
(1998) 04 CAL CK 0006
In the Calcutta High Court
Case No : F.M.A. No. 1608 of 1997

J.C. Chakraborty and Co.

APPELLANT

Vs

Santilal Rampuria and Others

RESPONDENT

Date of Decision : 23-04-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 98, Order 41 Rule 11, 151

Citation : 2 CWN 108

Hon'ble Judges : Tarun Chatterjee, J;D.K. Jain, J

Bench : Division Bench

Advocate : Jayanta Kr. Mitra and Amal Baran Chatterjee, for the Appellant;Sudhis Dasgupta and Harish Tandon, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Chatterjee, J.—This case has a chequered history. Therefore, we like to narrate the facts anterior to the filing of the present appeal. The predecessor-in-interest of the respondent Nos. 1 to 14 inducted M/s. Vega Trading Corporation (In short "the Corporation"), a firm carrying on business on and from B-8, Lalbazar Street, P. S. Hare Street, Calcutta under a registered deed of lease executed by them on 23rd April, 1948. The Corporation, thereafter, inducted several tenants in different portions of the premises in question. In the year 1960, the predecessor-in-interest of the respondent Nos. 1 to 14 brought an ejectment suit being Ejectment Suit No. 978/60 in the City Civil Court at Calcutta seeking eviction of the Corporation on the grounds of non-payment of rent and sub-letting. The eviction suit was however, dismissed by the City Civil Court at Calcutta. In 1972, the respondent Nos. 1 to 14 filed another suit for eviction in the City Civil Court at Calcutta which was registered as Ejectment Suit No. 650/72 on the grounds of non-payment of rent and sub-letting. This time on 26th February, 1974, the aforesaid Ejectment Suit was however, decreed in favour of respondent Nos. 1 to 14. Against the aforesaid judgment and decree of the City Civil Court at Calcutta, the Corporation preferred an appeal before this

Court and by a judgment and decree dated 3rd September, 1976, the judgment and decree of the City Civil Court Calcutta dated 26th February, 1976 passed in Ejectment Suit No. 650/72 was set aside by this Court and the suit was dismissed. Against the aforesaid judgment of this court passed on 3rd September, 1976, the respondent Nos. 1 to 14 filed a SLP before the Hon"ble Supreme Court. By a final judgment dated 1st August, 1989, the Apex Court of our country had set aside the judgment and decree of this Court on a reversal of the findings of this Court and restored the findings of the City Civil Court at Calcutta with the following observations :

"None of the sub-tenants has been impleaded in the present suit, but as it is not a case of tenant-corporation that any of them has sent any notice to the plaintiffs of the suit, so far as the present respondent is concerned, cannot fail on the ground of their non-pleading. However, the sub-tenants cannot be bound by the findings in this suit that they have failed to serve a notice as prescribed by the Act. Plaintiffs would be entitled to be heard if and when the plaintiffs seek their eviction so far as the sub-tenants who had been inducted in the premises earlier were parties to the 1980 suit may have still a better claim on the strength of the decree in their favour and may insist that they will be entitled to continue in possession as tenants directly under the plaintiffs."

2. After the judgment of the Supreme Court decreeing the suit for eviction of the respondent Nos. 1 to 14 which was passed against the Corporation, the sub-tenants who were inducted by the Corporation had filed a declaratory suit in the City Civil Court at Calcutta which was registered as T. S. No. 1626/89. Be it mentioned herein that the said suit was filed by the present appellant along with sixteen other alleged sub-tenants. However, in the year 1990, the aforesaid Declaratory Suit being T. S. 1626/89 was withdrawn at the instance of the alleged subtenants, one of whom is the appellant before us. The alleged sub-tenants including the appellant filed another suit being T. S. 231/91 in the City Civil Court at Calcutta on 19th February, 1991, in which the present appellant was also a plaintiff out of the sixteen other plaintiffs. In that suit the Corporation was also made a party. In the said declaratory suit, an injunction, application was moved by the alleged sub-tenants. By a judgment and order dated 19th April, 1991, the learned Judge, 7th Bench of the City Civil Court at Calcutta rejected the application for injunction filed instance of the aforesaid suit being T. S. No. 231/91. Feeling aggrieved by the said judgment and order of the City Civil Court at Calcutta rejecting the application for injunction filed in the instance of the alleged subtenants, a First Miscellaneous Appeal being F.M.A. 410/93 was filed in this Court. The aforesaid appeal was also dismissed by a Division Bench of this court in which one of us was a party. The alleged sub-tenants filed a SLP against the aforesaid judgment of the Division Bench passed in F. M. A. 410 of 1993 before the Hon"ble Supreme Court in India. The said SLP was subsequently withdrawn on 14th March, 1997 by the alleged sub-tenants in which the appellant was also a party. It may be placed that the suit that has been filed by the alleged sub-tenants in which the present appellant is a party is still now

