

(1995) 09 CAL CK 0011

In the Calcutta High Court

Case No : Appeal No. 48 of 1995 and Suit No. 239 of 1994

Central Bank of India

APPELLANT

Vs

Panalur Paper Mills and Another

RESPONDENT

Date of Decision : 26-09-1995

Acts Referred:

Transfer of Property Act, 1882 — Section 110

West Bengal Premises Tenancy Act, 1956 — Section 3, 3(2)

Citation : (1997) 1 CALLT 51

Hon'ble Judges : Umesh Chandra Banerjee, J; Barin Ghosh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Umesh Chandra Banerjee, J.—The rules of the High Court at Calcutta, Original Side, have special significance for the purpose of due administration of justice. It has stood the test of time and the powers of the High Court to frame rules have been preserved under the Letters Patent which is saved by the provisions of the Code of Civil Procedure. From time of time the High Court by resolutions adopted, the Rules on the Original Side of this Court and same has a binding effect in regard to suits instituted in the Original Side of this Court.

2. Chapter 13(A) of the Rules of this Court provides for summary procedure in suits to recover debts of liquidated demands or immovable property. Rule 1 of Chapter 13(A) expressly records that the provisions of the Chapter shall not be applicable save to suits as mentioned in Sub-rule (A) and (B). Sub-rule (B) of Rule 1 provides the application of the Chapter in regard to suits for the recovery of immovable property with or without claim for rent or mesne profits by a landlord against a tenant whose term has expired or has been duly determined by notice to quit or has become liable to forfeiture for non-payment of rent or against persons claiming under such tenant. The provision as contained in the Rules of this court is thus akin to the provisions of Order 37 of the Code of Civil Procedure. It is a special provision and has been engrafted for the purposes of

effecting speedy and effective Justice between the parties. Laws delay is not unknown in this sub-continent. The rule makers obviously not being oblivious of such a state of affairs have introduced this special provision in the Rules of this court. The legislators also deemed it expedient to incorporate in the Code of Civil Procedure, a similar procedure under Order 37 of the Code though certain amount of restrictions have been introduced in the Code by the 1976 amendment. But the need of speedy disposal of certain categories of suits, no doubt, continues to be the dominant object of the legislators.

3. It therefore appears that the discussion above leaves no manner of doubt that summary procedure is available in regard to a suit for recovery of immovable property with or without a claim for rent or mesne profits by a landlord against a tenant whose term has expired. Sub-rule (3) of Chapter 13(A) of the Rules of this Court provides that where the defendant in any suit which is within the terms of Rule 1 has entered appearance, plaintiff may, as regards its claim which is within the terms of Rule 1 on affidavit made by himself or by any other person who can swear positively to the facts verifying the cause of action and the amount claimed, if any, and stating that in his belief there is no defence to the claim, apply to the Judge for the final Judgment for the amount claimed together with interest, if any, or for recovery of land with or without rent or mesne profits as the case may be and costs. Be it noted here that by reason of the fact that speedy justice is to be made available to the parties, the Rule-makers in Proviso 2 to Rule 3 as noted above laid down that as against any defendant who has filed a written statement, such application shall not be permissible unless the summons is taken out within 10 days after receipt of the notice of entering of appearance under Chapter 8 Rule 18. In this context Rules 4, 5, 6 and 7 also to be noted. Sub-rule 4 provides that the application by the plaintiff for judgment under Rule 3 shall be made by Summons returnable not less than seven clear days after service accompanied by a copy of the plaint and affidavit.

4. Sub-rule 5 provides that the defendant may show cause against such application by affidavit and Sub-rule 6 provides that upon such application the Judge may, unless the defendant by affidavit or otherwise as the Judge may direct, shall satisfy the court that he has a good defence to the claim on its merits or disclose such facts as may be deemed sufficient to entitle him to defend, make an order refusing leave to defend and forthwith pronounce judgment, in favour of the plaintiff. Sub-rule 7 of Chapter 13(A) of the Rules, however, provides that if it appears to the Judge that any defendant has a good defence, he ought to be permitted to defend the claim and any other defendant who has no such defence ought not to be permitted to defend and though the former may be permitted to defend, the plaintiff shall be entitled to judgment against the later, and any issue execution upon a decree to be drawn up pursuant to such judgment without prejudice to his right to proceed with his claim against the other defendant.

