

(1950) 04 CAL CK 0012
In the Calcutta High Court
Case No : Civil Rule No. 105 (s) of 1950

Gosto Behary Sadhukhan and Others	Vs	APPELLANT
Panchu Gopal Paramanic and Others		RESPONDENT

Date of Decision : 28-04-1950

Acts Referred:

General Clauses Act, 1897 — Section 8

Citation : 54 CWN 613

Hon'ble Judges : Sen, J;Chunder, J

Bench : Division Bench

Advocate : Sambhunath Banerji, for the Appellant;Apurba Charan Mukherjee, for the Respondent

Judgement

Sen, J.—This Rule was obtained by the tenants in a suit for ejectment calling upon the landlords to show cause why the decree passed by this Court in the appeal in the aforesaid suit should not be varied or rescinded under sec. 18 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948 which shall hereafter be referred to as the Act of 1948. The facts briefly are as follows: A suit was instituted against the Petitioners on the 1st of December, 1944, being Title Suit No. 50 of 1944 for ejectment with respect to premises No. 79, Haraganj Road. It was alleged in the plaint that the Defendants were defaulters and on this ground presumably it was sought to be established that the Defendants could not get any protection from ejectment which would otherwise normally follow upon a valid notice to quit. A decree in ejectment was granted but for some reason or other it was granted in respect of not only premises No. 79, Haraganj Road, but also of premises No. 79/1, Haraganj Road. On the 13th of April, 1947, the tenants took an appeal to the District Judge and it was dismissed with certain modifications as regards the order for costs. On the 1st of October, 1946, the Rent Control Ordinance of 1946, came into operation and an application was made to the District Judge under sec. 17 of that Ordinance for re-opening the decree in ejectment but the District Judge refused the application. On the 27th of May, 1947, there was a second appeal filed in this Court against the decision on

an appeal in Title Suit No. 50 of 1944. The appeal was admitted on the 30th of May, 1947, and there was a Rule issued for a stay of execution. The Rule was made absolute on certain terms on the 24th of February, 1948. Amongst the terms the following are relevant: Execution would be stayed on the Appellants depositing Rs. 5,800 and thereafter depositing Rs. 150 per month which was the rate of rent admitted by the Appellants.

2. The Appellants made the required deposits. On the 28th of September, 1948, the appeal was allowed in part. The decree regarding premises No. 79/1, Haraganj Road was set aside, but the rest of the decree passed by the Courts below was confirmed. As regards the objection filed under sec. 17 of the Rent Control Ordinance of 1946, their Lordships passed no order and left it to the Defendants to have it decided by the Court which passed the decree, if they so wished. In the meantime on the 13th of February, 1946, the tenants instituted a suit for partition--the premises in suit were part of that partition suit and the tenant obtained a decree declaring the tenants' share in these properties but there was no partition by metes and bounds. This decree was passed on the 22nd of December, 1947. On the 1st of December, 1948, the Act of 1948 came into force and on the 16th of December, 1948, the tenants applied to the trial Court for rescinding or varying the decree, the application being made under sec. 18 of the Act of 1948. On the 20th of December, 1948, a deposit was made of the rent due till December, 1948, at the rate of Rs. 200 per month. On the 18th of March, 1949, the application under sec. 18, was dismissed. Then this Court was moved and a Rule was issued. This Court held that the Subordinate Judge had no jurisdiction to hear the application under sec. 18 and set aside the order of the learned Subordinate Judge. This Court did not express any opinion regarding merits; it held that this Court was the *pro per* Court to hear the application under sec. 18. On the 7th of February, 1950, the application under sec. 18 was made to this Court and the present Rule was issued.

3. Now, the Act of 1948 has been repealed by the Rent Control Act of 1950. On the date that the Rent Control Act of 1950 came into operation the aforesaid Act of 1948 was still in force, it did not cease to have effect by efflux of time. Consequently, the provisions of sec. 8 of the General Clauses Act (Bengal) apply and the application under sec. 18 of the Act of 1948 must be heard by this Court in accordance with the law as it was laid down by the aforesaid Act of 1948.

4. The point for consideration, therefore, is whether the decree passed by this Court on the 28th of September, 1948, should be set aside or varied by reason of anything contained in the aforesaid Act of 1948.