pending. The present appellant, thereafter, on 2nd April, 1997, filed an application under Order 21, Rules 98, 100 and 101 of the CPC read with section 151 of the Code for a declaration that the appellant must be declared to be a tenant in respect of his occupation in the disputed property and for a declaration that the appellant was not bound by the decree obtained by the decree-holder respondent Nos. 1 to. 14 against the Corporation which was opposite party No. 15 to the same. By the judgment and order under appeal, the learned Judge, City Civil Court at Calcutta, dismissed the said Misc. Case which was registered as Misc. Case No. 1021 of 1997. Feeling aggrieved by the aforesaid judgment passed in the "aforesaid misc. case by the City Civil Court at Calcutta, the appellant preferred a First Miscellaneous Appeal in this Court which was summarily dismissed under Order 41 Rule 11 of the Code of Civil Procedure. Feeling aggrieved by this order of the Division Bench of the Court dismissing the appeal summarily under Order 41 Rule 11 of the Code of Civil Procedure, a SLP was moved at the instance of the appellant. The Hon''ble Supreme Court by an order dated 2nd February, 1998 had set aside the order of this Court dismissing the appeal summarily under Order 41 Rule 11 of the Code and made the following observations :

"Leave granted. We have heard the learned counsel for the parties. In our considered opinion the High Court was not justified in dismissing the appeal summarily under Order 41 Rule 11 of the CPC as substantial questions of law had arisen in the case which needs to be decided. We, therefore, allow this appeal, set aside the judgment and order dated 4th September, 1997 passed by the Division Bench and remand the matter to the High Court which shall treat the appeal as duly admitted and dispose of it on merit, in accordance with law irrespective of anything said in the order dated 10th September, 1997 passed in F.M.A. 410/93."

3. In view of the aforesaid order and/or direction made by the Apex Court of our country, we heard the learned counsel for the parties on the merits of the appeal which has been preferred by the appellant against the judgment and order passed by the learned Judge, City Civil Court at Calcutta rejecting the petition of the appellant under Order 21 Rules 98, 100 and 101 of the Code of Civil Procedure. Before we proceed further, we must kept it in mind that in view of the direction made by the Hon''ble Supreme Court on this Court on 10th January, 1997 F.M.A. 410 of 1993 in this judgment.

4. Having heard the learned counsel for the parties and on going through the materials on record and after considering the factual background of the case in detail, as noted hereinabove, we are unable to find any merit in this appeal. Initially, on behalf of the appellant, Mr. Amal Baran Chatterjee, a learned advocate of this Court argued. However, on, the next date of hearing, adjournment was sought for on the ground that learned senior counsel would be engaged to argue this case before us. Accordingly we adjourned the hearing of the appeal and finally, Mr. Jayanta Kumar Mitra, a learned Senior Counsel of this

Court took over from Mr. Chatterjee and concluded the submissions on behalf of the appellant before us. Mr. Mitra, submitted before us that whatever submission, he was going to advance on behalf of the appellant in support of this appeal would be an addition to the arguments already made on behalf of the appellant by Mr. Chatterjee. That being the stand taken on behalf of the appellant, let us first consider the submission of Mr. Chatterjee in support of this appeal. Mr. Chatterjee at the first instance, urged that even if the alleged subtenant were liable to give notice u/s 16(2) of the Act, non-compliance of the said provision shall entail only a fine or a penalty u/s 30(5) of the Act. After taking us through the observations made by the Hon"ble Supreme Court in its earlier judgment which is reported in Shantilal Rampuria and Others Vs. Vega Trading Corporation and Others, as quoted herein above, Mr. Chatterjee argued that the appellant who was a party to the 1960 suit must have a better claim on the strength of the decree in their favour in the 1960 suit and thereafter they may insist that they shall be entitled to continue in possession as tenants directly under the respondents. These two submissions of Mr. Chatterjee were contested by Mr. Sudhis Dasgupta, who had appeared for the decree holder/respondents.