5. Be it noted that the Rules also prescribe that leave to defend may also be

given conditionally or subject to such terms as the Judge may think fit.

6. This detail analysis of the Rules of this court could have been avoided but by reason of the fact that this is a special procedure as envisaged under the Rules, judicial decorum and ethics prompt this court to note the same in extenso.

7. Having dealt with the Rules of this Court pertaining to the rights of a party for summary judgment in specified cases, let us now turn on to the contextual facts so as to appreciate the contentions raised in the matter.

8. The plaintiff/respondent instituted this suit for eviction of the appellant/defendant from the 1st floor of Premises No. 13, Lindsay Street, Calcutta and for mesne profits by reason of expiry of a registered Lease Deed dated 1st December, 1969 entered into by and between the Appellant and the predecessor-in-interest of the respondent No. 1, being the proforma defendant in the instant suit. It is the definite case of the plaintiff that upon expiry of the period as prescribed in the indenture of lease that is to say, after 30th October, 1990 the defendant has no right to continue in possession of the premises in question and as such the plaintiff is entitled to obtain peaceful and vacant possession thereof.

9. Be it noted that the defendant No. 1 did enter appearance in the suit under the provision of the Rules of this court as detailed above and the plaintiff in time applied for final Judgment for recovery of possession of the leasehold premises and also for a decree for mesne profits for the period between the date of expiry of the lease and the date of delivery of possession.

10. Admittedly the indenture of lease does provide the expression "sooner determination" but does not provide the mechanism therefore and neither any option has been expressed to be available to any of the parties to the indenture to determine the lease prior to its expiration. On a perusal of the indenture, it appears that wherever the expression "sooner determination" occurs the lease deed provides the expression "or at the expiration". Be it noted that if it was the clear intention of the parties to have "sooner determination" of the lease then and in that event there was no difficulty in expressing the same with clarity. In the absence of mechanism being provided for in the indenture of lease can it be said that the intent is clear enough to indicate that the parties contemplated a "sooner determination"--it is this issue which is the subject matter of this appeal.

11. Whereas the learned trial Judge came to the conclusion that the question of applicability of the provisions of the West Bengal Premises Tenancy Act does not and cannot arise; the appellant in the appeal contended that at least a doubt can be raised in regard to the matter in issue, which would otherwise entitle him to obtain leave to defend the suit.

12. The short question therefore falls for consideration in this appeal is whether by reason of user of the expression "sooner determination" of the lease can there be any doubt in regard to the applicability of the West Bengal Premises Tenancy Act.

13. It ought to be noted at this juncture that the proviso to Sub-section (2) of Section 3 of the Tenancy Act lays down that in the event of an indenture of lease is for a period of not less than 20 years certain and the period limited by such lease is not expressed to be terminable before its expiration at the option of the landlord or the tenant, then and in that event, the provision of West Bengal Premises Tenancy Act shall not apply to such lease. The instant lease deed admittedly provides the expressions "sooner determination" but can the user of that expression be termed to mean and imply an option to terminate--the answer in our view cannot but be in the negative. No option can be inferred in a written instrument unless it is expressly stated. As noted above "sooner determination" admittedly does not provide any mechanism as to how the same would be determined and in the absence of such a mechanism it is no gain said that the parties have expressly reserved their rights to terminate. The language of the indenture of lease ought to be read in a manner so as to give credence to the intent of the parties and not otherwise. Option is free choice and there exists no such choice in any of the clauses of the lease deed. The lease deed expressly provides :

"To hold and enjoy the demised premises and during the said term or any extension thereof subject to the terms and conditions hereinafter contained but without any eviction or interruption by the lessee or by any person or persons lawfully claiming from or under or in trust for him". The inclusion of this clause in the lease deed cannot but mean and imply that there exists no terminable right or option.

14. Be it noted here that in order to have an option for "sooner determination" there factors are required to be considered viz. (a) termination; (b) free choice and (c) excise of such a right--in the Instant lease deed there is conspicuous absence of these three factors to bring home the contention of the appellant.