5. Learned Advocate on behalf of the Petitioners contends that by virtue of the provisions of sec. 18 read with the provisions of sec. 12 (1) (b) of the aforesaid Act of 1948 the decree should be rescinded. Sec. 18 says that if the Court is of opinion that the decree or order would not have been made if the Act of 1948 had been in operation at the date of the making of the decree, the Court may rescind or vary the decree as it thinks fit for the purpose of giving effect to the

provisions of the Act. The first point for consideration, therefore, is whether if the Act of 1948 was in force, the decree of the 28th of September, 1948, would have been passed by this Court. Now, under the Act of 1948 a tenant could not get protection from a decree in ejectment if he was a defaulter. Sec. 12 (1) (a) of the Act of 1948 is in the following terms:--

12 (1) No tenant shall be entitled to the benefit of sec. 11 in respect of any premises unless--

(a) he pays the rent allowable by this Act and due by him in respect of such premises to the full extent within the time fixed in the contract with his landlord or in the absence of such contract, by the fifteenth day of the month next following that for which the rent is payable, and . . .

6. Now, Let us suppose that the Act of 1948 was in force on the 20th of September, 1948. The tenant would not be entitled to claim protection from ejectment unless he satisfies the Court that he has paid his rent allowable under the Act either within the time fixed in the contract with his landlord or in the absence of such contract by the fifteenth of the month next following that for which the rent is payable. Here, there is no contract fixing the date on which rent shall be paid and it is admitted that rent was not paid by the fifteenth day of each month next following that for which the rent was payable. That being so, the tenants would not get the benefit of sec. 11 even if the Act of 1948 had been in force on the date of the decree passed by this Court and they would have been liable to ejectment.

7. Learned Advocate, however, relies upon sec. 12 (1) (b) of the aforesaid Act of 1948 which is in the following terms:--

12 (1) No tenant shall be entitled to the benefit of sec. 11 in respect of any premises unless--

(b) in the case where any rent has accrued due before the commencement of this Act, he also pays within one month after the date of such commencement all arrears of rent allowable by this Act and due by him in respect of such premises to the full extent together with, where the arrears are already the subject-matter of a suit or proceedings before a Court or of any decree or order of Court, interest thereon at the rate of six and a quarter per cent. per annum and such costs as the Court may award.

8. It is now well-established by a series of decisions both on the Appellate Side and on the Original Side of this Court that the payment contemplated by sec. 12 (1) (b) must be paid within one month after the date of the decree. In this connection we were referred to the judgment of Mr. Justice Das and Mr. Justice Das Gupta in Civil Revision Case No. 845 of 1949 [Panchanan Chakravarti Vs. Harisatya Bhattacharyya and Another,] decided on the 13th December, 1949 and also to the decision of the Chief Justice and Mr. Justice Sinha in Appeal from Original Order No. 36 of 1949 arising out of Suit No. 2020 of 1947 [Federation

Bank of India Ltd. Vs. Hanutmal Boid,] decided on the 9th August, 1949. The Petitioners will, therefore, have to show that within a month of the 28th of September, 1948, they paid the amount as required under sec. 12 (1) (6) of the Act of 1948. Now, it has been held by this Court that the rent for the premises was Rs. 200. That was the decision of the trial Court and it was upheld by this Court. Learned Advocate appearing on behalf of the Petitioners points out that on the 28th of September, 1948, all arrears of rent had been deposited but I find that that is not correct because rent was deposited at the rate of Rs. 150 per month and not Rs. 200. Learned Advocate contends that the rent payable really was Rs. 150 per month inasmuch as the Petitioner had a one-fourth share of the proprietary interest in the property. That may or may not be correct, but this Court has held by its decree that the rent payable is Rs. 200 and there is no decree or order passed by any Court which has held to the contrary. Therefore the rent was not paid in full within a month of the 28th of September, 1948. Again, sec. 12 (1) (b) of the Act of 1948 requires not only the payment of arrears of rent but also interest thereon at 6-7th per cent, per annum. No such interest had been paid. The result is that sec. 12 (1) (b) of the Act of 1948 can be of no assistance to the Petitioners. In these circumstances we hold that the Petitioners are not entitled to any relief under sec. 18 of the aforesaid Act of 1948 and tills Rule must be discharged with costs the hearing-fee being assessed at two gold mohurs.

Chunder, J.

I agree.