5. Let us now deal with the first" submission of Mr. Chatterjee. As noted herein earlier, according to Mr. Chatterjee, if the sub-tenants were required to give notice in compliance with Section 16(2) of the Act, even then non-compliance of the said provision shall entail only a fine or a penalty in view of Section 30(5) of the Act and, therefore, in the absence of service of notice u/s 16(2) of the Act, it cannot be held that the appellant cannot become direct tenant to the extent of his occupation in respect of the decretal premises by virtue of his induction as a sub-tenant and his possession in the same. In the present case, we are only concerned with the induction of sub-tenants before the commencement of the Act. In our view, this contention of Mr. Chatterjee is without any substance. Before dealing with the provisions of eviction of a premises tenant governed by the Act, we may take into consideration the provisions contained in Section 30(5) of the Act which says that any tenant or sub-tenant who fails to give notice as required under Sub-section (1) or Sub-section (2) of Section 16 or intentionally furnishes information in such notice which is false in any material particular, shall, on the complaint of the landlord of the premises made to the Controller, be liable to a fine which may extend to Rs. 1,000/-. Relying on these provisions. Mr. Chatterjee argued that on the failure of a sub-tenant or a tenant to serve a notice u/s 16(1) or (2) of the Act, only steps that could be taken against the tenant or the sub-tenant, as the case may be, were to make a complaint to the Controller and if such complaint is made, the tenant or the sub-tenant, as the case may be, shall only be liable to a fine which may extend to Rs. 1,000/-. Mr. Chatterjee, therefore, argued that on account of the failure to serve a notice u/s 16(1) or (2) of the Act, the consequence only would be that the tenant or a subtenant would be liable to a fine or penalty and, therefore, the failure on the part of the tenant to serve a notice u/s 16(1) or (2) of the Act would not amount to eviction of the sub-tenant on the ground that the sub-tenant was liable to be

evicted as he had failed to comply with the provisions contained in Section 16(1) or (2) of the Act. Before we proceed further, it is necessary to refer to Chapter III of the Act which deals with filing of suits and proceedings for eviction. Section 13 protects a tenant against eviction. It clearly puts an embargo on the court to pass a decree for recovery of possession of any premises from a tenant in favour of landlord except on one or more of the grounds mentioned therein. Section 13(1)(a) of the Act makes a provision for eviction of a tenant if such a tenant or any person residing in the premises has let out without the previous consent in writing of the landlord and also transfer, assigns and/or sublets in full or in part of the premises held by him. Section 3(2) provides that the sub-tenants who have given notice to the landlord in compliance with the provisions of Section 16 shall be made parties in ejectment suits brought by the landlord against his tenant. The proviso in Section 13(2) of the Act however, gives protection to some tenants in certain cases. From a plain reading of Section 13(2) of the Act, in our view, it is clear that the first part of this sub-section is the only provision which entitles a sub-tenant to be impleaded in a suit for ejectment by the landlord on any of the clauses including clauses (f) and (ff) of Section 13(1). At this stage, we must remind ourselves that under the general law, no sub-tenant is to be impleaded in a suit for ejectment by the landlord against the tenant and the only exception to this general rule is to be found in Section 13(2) of the Act. Section 13(3) of the Act clearly says that excepting the cases covered by Sub-section (2) and Sub-section (4) of Section 13, the decree or order for the delivery of possession of any premises shall be binding on every sub-tenant. Sub-section (4) of Section 13 requires the court to pass a decree for partial eviction only in cases, where the court is of the opinion that the requirement of the landlord may be satisfied by ejecting the tenant or the sub-tenant, from a part only of the premises in occupation of the tenant or a sub-tenant. As noted herein earlier, under the general law, sub-tenant is not required to be impleaded in a suit for ejectment by a landlord against his tenant. In the case of *Rup Chand Gupta Vs. Raghuvanshi Private Limited and Another*, the Supreme Court has observed as follows :

