
(1984) 04 CAL CK 0016
In the Calcutta High Court
Case No : Civil Revision No. 2781 of 1982

Jayantilal Chhaganlal Kampani and Another	APPELLANT
Vs	
Smt. Indira Hazra	RESPONDENT

Date of Decision : 30-04-1984

Acts Referred:

West Bengal Premises Tenancy Act, 1956 — Section 17(2)

Citation : AIR 1985 Cal 83 : 88 CWN 874

Hon'ble Judges : S.N. Sanyal, J

Bench : Single Bench

Advocate : B.K. Bose and M.C. Das, for the Appellant; A. Chatterjee, for the Respondent

Judgement

S.N. Sanyal, J.—This is an application u/s 115 of the Civil P.C. by the defendants against the order dated April 21, 1982 passed by the learned Munsif, 4th Court, Alipore in Title Suit No. 226 of 1980. The opposite party, Smt. Indira Hazra, instituted the suit against the petitioners Jayantilal Chhaganlal Kampani and Hemchand Ramchand Jaitha for ejectment and mesne profits. The case of the opposite party is that the petitioner No. 1 was a tenant under her in respect of the suit premises at a monthly rental of Rs. 240/-. The petitioner No. 1, without the previous consent in writing or otherwise of the opposite party, transferred and assigned the suit premises as a whole or sublet it to the opposite party No. 2. The suit premises are reasonably required for her own occupation. Both the defendants, who are petitioners in the present Rule, contested the suit by filing separate written statements. Both the petitioners also filed separate applications u/s 17(2) of the West Bengal premises Tenancy Act thereafter referred to as the Act). In his application the petitioner No. 2 alleged that ho was a tenant under the opposite party; but the rent receipts were being granted the name of the petitioner No. 1, though the petitioner No. 1 had left the suit premises some time in 1968 or 1969. The petitioner No. 2 asked the Court to decide the relationship of landlord and tenant between the petitioner No. 1 and the opposite party and the amount of arrears of rent due to the plaintiff. In his application u/s

17(2) of the Act the petitioner No. 1 alleged that he had surrendered the tenancy in favour of the plaintiff and the plaintiff had recognised the defendant No. 2 as tenant, but the rent receipts were being granted in the name of the petitioner No. 1. The petitioner No. 1 prayed that the Court would be pleased to decide the dispute regarding the relationship of landlord and tenant between the petitioner No. 1 and the plaintiff and to pass such other order or orders as the Court may deem fit and proper. The learned Munsif after hearing the parties came to the conclusion that the application made by the petitioner No. 2 u/s 17(2) of the Act was not maintainable, as the petitioner No. 2 could not show that the rent receipts were granted in his name. As regards the application of petitioner No. 1, the learned Munsif has held that he is still a tenant under the plaintiff. The application filed by the petitioner No. 1 was disposed of on contest and the application filed by the petitioner No. 2 was rejected.

2. Being aggrieved, the petitioners have challenged the said order in the present revision case. Mr. Bose, learned Advocate for the petitioners, has confined his arguments only in respect of the application of the petitioner No. 1 u/s 17(2) of the Act. Mr. Bose argues that the petitioner No. 1 filed the application u/s 17(2) of the Act raising dispute regarding the relationship of landlord and tenant. The learned Munsif after finding that the petitioner No. 1 was a tenant, should have determined the amount of rent payable by the petitioner No. 1: The learned Munsif has thus failed to exercise his jurisdiction and the petitioner No. 1 has been seriously prejudiced thereby. In support of his contention Mr. Bose has referred to the case of *Biswanath Roy v. Annapurna Roy* (1961) 65 Cal WN 149 and has argued that the dispute as to the existence of relationship of landlord and tenant between the parties does affect the question of rent payable by a tenant to a particular landlord and as such the same comes within the purview of Section 17(2) of the Act.

3. Mr. Chatterjee, learned Advocate for the opposite party, has argued that only question raised in the application u/s 17(2) of the Act filed by the petitioner No. 1 was whether there was relationship of landlord and tenant and the same has been decided by the learned Munsif. Mr. Chatterjee argues that Section 17(2) of the Act requires that the tenant within the time specified in Sub-section (1) shall deposit in Court the amount admitted by him to be due from him together with the application to the Court for determination of rent payable. Unless there is prayer by the defendant for determination of the rent payable, the Court will not suo motu determine the rent payable by the tenant. Mr. Chatterjee has referred to the case of *Sohanlal Rajgharia v. Calcutta Chromotype Pvt. Ltd.* (1979) 1 Cal LJ 193 : (AIR 1979 NOC 45).

4. In the case of *Biswanath Roy v. Annapurna Roy* (1961) 65 Cal WN 149 it has been held that any kind of dispute which affects the amount of rent payable by the tenant, including a dispute as to the existence of relationship of landlord and tenant between the parties, will be a dispute under or within the contemplation of Section 17(2) of the Act. It has been further held that the Court has to

determine who is the landlord to whom the amount in question is to be paid and the dispute as to the relationship of landlord and tenant, which obviously involves and raises the question as to whether the particular plaintiff is the landlord of the particular defendant even though the latter may be the tenant of the premises in question, would plainly be a dispute which will have to be decided before the question contemplated under Sub-section (2) can be finally answered. The denial of relationship of landlord and tenant will necessarily mean that the tenant's contention is that no rent is payable to the particular plaintiff, who claims to be landlord, or, in other words, that he disputes the plaintiff's claim for rent, and, accordingly it will come well within the phrase "dispute as to the amount of rent payable by the tenant" in the context particularly of the further provisions that the Court should determine what is the amount payable to the particular landlord by the particular tenant. In the instant case the defendant No. 1 raises the dispute regarding the relationship of landlord and tenant in his application u/s 17(2) of the Act. The said dispute has to be determined before the determination of rent payable. The objection of Mr. Chatterjee is that no specific prayer was made by the petitioner No. 1 in his application u/s 17(2) of the Act for determination of the rent payable. This contention of Mr. Chatterjee cannot be accepted. In the application u/s 17(2) of the Act the petitioner No. 1 not only prayed for decision regarding the relationship of landlord and tenant, but he also made a prayer that the Court may be pleased to pass such other orders as may be deemed fit and proper. After the determination of the relationship of landlord and tenant it was necessary for the learned Munsif to determine the amount of rent payable by the petitioner No. 1 to the opposite party. The learned Munsif has failed to exercise his jurisdiction and the petitioner No. 1 has suffered an irreparable loss on that account. In *Sohanlal's case* (supra) (1979) 1 Cal LJ 193 : (AIR 1979 NOC 45) relied upon by Mr. Chatterjee, there was no application u/s 17(2) of the Act for determination of the rent. In the instant case, however, there is an application by the petitioner No. 1 and the learned Munsif has not properly considered the said application. The application u/s 17(2) of the Act filed by the petitioner No. 1 should be sent back to the learned Court below for determination of the rent payable by the petitioner No. 1 to the plaintiff. The finding of the learned Munsif that there is relationship of landlord and tenant between the plaintiff and the defendant No. 1 will, however, stand. The rejection of the defendant No. 2's application u/s 17(2) of the Act is also upheld.

5. The revisional application is disposed of as mentioned hereinabove. The order of the learned Munsif is modified and the defendant No. 1's application u/s 17(2) of the Act is sent back to the learned Munsif for determination of the rent payable by the defendant No. 1 to the plaintiff. The learned Munsif will thus dispose of the said application u/s 17(2) of the Act filed by the defendant No. 1 in accordance, with law and in the light of the observations made hereinbefore in the judgment. The Rule is thus disposed of. There will be no order as to costs.