
(1985) 05 CAL CK 0003
In the Calcutta High Court
Case No : C.R. No. 886 of 1981

Chamanlal Rewashankar and Others

APPELLANT

Vs

Vasant Jiwraj Thakkar and Others

RESPONDENT

Date of Decision : 09-05-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Transfer of Property Act, 1882 — Section 108

West Bengal Premises Tenancy Act, 1956 — Section 17(1), 17(3)

Citation : 89 CWN 1067

Hon'ble Judges : M.M. Dutt, J

Bench : Single Bench

Advocate : Gobinda Ch. Pal and Jayanta Bhattacharjee, for the Appellant; Asok Kr. Sadhukhan, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Dutt, J.—This Rule is at the instance of the defendants tenants in a suit for eviction and it is directed against order no. 27 dated December 5, 1980 of the learned Chief Judge of the City Civil Court, Calcutta. By the said order, the learned Chief Judge dismissed the application of the defendants, u/s 151 of the CPC and allowed the application of the plaintiffs landlords u/s 17(3) of the West Bengal Premises Tenancy Act, 1956, hereinafter referred to as the Act. In the suit, the plaintiffs have prayed for eviction of the defendants from the suit premises on the ground of reasonable requirement of the plaintiffs of the suit premises for their own occupation, subletting of the suit premises by the defendants and violation of the provisions of clauses (m), (o) and (p) of section 108 of the Transfer of Property Act. The defendants entered appearance in the suit, and started depositing the monthly rent u/s 17(1) of the Act.

2. The plaintiffs filed an application u/s 17(3) of the Act praying for striking out the defence of the defendants against delivery of possession on the ground that the defendants had not paid rent in accordance with the provision of section

17(1). During the pendency of the application u/s 17(3) of the Act, the defendant filed an application u/s 151 of the Code of Civil Procedure. It transpired from the said application of the defendants that rents were deposited in Court in the name of plaintiff no. 1, Vasant Jiwraj Thakkar alone and not in the names of the other plaintiffs, all of whom are the landlords of the defendants, and that was the reason for which the plaintiffs filed the application u/s 17(3) of the Act. It was alleged in the application u/s 151 that the omission to mention the names of the other plaintiffs in the challans had taken place through inadvertence of the Advocate's clerk of the defendants. It was contended by the defendants that it was a technical defect, and that the defendants should be permitted to correct the challans by inserting the words "and others" after the name of the plaintiff no. 1. Shri Ganesh Chandra Pal, the clerk of the Advocate of the defendants, has affirmed an affidavit stating, inter alia, that through inadvertence, he omitted to mention the names of the plaintiffs in the deposit challans, and that it was a bona fide mistake on his part.

3. The learned Chief Judge, relying upon a Bench decision of this Court in *Bengal Tent Factories Ltd. & Anr. vs. Amiya Prova Das Gupta & Ors.*, 64 CWN 342 overruled the contention of the defendants and dismissed their application u/s 151 of the CPC and allowed the application of the plaintiffs u/s 17(3) of the Act striking out the defence of the defendants against delivery of possession. Hence, this Rule.

4. It is not in dispute that through inadvertence or mistake of the Advocate's clerk of the defendants in the deposit challans, the name of all the plaintiff were not mentioned and the deposits were being made only in the name and to the credit of the plaintiff no. 1. The question that falls for consideration in this Rule is whether the Court has the power to allow the defendants to amend the challans by inserting therein the words "and others" after the name of the plaintiff no. 1.

5. The learned Chief Judge has, relying upon the Bench decision in *Amiya Prova Das Gupta's case (supra)*, refused the prayer of the defendants to amend the challans. *Amiya Prova Das Gupta's case* arose out of a suit for ejectment of a tenant under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, hereinafter referred to as the Rent Control Act. In that case, Mrs. Amiya Prova Das Gupta was the plaintiff no. 1. According to the defendant, the plaintiff no. 1 was the sole landlord. The defendant, however, deposited rent with the Rent Controller in the name and to the credit of M/s. Amiya Prova Das Gupta and not in the name of Mrs. Amiya Prova Das Gupta. The deposit of rent under the Rent Control Act was governed by the provisions of Chapter IV thereof. Section 20(2) which was a provision under Chapter IV of the Rent Control Act provided, inter alia, that no such deposit would be considered to have been validly made if any statement in the application depositing the rent, whether made designedly or with gross negligence, were calculated to prevent the landlord from receiving payment from the Controller, unless the landlord had received such payment before the date of filing the suit for recovery of possession of premises from the

tenant. It was found that the misdescription of the name of the landlord in the deposit challans was deliberately and dishonestly made, and that the story of mistake as set up by the defendant was false. Further, it was found that even if the defendant's story of mistake was true, it was clearly a case of gross negligence and was likely to prevent the landlord from withdrawing the particular deposit or deposits. Accordingly, the deposits were held to be invalid,

6. In the instant case, the deposit of rent, with the Rent Controller is also governed by the provisions of Chapter IV of the Act with which we are concerned. Section 22(2) of Chapter IV of the Act is to some extent similar to section 20(2) of Chapter IV of the Rent Control Act. Section 22(2) of the Act provides that no such deposit shall be considered to have been validly made if the tenant willfully or negligently makes a false statement in his application in depositing the rent, unless the landlord has withdrawn the amount deposited before the date of institution of a suit or proceeding for recovery of possession of the premises from the tenant.

7. As has been stated already, the deposits in the instant case have been made not with the Rent Controller but in the Court u/s 17(1) of the Act. There is a difference between deposit of rent with the Rent Controller under the provisions of Chapter IV of the Act and deposit of rent in Court u/s 17(1) of the Act. Deposits made with the Rent Controller should conform to the provisions of Chapter IV of the Act. We are not, however, concerned with the provisions of Chapter IV of the Act inasmuch as the deposits have been made in Court. It is not in dispute that through a bona fide mistake of the Advocate's clerk the deposits had been made in the name of the plaintiff no. 1 alone. While it is doubtful whether the Rent Controller can allow to amend the deposit challans, there can be no doubt that the Court in which the deposits are made has ample power to allow amendment of the deposit Challans, so that there can be no difficulty for the landlords to withdraw the deposits made. The learned Chief Judge, in our opinion, misconceived the decision in *Amiya Prova Das Gupta's* case. In the first place, the deposits in that case were made with the Rent Controller and, in the second place, it was found that the misdescription in the name of the landlord was deliberately and dishonestly made, and that the story of mistake as set up by the defendants was false. In the instant case, apart from the fact that the deposits were made in Court u/s 17(1) of the Act, there is no such finding against the defendant and, accordingly, *Amiya Prova Das Gupta's* case (*supra*) has no manner of application. Moreover, in that case, the plaintiff no. 1 could not withdraw the amounts deposited by the defendant with the Rent Controller inasmuch as the deposits were made not in the name of the plaintiff no. 1 but, as stated earlier, in the name of "M/s. Amiya Prova Das Gupta". In the instant case, the plaintiff no. 1 could easily withdraw the amounts deposited by the defendants in Court u/s 17(1) of the Act and, withdrawal of the amounts by the plaintiff no. 1, one of the landlords, would be tantamount to payment to the other plaintiffs or landlords. In our opinion, therefore, the learned Chief Judge was not justified in refusing to correct the deposit challans by inserting therein

the words "and others". For the reasons aforesaid, we set aside the order of the learned Chief Judge. The application u/s 17(3) is dismissed and that made by the defendants u/s 151 of the CPC is allowed. The defendants are allowed to correct the deposit challans in question in the manner as prayed for by them. The Rule is made absolute. There will, however, be no order as to costs.