"Taking the last action first, viz., *Raghu Vanshi*'s omission to implead the appellant, it is quite clear that law does not require that a sub-lessee need to be made a party. It has been rightly pointed out by the High Court that in all cases where the landlord institutes a suit against the lessee for possession of the land on the basis of a valid notice to quit, served on the lessee and does not implead the sub-lessee as a party to the suit, the object of the landlord is to eject the sub-lessee from the land in execution of the decree and such an object quite legitimate. The decree in such a suit would bind the sub-lessee. This may act harshly on the sub-lease. But this is the position well understood by him when he took the sub-lessee. The law allows and so omission cannot be said to be an improper act."

(Emphasised supplied)

Section 14 of the Act restricts subletting, after commencement of the Act. No tenant shall, without the previous consent in writing of the landlord sublet the whole or any part of the premises let out to him nor should he transfer or assign his right in the tenancy or in any part thereof. Violation of the aforesaid provisions saddles the tenant with two fold liabilities.

1. He become liable to be ejected as provided in Section 13(1)(a) of the Act.

2. He becomes liable to a fine, on landlord's complaint to the Controller.

6. It is well settled that although under the general law, a tenant enjoys the right to sublet without the landlord's consent, the position of a sub-tenant is nonetheless precarious as he is not a necessary party in the ejectment suit and is bound by the decree for eviction passed against the tenant. Section 14 of the Act, as noted hereinabove, curtails the right of a tenant to sublet. u/s 14 of the Act, restrictions have been imposed on the tenant to sublet the tenanted premises without the previous consent of the landlord. The legislature did not end there. Section 16 of the Act clearly says that creation and termination of sub-tenancies must be notified. Sub-section (1) of Section 16 deals with post act sub tenancy. After the commencement of the Act, where any premises is sublet either in whole or in part without the previous consent of the landlord, both the tenants and the subtenants must give notice about the creation of sub-tenancy to the landlord within one month from the date of sub-letting. So far as the pre-Act sub tenancy is concerned, section 16(2) of the Act, deals with the same. In that case also, the tenant or/ sub-tenants to whom the premises have been sublet shall give notice to the landlord of subletting in the prescribed manner within six months of the commencement of the Act. From a plain reading of both -the Subsections of Section 16 of the Act, it is pellucid that Sub-sections (1) and (2) impose obligation upon the tenant who had sublet any premises and upon every sub-tenant to whom the premises are so sub-let to give notice of the sub-letting to the landlord in the prescribed manner and within the specified period.

7. From a comparative analysis of the aforesaid provisions of the Act, viz., Section 13, 14, 16 and 30(5) of the Act, it becomes clear that the aforesaid two liabilities are concurrent, one does not exclude the other that is to say the landlord may take advantage of either or both. As noted herein earlier, a decree for ejectment passed against the tenant is binding also on the sub-tenant and there is no obligation on the part of the landlord to implead such sub-tenant in a suit for ejectment filed against the tenant. In the present case, no dispute was raised by the learned counsel for the appellant that any notice was served by the appellant upon the landlord in compliance with Section 16(2) of the Act. From the discussions made hereinabove and on the terms of Section 13(2) read with Section 16(2) of the Act, we have no hesitation in our mind that the sub-tenant who had given notice u/s 16 of the Act can only be protected and in that case, the decree passed against the tenant would not bind the sub-tenant in view of Section 13(4) of the Act. It has been rightly pointed out. by a learned Single Judge of this Court in the case of Bholanath Chatterjee and Another Vs.

