

(2024) 02 CAL CK 0074
In the Calcutta High Court
Case No : CO No. 3400 Of 2023

Dhananjay Das

APPELLANT

Vs

Mrinal Kanti Ghosh & Ors.

RESPONDENT

Date of Decision : 22-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 227

West Bengal Premises Tenancy Act, 1997 — Section 7(2), 14, 14(1), 14(1)(b), West Bengal Premises Tenancy Act, 1956 — Section 17(2)

Citation : (2024) 02 CAL CK 0074

Hon'ble Judges : Hiranmay Bhattacharyya, J

Bench : Single Bench

Advocate : Aritra Basu, S.P.Tewary, Tarak Nath Halder

Final Decision : Disposed Of

Judgement

Hiranmay Bhattacharyya, J

1. This Civil Order is at the instance of the defendant in a suit for eviction and is directed against the order dated 08.06.2023 passed by the learned Civil Judge (Junior Division), Second Court at Barrackpore in Ejectment Suit no. 100 of 2009.

2. By the impugned order, the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (for short "the 1997 Act") was allowed by directing the defendant/petitioner herein to deposit the arrear rent within the time limit specified in the said order.

3. The predecessor-in-interest of the opposite parties herein instituted the suit for eviction, inter alia, on the ground of default. After entering appearance in the said suit the defendant/ petitioner herein filed an application under Section 7(2) of the 1997 Act raising various disputes.

One of the disputes raised in the said application was that there exists no relationship of landlord and tenant, between the plaintiff and the defendant. The dispute as to the rate of rent was also raised by the defendant/petitioner. The

petitioner also raised a dispute with regard to quantum of arrear rent in the said application. The defendant/tenant claims to have paid a sum of Rs. 1,20,000/- only in advance towards the rent in respect of the sweet meat shop under the name and style of "Gouri Sweets" and further paid a sum of Rs. 90000/- only in advance towards the rent in respect of tenancy of the workshop namely "D.D. Enamels" subject to adjustment against the monthly rent from the month of January, 1998.

4. The predecessor-in-interest of the plaintiff's/ opposite parties contested the said application by filing a written objection specifically denying that the defendant tenant have made an advance of Rs. 1,21,000/- against the tenancy of the sweet meat shop and Rs. 90,000/- only against the tenancy of the workshop D.D. Enamels.

5. The learned Trial Judge held that the defendant is a tenant under the plaintiff at a consolidated rate of rent of Rs. 1400/-. With regard to the claim of adjustment of Rs. 90000/-, the learned Trial Judge noted the evidence of the PW-1 wherein he stated that he does not have any money receipt in that respect containing the signature of Parul Rani Ghosh. With regard to the adjustment of the amount of Rs. 1,21,000/-, the learned Trial Judge observed that the document being exhibit 14 is in respect of "Ashirbad Stores" whose proprietor is Gouri Bala Das and the defendant in his cross examination made an admission that there was no signature of the plaintiff in that document and the said document nowhere states that the advance was taken by Moloy Kanti Ghosh for Parul Rani Ghosh. On the basis of such observations, the learned Trial Judge discarded Exhibit 14 while considering the claim for adjustment.

6. Mr. Basu, learned Advocate appearing in support of this Civil Order contended that the impugned order suffers from perversity for non-consideration of Exhibit-8. He further contended that the learned Trial Judge failed to appreciate the effect of the document being Exhibit 14 in its true perspective. He contended that the defendant tenant having incurred an amount for improvement of the tenancy and having paid a substantial amount in advance towards rent pursuant to an agreement, by and between the landlord and tenant that such sum is to be adjusted against the rent payable by the tenant to the landlord, such a dispute falls within the scope of Section 7(2) of the 1997 Act. In support of such contention he placed reliance upon a decision of the Hon'ble Division Bench in the case of Makhan Lal Bose vs. Charupama Debi and ors. reported at AIR 1984 (Cal) 44.

7. Per contra, Mr. Halder, learned Advocate opposing this civil order contended that Exhibit 14 does not relate to the tenancy which is the subject matter of the instant suit for eviction. He further contended that Section 14(1)(b) of the 1997 Act imposes a statutory bar on the landlord from receiving any amount exceeding one month's rent of such premises as rent in advance. He submitted that the alleged payment of advance rent is in contravention of the provisions laid down in the 1997 Act and, therefore, the defendant is not entitled to claim

adjustment of the same from arrears of rent. In support of such contention, Mr. Halder, relied upon an order dated 24.01.2019 of the co-ordinate bench in CO 3055 of 2017 in the case of Subrata Kumar Kapuria vs. Binoyendu Aich Roy.

