides for the procedure for trial of suits. It is unnecessary, however, to discuss the matter further, because even if no provision is made in the Act or in the rules for execution of orders under the Rent Act, once it is held" that the President is a Court of civil jurisdiction and has power to award costs we think it must be held, that the Court has inherent power to enforce the order for costs passed by it. In the case of Jogendra Chandra Sen v. Bibee Wazidunneissa "Khatun 34 C. 860 : 11C.W.N. 856 Sir Francis Maclean, C.J., observed as follows: "But it is now urged that the Court has no jurisdiction to do this which means, in effect, that the Court has no power to enforce its own orders. I hope that is not so, and I do not think that it is so. There is apparently no section in the CPC which applies directly to the case. But the Code is not exhaustive, and it seems to me that when the Court had jurisdiction, as undoubtedly it had, to make the order as to costs, there is an inherent power in the Court to have that order carried into effect; otherwise the order would be a force."

14. We think the principle stated above, viz, that a Court has inherent powers to execute its own orders is applicable to the present case.

15. We accordingly hold that the President of the Tribunal has power to execute the order for costs passed by him.

16. The Rule is accordingly made absolute.

17. We make no order as to costs.