Somendra Chandra Nandi and Others, that Subsection (5) of Section 30 only provides for penalties of tenants or sub-tenants who failed to comply with the requirement of the provisions of Section 16 of the Act. In our view, the learned Single Judge has rightly held in the aforesaid decision that Section 30(5) of the Act does not (sic) expressly or by implication any right in any circumstances in a sub-tenant who has failed to give notice as required u/s 16 of the Act. From a careful examination of the provisions contained in Section 30(5) of the act, and in view of the discussions made hereinabove, we are in full agreement with the judgment of the learned Single Judge in the case of Bholanath v. S. C. Nandi, AIR 1975 Cal 425 in which it was held that Sub-section (5) of Section 30 of the Act cannot be applied for the purpose of holding that if the landlord had knowledge of sub-tenancy and there was no notice u/s 16 of the Act on the landlord from the sub-tenant, such sub-tenant could be protected under the Act. In Smt. Hironmoyee Devi vs. S. C. Nandi, 1982(1) CLJ 229, a Division Bench of this Court has observed as follows:

Thus, in cases of pre-Act sub-letting where there is no consent of the landlord in writing, the statute made a further provision for determination of any dispute regarding such sub-tenancy being with or without the consent of the landlord by the Controller and the landlord's right to dispute the sub-tenancy under Sub-section (3) is dependent upon service of the notice on him. The object of Section 16, on the whole, was to provide a scheme and a machinery to render it certain as to who are the sub-tenants that would be entitled to relief under the other provision of the Act. namely, Section 13(2) thereof. Such being the legal position, in our view, our learned brother, S. K. Dutta, J. and so also the Courts below were right in their views that in the absence of any notice given u/s 16(2) of the said Act, the pre-Act sub-tenants like the said defendants are not entitled to the protection u/s 13(2) of the said Act. The first point raised by Mr. Bose, must fail and is overruled."

8. In the aforesaid Division Bench decision, it has also been clearly held that on the terms of Section 16(2) of the Act, the legislature has made it incumbent upon the sub-tenants to give notice of their sub-tenancies in order to be entitled to claim protection thereunder. It was pointed out by the aforesaid Division Bench of this court that no court can dispense with the fulfillment of such a statutory requirement by taking the view that since the landlord was aware of the sub-tenants which is immaterial whether any notice u/s 16(2) of the Act had been given or not. Similar view was expressed by another Division Bench of this court in the case of Laxmi Rani Das v. Hari Sankar Dutta 1982 (1) CLJ 350.

9. In view of the clear pronouncement of the aforesaid two Division Bench decisions which were rendered in the year 1982 and which are now controlling the field and after considering the relevant provisions of the Act as noted hereinabove, we have no hesitation in our mind to hold that the views expressed in the aforesaid two Division Bench decisions of this court must be followed by us as well. Accordingly, the first submission of Mr. Chatterjee is overruled.

10. Let us now consider the second submission of Mr. Chatterjee. Mr. Chatterjee relying on the observations made in the earlier judgment between the same parties which is reported in *Shantilal Rampuria and Others Vs. Vega Trading Corporation and Others*, as quoted herein earlier, submitted before us that the appellant cannot be said to be bound by the findings in the ejectment suit filed against the tenant as from the said observation of the Supreme Court, it appears that the appellant may still insist that he will be entitled to continue with the possession as tenant directly under the decree holders/ respondents. This submission of Mr. Chatterjee cannot at all be accepted. In that decision, the Supreme Court was considering the case of eviction of the tenant-corporation on the ground of subletting. Before the Supreme Court, there was no question on the right of the alleged sub-tenants under the Act. In fact, the Supreme Court by making the aforesaid observations has also made it clear that such question can be agitated by the sub-tenants if any situation arises. Therefore, on the basis of the aforesaid observation of the Supreme Court, it cannot be said that the Supreme Court had laid down any principle that the appellant or the alleged sub-tenants were entitled to continue with possession as tenants directly under the decree holders/respondents. The Supreme Court in that decision only kept it open to be decided if any plea is taken by the alleged sub-tenants regarding the plea of becoming a direct tenant under the decree holders/respondents. By the present proceeding, such question was decided and it has now been found that the appellant was not entitled to continue in possession as tenants directly under the decree holders/ respondents in view of the fact that no notice u/s 16 of the Act was served upon the decree holders/respondents.

