

(1971) 02 CAL CK 0009
In the Calcutta High Court
Case No : A.F.O.D. No. 931 pf 1966

Ganesh Chandra Dutta

APPELLANT

Vs

Chunilal Mondal and Another
 Chunilal Mondal and
Another Vs Ganesh Chandra Dutta

RESPONDENT

Date of Decision : 18-02-1971

Acts Referred:

City Civil Court Act, 1953 — Section 8(1)

West Bengal Premises Tenancy Act, 1956 — Section 17(1), 17(2), 20, 29(6)

Citation : AIR 1972 Cal 150 : (1972) 1 CALLT 307 : (1973) 1 ILR (Cal) 132

Hon'ble Judges : Chittatosh Mookerjee, J

Bench : Single Bench

Advocate : Manindranath Ghose, Jamini Kumar Banerjee and Mukul Prokash Banerjee, for the Appellant;

Final Decision : Allowed

Judgement

Chittatosh Mookerjee, J.—The plaintiff-respondents brought a suit in the City Civil Court at Calcutta for ejectment against their tenant who is appellant before me for ejectment and recovery of khas possession of the premises described in the schedule to the plaint. The learned Judge. 5th Bench, City Civil Court at Calcutta has decreed the said suit in favour of the plaintiff-respondents and the defendant tenant has preferred this appeal.

2. Mr. Banerjee, the learned advocate for the respondents has submitted before me that this appeal is not maintainable in law. According to Mr. Banerjee the West Bengal Premises Tenancy Act, 1956, is a self-contained code and no appeal has been provided against a decree for recovery of khas possession of a premises passed by a Court competent to entertain or try such a suit u/s 20 of the said Act.

3. In this connection Mr. Banerjee has also drawn my attention to the schedule of the West Bengal Premises Tenancy Act. Section 22 of the City Civil Court Act 1953 lays down that the enactments specified in the Second Schedule shall be

amended to the extent and in the manner mentioned in the fourth column of the schedule. Originally in the second schedule the substituted Sub-clauses (i) and (ii) and the proviso to Clause (1) of Schedule B of the West Bengal Premises Rent Control (Temporary Provisions) Act 1950 were set out. After the enactment of City Civil Court and the West Bengal Premises Tenancy Act 1957, the reference to the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 were deleted, and it was provided that where the premises are situate on land wholly within the ordinary original Civil Jurisdiction of the Calcutta High Court suit for recovery of possession of a premises would lie in the City Civil Court when the value of the suit or the value of the premises does not exceed Rs. 10,000/-. Where the value of the premises exceeds Rs. 10,000/- suit would lie to the High Court. Under Clause 2 of the schedule to the West Bengal Premises Tenancy Act where the premises are situate On a land wholly or partly outside the ordinary original Civil Jurisdiction of the Calcutta High Court suit for recovery of possession would lie in the court other than the Calcutta High Court which would have had jurisdiction to try the suit if the West Bengal Premises Tenancy Act was not passed. It is unnecessary to refer to the provisos to Clause (1) of the schedule which deal with the suits pending in the City Civil Court and with suit, appeals and proceedings instituted in the Calcutta High Court or in the court of the Chief Judge of the Court of Small Causes and pending at the date of commencement of City Civil Court and West Bengal Premises Tenancy (Amendment) Act 1957.

4. In my view there is no scope for any argument that no appeal lies against a decree passed by the City Civil Court in a suit for recovery of possession of a premises governed by West Bengal Premises Tenancy Act. Section 6 of the City Civil Courts Act 1953, lays down that save as otherwise provided, the CPC 1908, shall apply to all suits and proceedings under this Act, so far as it is consistent with the City Civil Court Act Sec. 8 (1) (a) of the City Civil Court Act provides that an appeal shall lie to the High Court from every decree passed by the City Civil Court. Sub-section (6) of Section 29 of the West Bengal Premises Tenancy Act provides that the provisions of CPC shall apply to all suits and proceedings referred to in Section 20 except suits and proceedings which lie to the High Court. Section 13 of the West Bengal Premises Tenancy Act also lays down that no order or decree for recovery of possession shall be made except on one or more of the grounds set out in the said Section. Therefore the said expression "decree" in the West Bengal Premises Tenancy Act has the same meaning as the "decree" as defined by Section 2(2) of the Code of Civil Procedure. u/s 96 of the CPC save as otherwise expressly provided in the body of the Code or by any other law for the time being in force an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorised to hear the appeals from the decision of such courts. There is nothing in the West Bengal Premises Tenancy Act limiting or affecting such right of appeal against a decree passed in a suit for recovery of possession. I have already stated that u/s 8 of the City Civil Court Act this court has been authorised to hear appeals from

decrees and appealable orders of the City Civil Court.

5. Further the Supreme Court in *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, while considering the question whether an appeal lay under Clause 15 of the Letters Patent of Bombay High Court against a decision given by single Judge of the High Court in an appeal preferred u/s 76 of the Trade Marks Act 1940 considered a number of reported cases on the question and held that when an appeal lies to a court already established then that appeal must be regulated by the practice and procedure of that court. Mahajan, J. who delivered the judgment of the Supreme Court quoted with approval the observations of Viscount Haldane L. C. in *National Telephone Co. Ltd. v. Post Master General*, 1913 AC 546 that when a question is stated to be referred to a established Court without more imports that the ordinary incidents of the procedure of that court are to attach and also that in general right of appeal from its decision likewise attaches. The Privy Council in AIR 1948 12 (Privy Council) similarly observed that where a legal right is in dispute and the ordinary courts of the country are seized of such disputes the courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorised by such rules notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal.