8. Heard the learned advocate for the parties and perused the materials placed. This Court finds that the question that arises for consideration in this Civil Order is whether the defendant tenant is entitled to an adjustment of the amount claimed to have been paid as advance rent from the monthly rent payable by him to his landlord.

9. Section 14 of the 1997 Act imposes a restriction on claim, demand or receipt of premium or other consideration. Section 14(1)(b) states that no person shall in consideration of the grant, renewal or continuance of a tenancy of any premises, except with previous permission of the Controller, claim, demand or receive the payment of any sum exceeding one month's rent of such premises as rent in advance.

10. Upon a reading of the said provision, to the mind of this Court, the statutory restriction shall apply if any sum is paid in consideration of the grant, renewal or continuance of a tenancy of any premises.

11. It is not the case of either of the parties that the payment of Rs. 90,000/- and Rs. 1,21,000/- was in consideration of the grant, renewal or continuance of a tenancy of any premises. Therefore, this Court is of the considered view that the provisions of Section 14(1) do not have any manner of application to the case on hand.

12. In the case on hand, the petitioner claims to have made advance payment of rent to the landlord which he accepted on a specific agreement that the said amount would be adjusted against the monthly rent due and payable by the defendant on and from the month of January, 1998. A more or less similar issue fell for consideration before the Hon'ble Division Bench in Makhan Lal Bose (supra). The Hon'ble Division Bench while deciding an application under Section 17(2) of the West Bengal Premises Tenancy Act, 1956 held that if any lawful advance which the landlord accepts from the tenant or any amount which is lawfully due from the former to the latter be agreed between the parties to be adjusted against the rent, that certainly confers a right upon the tenant under the contract to get an adjustment against the rents actually accruing and there is no reason why the tenant cannot assert that right in an application under Section 17(2) of the Act. After noting that the West Bengal Premises Tenancy Act, 1956 imposes a statutory bar at the landlord receiving any consideration other than an advance of one month's rent by way of security for creation of the tenancy, the Hon'ble Division Bench held that such provision does not stand in the way of the landlord incurring any loan from an existing tenant or otherwise, creating a relationship of debtor and creditor between them in any manner not being in reality in consideration for creation of the tenancy. It was further held that incurring such a debt is not barred under the statute and obviously any amount

so due would be repayable according to the contract. If the contract between the parties be that it would be so repayable against future rents there is no reason why the advance so made or the loans so taken, cannot or should not be adjusted against the rent.

13. The ratio decided in *Makhan Lal Bose* (supra) squarely applies to the case in hand as it has already been observed hereinbefore that the amount claimed to have been paid by the tenant defendant to the landlord opposite party is not for creation, renewal or continuance of the tenancy. The defendant tenant sought to make out a case that a relationship of debtor and creditor was created between the parties with a specific agreement for adjustment of an amount alleged to have been advanced from the monthly rent payable by the tenant to the landlord.

14. This Court is, therefore, of the considered view that the adjustment of the amounts claimed to have been paid as advance rent does not fall foul of the statutory bar imposed under Section 14(1) of the 1997 Act.

15. The claim for adjustment shall undoubtedly have a bearing on the amount of the rent payable by the tenant and, therefore, this Court holds that such a dispute undoubtedly falls within the scope and ambit of the "dispute" contemplated under Section 7(2) of the 1997 Act.

16. The decision in the case of *Makhan Lal Bose* (supra) was not brought to the notice of the co-ordinate bench in *Subrata Kumar Kapuria* (supra). The decision of the Hon'ble Division Bench is binding upon this Court. For such reason this Court is inclined to follow the decision in the case of *Makhan Lal Bose* (supra).

17. This Court shall now consider as to whether the learned Trial Judge was right in discarding Exhibit 14 and the effect of non-consideration of Exhibit 8 while passing the impugned order.

18. In so far as the claim of the defendant petitioner for adjustment of the sum of Rs. 121000/-, this Court finds that the document being Exhibit 14 relates to "Ashirbad Stores" and the name of the proprietor is Gouri Bala Das. The defendant petitioner claims to run a sweet meat shop under the name and style of "Gouri Sweets" and a workshop under the name and style of "D.D. Enamels". Mr. Basu, learned Advocate for the petitioner, in course of his argument, could not point out any evidences on record to connect Exhibit 14 with the business carried on from the tenancies which are the subject matter of the instant suit for eviction. The defendant tenant failed to establish any nexus of Exhibit 14 with the tenancies in question. This Court is, therefore, of the considered view that the learned Trial Judge was right in discarding Exhibit 14 while deciding the claim for adjustment.

