
(1957) 02 CAL CK 0022
In the Calcutta High Court
Case No : Civil Rule No. 914 of 1956

Bishnu Charan Mukherjee

APPELLANT

Vs

Basudev Banerjee

RESPONDENT

Date of Decision : 11-02-1957

Acts Referred:

West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 — Section 14(4)

Citation : (1958) 1 ILR (Cal) 315

Hon'ble Judges : Renupada Mukherjee, J

Bench : Single Bench

Advocate : Sachindra Chandra Das Gupta and Murari Mohan Mukherjee, for the Appellant; Bankim Chandra Dutta and Bratendra N. Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Renupada Mukherjee, J.—This Rule is directed against an order passed by the Munsif, Third Court, Howrah, in connection with a suit for ejectment brought by the Plaintiffs opposite parties against Petitioner Bishnu Charan Mukherjee. The premises from which the Petitioner is sought to be evicted consists of a room and a covered verandah at 46 Khurut Road. The ground on which ejectment was claimed by the Plaintiffs was one of default in payment of rent.

2. The suit was contested by the Defendant Petitioner, who denied relationship of landlord and tenant between himself and the Plaintiffs opposite parties and contended that one Jagannath Chatterjee, son of Petitioner's sister, was the real tenant of the premises and he conducted business therein.

3. While the suit was in progress in the court of the learned Munsif the Plaintiffs opposite parties filed an application u/s 14(4) of the West Bengal Premises Rent Control Act of 1950 for a direction upon the Defendant Petitioner to deposit arrears of rent and also to pay current rent month by month. This application was contested by the Petitioner and the principal ground of his contest was that he was not a tenant of the Plaintiffs opposite parties and was not, therefore,

bound to pay either arrears of rent or current rent. The application was, however, allowed on contest on January 18, 1955. The Petitioner did not deposit the sum of Rs. 950, which he was directed to deposit within 15 days of the date of final order passed on the application u/s 14(4). His defence against ejectment was, therefore; struck out. The suit, however, continued to proceed because the Plaintiffs had a claim for mesne profits in the suit. The Petitioner attempted to show that he was not liable for any mesne profits inasmuch as he was not a tenant of the opposite parties. In order to substantiate his allegation that he was not a tenant of the opposite parties the Defendant wanted to disprove his signature on a certain document, which had been previously marked Ext. 3 and which was relied on by the other side for the purpose of showing that the Petitioner was a tenant of the opposite parties. The Petitioner's prayer for citing a handwriting expert for the above purpose was disallowed by the trial court because, in the opinion of that court, the question about the existence of the relationship of landlord and tenant had been finally decided between the parties and the matter could not be re-agitated at the instance of either party. This order was passed on March 29, 1956 and the Defendant has come to this Court in revision contending that by refusing process on the handwriting expert, the learned Munsif has refused illegally to exercise a jurisdiction which was vested in him by law.

4. Mr. Das Gupta appearing on behalf of the Petitioner submitted that the learned Munsif was wrong in thinking that the question of the existence of relationship of landlord and tenant between the parties has been finally or conclusively decided between the parties in the proceeding which took place, in connection with the application u/s 14(4) of the Rent Control Act of 1950. Mr. Das Gupta submitted that such a decision was arrived at by the trial court only for the purpose of deciding the application u/s 14(4) and the determination of that question cannot be taken to be a final or conclusive decision between the parties, in a subsequent, proceeding. I may mention here that in holding that the matter had been conclusively and finally decided between the parties the trial court has relied on a division Bench case *Sunil Baran Roy Choudhury v. Purna Chandra Chandra* (1952) 59 C.W.N. 974. It has no doubt been held in that case that an appeal lies against an order striking out the defence following non-compliance with an order passed u/s 14(4) of the Rent Control Act of 1950 directing the tenant to put in arrears of rent and if no appeal is preferred, the order becomes final and can no longer be questioned. An exactly opposite view has, however, been taken by *Bachawat and Guha Ray JJ.* in another case, *Ashalata Mitra v. A.D. Viz* (1956) 60 C.W.N. 574. In the present case, however, I need not feel any difficulty because two opposite views have been taken in two Bench decisions on the question whether an order passed in connection with an application u/s 14(4) of the Rent Control Act of 1950 is an appealable order, because what really calls for my decision is whether a finding on the question of the existence of relationship of landlord and tenant, which is put in issue by the parties in connection with an application u/s 14(4) of the Rent Control Act of 1950, is open