15. There is no provision for earlier termination and in the absence of a such a provision, question of reading into the indenture a particular option or choice or terminable interest in any view does not and cannot arise. The language of the proviso to Sub-section (2) of Section 3 of the Tenancy Act has been categorical enough to provide that the period limited by such lease if not expressed to be terminable before its expiration at the option of either the landlord or the tenant the act will not have any application provided however the lease is for a period over 20 years. In the instant case apart from the expression "sooner determination" there is no expression in regard to the termination of the lease before its expiration and there exist no option either of the landlord or of the tenant or a terminable right before expiration of the period of lease.

16. On the contrary as noted above the tenant is to hold and enjoy the property during the entirety of the term as mentioned in the lease deed and the only option given to the lease in regard to the removal of fixture at the end term of "sooner determination" thereof.

17. Be it noted here that the lease deed contains an option to the tenant for removal of fixtures and in accordance with the normal rules of interpretation of documents if on one particular issue the parties provide in writing an option to be exercised by one of the parties, then and in that event following golden rule of construction it would be presumed that in the event the parties wanted to incorporate any further option in regard to any other matter, there would have been an expressed provision in the lease deed in that regard and in the absence of which one cannot possibly read into the lease deed the existence of such a clause depicting an option or having a terminable interest. The clause in the lease deed as noted above unmistakably record wishes and desires of the parties in the matter of holding on to the tenancy during the entire period as mentioned in the deed of lease.

18. The learned trial Judge while dealing with the matter observed :

"The question of determination before the expiry of the term contained in the lease in my view provides for the right to determine the lease under the law that is to say under the Transfer of Property Act itself. The said words in the lease in the instant case providing for "sooner determination" cannot be equated with the option to terminate the lease at the instance of the landlord. The contention of the defendant therefore fails. In my view there is no defence in the suit and the plaintiff accordingly succeeds in the instant case."

19. We do not see any reason to come to a different conclusion as has been arrived at by the learned trial Judge : the conclusion as arrived at by the learned Judge is inescapable--either the words "sooner determination" thereof have to be treated as mere surplusage or the same should be treated as under the provisions of the Transfer of property Act and there is no escape therefrom more so by reason of the fact that the lease deed is for a period of 21 years commencing from 1st November, 1969 and expiring on 30th October, 1990 : on the fact of the document there exist no manner of doubt that the instant indenture is covered under the provisions of the Transfer of Property Act and not under the West Bengal Premises Tenancy Act. The language of the proviso to the Sub-section (2) of Section 3 of the Tenancy Act as noted above is clear and categorical that the expression of choice shall have to be expressly recorded in the document. The attempt on the part of the appellant in regard to an implied option in the matter under consideration does not and cannot arise by reason of the language used in the deed of lease.

20. Mr. Chatterjee appearing in support of the appeal placed strong reliance on Section 110 of the Transfer of Property Act. For convenience sake the provision is set out hereunder :

"110. Where the time limited by a lease of immovable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option".

21. Relying upon the same it was contended that since the lease deed itself records "sooner determination" there exists therefore an option to terminate the lease prior to its expiry and the lessee in terms of Section 110 would be entitled to treat the lease terminated and as such the lessee is entitled to treat the lease as being governed in terms of the provisions of Section 3 of West Bengal Premises Tenancy Act. We are, however, unable to record our concurrence with the submission for the reasons recorded in the preceding paragraph. In any event having a close look at the section itself it appears that this statute has conferred such a right on to a lessee only in the event of there being a clear expression of termination of the indenture prior to its expiry. Section 110 only indicates the party at whose option the lease can be terminated provided the lease is terminable before its expiry, but the person at whose option the same can be terminated has not been indicated and this cannot be taken advantage of by Mr. Chatterjee in treating the same as an exposition of law warranting the lessee to terminate the lease prior to its expiry when the lease does not provide that the same is terminable before its expiry. The language used in the section is clear and categorical and there exists no ambiguity whatsoever. It is to be noted that the section itself is very illustrative in its application and no further words can be read within the section, so as to draw the inference, if any, as has been canvassed by Mr. Chatterjee. In the premises, applicability of Section 110 of the Transfer of Property Act in the matter under consideration does not and cannot arise.

There is, therefore, no merit in the appeal, thus the appeal falls and the same is dismissed. No order as to cost.

Barin Ghosh, J.

22. I agree.