19. Mr. Basu, strenuously contended that the impugned order suffers from perversity for non-consideration of the effect of Exhibit 8 which, according to him, is a relevant piece of evidence in support of claim of the defendant for adjustment of rent.

20. Exhibit 8 is a letter dated 02.03.2000 purported to have issued by the petitioner herein to the predecessor-in-interest of the opposite parties herein. The said letter contained a statement of the defendant who claims to have spent a sum of Rs. 90000/- for construction of a Pukka structure on the basis of mutual agreement. The said letter also states that Parul Rani Ghosh, the landlord, agreed to adjust the cost of construction by monthly installment of Rs. 400/- and also that rent receipts were issued with the adjustment of Rs. 400/- per month against the rent of Rs. 1400/-. The said document is a unilateral one. In order to prove existence of a valid contract it is necessary to establish meeting of minds of the contracting parties. Except Exhibit 8, no evidence has been brought to the notice of this Court to establish such fact. The said document, to the mind of this Court, does not ipso facto prove that the petitioner spent a sum of Rs. 90000/- for construction of Pukka structure as per the mutual agreement and also that the landlord agreed to adjust the cost of construction by monthly installment of Rs. 400/- per month without any other corroborative evidence in that regard.

21. The Hon'ble Division Bench of this Court in the case of A.E.G. Carapiet vs. A.Y.Derderian reported at AIR 1961 (Cal) 359 held that wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. The Hon'ble Division Bench held thus-

"9. The law is clear on the subject. Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses. It has been stated on high authority of the House of Lords that this much a counsel is bound to do when cross-examining that he must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had any share. If he asks no question with regard to this, then he must be taken to accept the plaintiff's account in its entirety. Such failure leads to miscarriage of justice, first by springing surprise upon the party when he has finished the evidence of his witnesses and when he has no further chance to meet the new case made which was never put and secondly, because such subsequent testimony has no chance of being tested and corroborated."

22. In the case on hand the essential and material case of the defendant petitioner is that the defendant paid certain amounts as advance rents on an agreement that such amount shall be adjusted with the monthly rents payable by the tenant to the landlord. After going through the materials on record this Court finds that such essential and material case of the defendant tenant was not put

to the plaintiff's witnesses during cross-examination. The effect of declining to avail of such opportunity is that the tenant defendant believed that the testimony given by the plaintiff's witnesses could not be disputed at all.

23. After going through the materials on record this Court finds that there is no effective cross examination made on the plaintiff's witnesses with respect to the factum of agreement for adjustment of amount alleged to have been incurred for improvement in the tenancies from the monthly rent. In the absence of such cross examination this Court is not inclined to accept the argument of Mr. Basu that the petitioner is entitled to such adjustment from the monthly rent.

24. This Court, therefore, holds that the claim for adjustment of any amount from the monthly rent payable by the tenant to the landlord was rightly rejected by the learned Trial Judge.

25. By placing reliance upon the Rent Control Challan being Exhibit 4, Mr. Basu would contend that the rate at which monthly rent was last paid is Rs. 1,000/-. It is not disputed that the defendant tenant was inducted at a consolidated rent of Rs. 1,400/- per month. This Court has already held that the petitioner was not entitled to any adjustment of rent. It is well settled that mere deposit of rent before the Rent Controller does not create a tenancy right in favour of the person depositing such rent. Deposit of such rent also does not establish the rate of rent. In case of dispute as to the rate of rent, such issue has to be decided by the appropriate forum.

26. In the case on hand, the learned trial judge rightly held that the consolidated rent was Rs. 1,400/- per month and the deposits before the Rent Controller to be bad.

27. For all the reasons as aforesaid, this Court holds that the impugned order does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India. However, taking note of the fact that the order impugned has been challenged by the tenant defendant in this Civil Order, to the mind of this Court, the operative portion of the order impugned is to be modified to some extent due to passage of time. The defendant petitioner is directed to deposit the arrear rent for the period from November, 1999 to January, 2024 at the rate of Rs. 1400/- per month together with statutory interest at the rate of 10% per annum within one month from the date of this order.

28. The tenant defendant will be at liberty to deposit the current consolidated rent at the rate of Rs. 1400/- per month from the month of February, 2024 onwards within 15th of each succeeding English Calendar month. With the above observations and directions CO No. 3400 of 2023 stands disposed of. There shall be, however, no order as to costs.

29. Urgent Photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.