to challenge at the instance of either party at a subsequent stage of the suit. On this question I do not find any direct authority of this Court. There is, however, a Division Bench decision of this Court of Das Gupta and Guha JJ. *Ashalata Mitra v. A.D. Viz.* (1955) 59 C.W.N. 692, in which it has been held that when other questions, besides the question of the existence of amount of arrears, are raised between a landlord and a tenant, it is the court's duty to decide those questions for the purpose of the application u/s 14(4). Mr. Das Gupta appearing on behalf of the Petitioner, relied on some portions of this report which seem to give an impression that the decision, which a court would make on an application u/s 14(4) would be for the purpose of that application only. There is, however, nothing in this decision to suggest an inference that if a court decides on an application u/s 14(4) of the Rent Control Act of 1950 matters like the existence of relationship of landlord and tenant between the parties or dispossession of the tenant, the decision of the court given at that stage of the suit would not bind the parties at a subsequent stage.

5. In this connection I may cite a case *D.R. Gellatly v. J.R. W. Gannon* (1953) 57 C.W.N. 294. Chakravartti C.J., who delivered the judgment in that case, held that if a tenant contests a suit for ejectment brought under the provisions of the West Bengal Premises Rent Control Act of 1950 and pleads that he is not a tenant, then till that question is decided against him there can be no question of proceeding against him as a tenant or applying to him Section 14(4) or any other provision of the Rent Control Act. The implication of this decision is that where a contesting" tenant denies the relationship of landlord and tenant between himself and the Plaintiff in a defence put forth on that line and the landlord makes an application u/s 14(4) of the Rent Control Act of 1950, the above pleas of the tenant must be decided as a preliminary issue for the purpose of properly deciding the application u/s 14(4). There is nothing in law from which it can be laid down as a proposition of law that a decision on a preliminary issue raised and decided between the contending parties should not be operative when the suit is finally heard and decided between the parties. I may only mention that where parties join issues on preliminary questions like the jurisdiction of the court or the operation of a bar of limitation, the decision given by a court on such questions binds the parties at all stages of the suit. It follows, therefore that where a tenant pleads that he is not the tenant of the Plaintiff in a suit for ejectment, the decision given by the court on such a question for the purpose of deciding an application u/s 14(4) must be taken to be final and conclusive during all subsequent stages of the suit. It cannot certainly be said that such a decision given by a competent court would be only a haphazard or inconclusive decision. of course in a suitable case where pleas of this nature are raised by a tenant the court may refrain from passing any order on an application u/s 14(4) of the Rent Control Act of 1950. That is the scope of the decision in *Bidyapati Ghose v. Raj Kumar Pal* (1953) 58 C.W.N. 361. From an examination of the authorities cited before me as also on a consideration of the general principles of law, I am unable to agree with the contention put forth by Mr. Das Gupta that a question of the

existence of relationship of landlord and tenant, raised and decided in connection with an application u/s 14(4) can be reopened by a party at the time of the final hearing of the suit. This contention of Mr. Das Gupta would also appear to be negated by the concluding sentence of Section 14(4) of the Rent Control Act of 1950. That sentence runs as follows:

The landlord may also apply for permission to withdraw the deposited rent without prejudice to his right to claim decree for ejectment and the court may permit him to do so.

6. This sentence shows that where a question as to the existence of the relationship of landlord and tenant is raised by an alleged tenant, that question must be determined finally by the court for the purpose of deciding an application u/s 14(4), otherwise it would be meaningless to allow the landlord to withdraw the money deposited by the tenant.

7. In view of the foregoing observations I am of opinion that the learned Munsif was right in refusing to allow the Defendant Petitioner to re-agitate a question which had been decided by him conclusively at a previous stage of the suit, although that decision was given more or less for the purpose of deciding a preliminary issue. There is, therefore, no ground for interference in revision.

8. In the result, this Rule is discharged. Considering the circumstances of the case I direct that the parties will bear their own costs in this Rule.

9. Let the records be sent down to the court below without delay.