6. On the authority of the said decisions I am bound to hold that when the City Civil Court in the exercise of its jurisdiction passes a decree for ejectment, the same is subject to an appeal.

7. In fact numerous appeals have been heard and disposed of by this Court against decrees passed in suits for a recovery of premises passed by the Civil Court. The decision in *Jamuna Bala's case*. (1960) 64 Cal WN 678 did not deal with the question whether an appeal at all lies. But the said decision dealt with the question of forum of such appeal. Therefore, it is unnecessary for me to deal with the said case.

8. This Court while considering the provisions of West Bengal Premises Rent Control (Temporary Provision) Act 1950 have held that the decree for ejectment from a premises governed by the said Act was a decree within the meaning of Section 2(2) of the Code and the provisions of CPC would apply to such suits and appeals. It was held that a suit for recovery of possession u/s 16 of the Act of 1950 was a proceeding in a court of Judicature although the West Bengal Premises Rent Control (Temporary Provision) Act 1950 did not contain any provision similar to Section 29 (6) of the West Bengal Premises Tenancy Act. Reference may be made to the decisions reported in *Sm. Mirabala Dasi Vs. Binapani Dassi*, , *Dalhousie Traders Ltd. Vs. Mahammad Sadique*, , *Sahadat Khan Vs. Mohammad Hossain*, .

9. The fact that under the schedule under West Bengal Premises Tenancy Act as it stood before it was amended by the City Civil Court Act and the West Bengal

Premises Tenancy (Amendment Act 1957) it was provided that the Chief Judge of the Court of Small Causes, Calcutta shall entertain and try a suit which is cognizable by him as the Court of district Judge under the Bengal, Agra and Assam Civil Courts Act 1887 was not relevant. A special jurisdiction had been conferred upon the Chief Judge and upon the other Judges of the said court to whom a suit may be transferred by the Chief Judge for trial. It was therefore necessary to expressly confer upon them the powers which are exercised by District Judges and Subordinate Judges under Bengal, Agra and Assam Civil Courts Act.

10. Chakrabarti C. J. and S. R. Dasgupta J. in *Newton Hickie and Another Vs. Official Trustee of West Bengal*, considered the question whether the decision of the Court of Small Causes in two suits for ejectment from a premises governed by the West Bengal Premises Rent Control (Temporary Provision) Act 1950 was *Res Judicata* or not. Their Lordships held that the Court of Small Causes was not ordinarily competent to try ejectment suits against the tenants. But the Chief Judge of the court functioning as a District Judge and a Judge functioning as a Subordinate Judge were special creatures of the Rent Control Act exercising a specified jurisdiction. Therefore they were courts of a peculiar type.

11. But u/s 5 (2) of the City Civil Court Act 1953, subject to the provisions of Sub-sections (3) and (4) the said court shall have jurisdiction and the High Court shall not have jurisdiction to try suits and proceedings of a civil nature not exceeding rupees fifty thousand.

12. I may note that even after the amendment of Section 5 of the City Civil Court Act raising its pecuniary jurisdiction, no corresponding amendment has as yet been made in the Second Schedule to the said Act or in the Schedule to the West Bengal Premises Tenancy Act.

13. Therefore omission of any reference to the Bengal, Agra and Assam Civil Courts Act in relation to the City Civil Court in the Schedule to the West Bengal Premises Tenancy Act 1956 was not material Sections 20 and 21 deal with the forum of appeal from the courts constituted under the said Act. But right of appeal is also incident of a decree passed by a court established by the ordinary law and which is governed by the Civil Procedure Code. The City Civil Court is thus competent to try suits of civil nature upto Rupees 50,000/- subject to the exceptions mentioned in the Act and u/s 8 (1) of the Act the appeal lies to this court against the decrees and appealable orders of the said Court Therefore this appeal is maintainable.

14. The plaintiff landlord alleged that the defendant tenant was a defaulter in payment of rent since May 1961. The learned Judge of the court below in his judgment under appeal has also found that the defendant was a defaulter in respect of the said period. Mr. Ghosh, learned advocate for the appellant has not disputed the said finding that the defendant was a defaulter as found by the court below. But he has drawn my attention to the fact that the appellant within

one month from the date of the service of the summons of the ejectment suit had filed a petition in the trial court u/s 17 (1) of the West Bengal Premises Tenancy Act and had prayed for permission to deposit rent from May. 1961 to October 1963 along with interest. The learned Registrar City Civil Court by his order No, 3 dated 30th September, 1963 permitted him to deposit the same entirely at his risk. I find that the defendant who is appellant before me had deposited the said arrear rent and he also continued to deposit in the trial court month by month within the 15th day of each succeeding month an amount equivalent to rent. Therefore the defendant tenant having fully complied with Section 17 (1) of the West Bengal Premises Tenancy Act is entitled to relief under Sub-section (4) of Section 17 of the West Bengal Premises Tenancy Act. In fact the learned advocate for the respondents has not disputed the said facts. The defendant tenant did not previously obtain relief under Sub-section (4) of Section 17 of the Act and the proviso to Subsection (4) does not apply in the instant case. Accordingly I grant defendant re-life under Sub-section (4) of Section 17 of the Act.

15. In the above view I allow the appeal set aside the judgment and decree of the trial court and dismiss the plaintiffs' suit. The plaintiffs-respondents will get the cost of the trial court (from the defendant appellant). There will be no order as to costs in this appeal.