
(1947) 08 CAL CK 0004
In the Calcutta High Court
Case No : Civil Revision Case No. 291 of 1947

Bhim Charan Guin

APPELLANT

Vs

Sasi Bhusan Kundu

RESPONDENT

Date of Decision : 22-08-1947

Acts Referred:

Citation : (1947) 08 CAL CK 0004

Judgement

Sen, J.—In my opinion this Rule must be made absolute. The facts briefly are as follows: The Plaintiff instituted a suit for rent against the Defendant firm claiming rent at the rate of Rs. 29 per month for the period of Baisakh, 1351, to Baisakh, 1353 B.S. (April 15, 1944 to April 15, 1946).

2. The original rent of the demised premises was Rs. 13-8. The Plaintiff's case was that owing to a cyclone the premises were damaged and had to be repaired and for effecting these repairs the Plaintiff increased the rent to Rs. 29 per month from Bhadra, 1350 P.S. On these allegations the Plaintiff brought his suit against the Defendant. The defence taken was that the original rent payable was Rs. 13-8, that there had been no agreement by which the rent had been increased and that the rent had been paid in full partly by money paid in advance and partly by deposits made in the office of the House Rent Controller, Midnapore.

3. The learned Judge has found that there was an agreement by which the rent was increased to Rs. 29 per month from Bhadra, 1350 B.S., but he has held that, by reason of the provisions of para. 3 of the Bengal House Rent Control Order of 1942, the Plaintiff Cannot claim rent at a rate which exceeds Rs. 13-8, the original rent, by more than 20 per cent. On this basis, he has found that the rate of rent payable for the period in suit was Rs. 16-3. He has found further that the Defendant had paid rent in excess of this rate for an anterior period of 1350 to 1351 B.S. and after deducting this excess he has granted the Plaintiff a decree for Rs. 88-11. The defence of an advance payment has been disbelieved.

4. The only point for decision is whether the learned Small Causes Court was right in holding that the Plaintiff could not charge rent in terms of the agreement

at the rate of Rs. 29 per month by reason of any law or ordinance.

5. The first point, which I would like to stress, is that the learned Judge was quite wrong in holding that the suit was governed by the Bengal House Rent Control Order of 1942. That Order came to an end on September 30, 1946. The judgment of the learned Judge was passed on November 30, 1946. The Order at that time was dead and it could not have any effect upon the rights of the parties, except in so far as any provision of that Order had been incorporated in any other law which was in force at the time of the decision of the suit. At the time that the decree was passed, the Plaintiff's right regarding the amount of rent, which he could claim, was governed by Section 3 of the Calcutta Rent Ordinance of 1946 which is in the following terms:

3(1) Subject to the provisions of this Ordinance, where the rent of any premises has been or is hereafter, during the continuance of this Ordinance, increased so as to exceed the standard rent, the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable:

Provided that nothing in Sub-section (1) shall apply--

(a) to any rent which accrued due before the date of the commencement of this Ordinance.

6. I need not reproduce the other provisos, as they have no application to the point for determination in this application. Reading Section 3(2) together with prov. (a), I am of opinion that the Plaintiff was entitled to claim rent at the rate of Rs. 29 per month in accordance with the provisions of the agreement between him and the Defendant firm. Sub-section (2) lays down that, during the continuance of the Ordinance, a landlord cannot claim rent in excess of the standard rent in spite of any agreement to the contrary. The standard rent so far as these premises are concerned would be the standard rent fixed in accordance with the provisions of Section 2(7)(b). The proviso, however, says that Sub-section (1) shall have no application to any rent which accrued due before the date of the commencement of the Ordinance of 1946. The learned advocate for the Petitioner argues that the rent which accrued due before the date of the commencement of this Ordinance was the rent which accrued due by reason of the agreement between the parties, that is, rent at the rate of Rs. 29 per month. The learned advocate for the Defendant firm argues that the words rent which accrued due before the date of "the commencement of this Ordinance" mean rent which would have been legally recoverable under the provisions of the Bengal House Rent Control Order of 1942, because that Act was in force at the time at which the rent accrued due. In support of his argument he referred to Section 26 of the Calcutta Rent Ordinance of 1946, but I am unable to understand what application that section has to the point under consideration. That section does not keep alive the provisions of the Bengal House Rent Control Order of 1942, so far as the rate of rent recoverable is concerned. It relates to proceedings commenced under the provisions of the Calcutta House Rent Control

Order of 1943, of the Bengal House Rent Control Order of 1942 and of the Bengal Hotels and Lodging Houses Control Order of 1942 and says that any proceeding commenced under the provisions of any of these Orders shall on the Orders ceasing to be in operation be continued and be deemed to have been commenced under the corresponding provisions of the Ordinance of 1946. Section 26 relates, therefore, to proceedings commenced under the Orders mentioned above. In the present case I am not dealing with any proceeding commenced under any of the provisions of the aforesaid Orders. "The proceedings which I am dealing with constitute a suit instituted in the Court of Small Causes in accordance with the provisions of the Provincial Small Causes Courts Act. I realise that any claim for rent in this suit will be affected by the provisions of the Calcutta Rent Ordinance of 1946, but it cannot be said that the present suit is a proceeding under the Calcutta Rent Ordinance of 1946 or a proceeding under any of the Orders before mentioned. For these reasons, I am of opinion, that no notice need be taken of the provisions of Section 26 of the Calcutta Rent Ordinance of 1946 in deciding the matter which has come up for decision.

7. Now, what was the rent which accrued due before the date of the commencement of the Ordinance of 1946 which would govern this particular case? As I have stated before, the judgment was passed on November 30, 1946. On that date, the Bengal House Rent Control-Order of 1942 had ceased to exist. The Court will, therefore, have to decide the rate of rent with reference to, the provisions of the general law and to the Calcutta Rent Ordinance of 1946. Under the general law, the rent payable would be the rent agreed upon between the parties. Under the Calcutta Rent Ordinance of 1946, ordinarily the rent payable would be the standard rent provided for in Section 2 irrespective of any agreement, but in a case which would be affected by the proviso to Section 3(1), Sub-section (1) would have no application, that is to say, in respect of rent which accrued due before the commencement of the Ordinance of 1946. Sub-section (1) would have no application and the general law would apply. As I have stated before, the general law is that the rent payable would be the rent agreed upon between the parties. In this case, the rent payable would be at the rate of Rs. 29 per month.

8. In these circumstances, the Rule is made absolute and the judgment and decree of the Court below are set aside so far as the rate of rent is concerned. There will be a decree against the Defendant firm for rent at the rate of Rs. 29 per month for the period in suit. The Plaintiff will be entitled to these costs throughout.