11. Accordingly, the second contention of Mr. Chatterjee cannot also be accepted.

12. Let us now consider the only submission of Mr. Jayanta Kr. Mitra, the learned senior counsel, appearing on behalf of the appellants. Referring to Clause 5 of the original lease deed, Mr. Mitra contended that as the Corporation was entitled under the Clause 5 of the said lease deed to sub let the portion which could not be used by them as the appellant along with other alleged sub-tenants had been inducted in the premises in question in pursuance of Clause "5" of the lease deed, before the expiry of lease period in the year 1951 and such induction of sub-tenants was known to the respondent Nos. 1 to 14 for a long time, after the commencement of the Act, the appellant had become a direct tenant under the respondent Nos. 1 to 14, even if no notice u/s 16(2) of the Act was served upon the decree holders/ respondent Nos. 1 to This submission of Mr. Mitra is not accepted. It is an admitted position that on the ground of illegal subletting and default, the original ejectment suit was filed against the Corporation by the respondent Nos. 1 to 14 in the year 1972. The suit was decreed by the Trial Court that is to say the Corporation was directed to vacate the suit premises on the ground that they had sublet the suit premises without the consent in writing. The Supreme Court after reversing the finding of the Trial Court has again reaffirmed the finding of the Trial Court that is to say the Supreme Court found that the decree for eviction passed against the Corporation on the ground of

illegal subletting was rightly passed by the Trial Court. There is no dispute that at the time when the suit was decreed against the tenant, Clause 5 of the lease deed was very much in existence and it was before the Trial Court and before the Hon"ble Supreme Court. In spite of that, the Supreme Court found that the tenant was liable to be evicted on the ground of illegal subletting. Therefore, it cannot be said now that as the induction of the appellant as sub-tenant by the tenant-corporation was not illegal, invalid, the appellant cannot take advantage of Clause 5 of the lease deed which permits the tenant corporation to induct sub-tenant. There is no dispute that the appellant has claimed sub-tenancy before the commencement of the Act. In view of our discussions made herein above and relying on Section 16(2) read with Section 13 of the Act, we are of the opinion that the requirement of Section 16(2) of the Act is mandatory. It will appear that in Section 16(2) of the Act, the language is that "every sub-tenant to whom the premises have been sublet shall give notice to the landlord of such sub-letting in the prescribed manner within six months from the date of commencement of this Act."

From a plain reading of this provision as contained in Section 16(2) of the Act, it is clear to us that the aforesaid provisions are mandatory and a sub-tenant would have no protection against eviction of his lessor under the general law except for this provision. As discussed herein earlier, in view of Sub-section (2) of Section 13 of the Act, only sub-tenants who have given notice of their sub-tenancies to their landlord u/s 16(2) of the Act, would be protected under the Act and none else. Admittedly, in the present case, no notice was served by the sub-tenant to the decree-holders/respondent Nos. 1 to 14. In view of the discussions made herein above and in view of two Division Bench decisions of this court with which we are in full agreement, we are of the view that after the commencement of the Act, it was incumbent on the sub-tenant to serve a notice u/s 16(2) of the Act, so that after the commencement of the Act, they become direct tenants under the landlord. Therefore, we are unable to agree with the submission of Mr. Mitra that since permission was given in the lease deed to sublet the portion of the decretal premises and since the decree holders had knowledge of such induction of sub-tenants in the tenanted premises, the appellant would become a direct tenant under the law and, therefore, would be protected from eviction even when, the notice u/s 16(2) of the Act was not served upon the landlords by the sub-tenant. There is yet another reason for which this contention of Mr. Mitra cannot be accepted. The argument that was made by Mr. Mitra is based on mixed question of law and fact. If the factual position is not found from the petition under Order 21 Rule 98 to 101 of the CPC filed by the appellant, we are unable to permit Mr. Mitra to agitate such question before us. For this reason, we have carefully read each and every statement made by the appellant in his petition under Order 21 Rule 98, 100 and 101 of the Code of Civil Procedure. From a careful examination of each and every statement made in the aforesaid petition filed by the appellant, we do not find any such factual statement having been made by the appellant in his petition under Order 21 Rule 98, 100 and 101 of the

Code of Civil Procedure. Therefore, on this score also, we are unable to accept the contention of Mr. Mitra. Before parting with this judgment, we may recall that 17 alleged sub-tenants were inducted by the original tenant-corporation out of which the present petition under Order 21 Rule 98, 100 and 101 of the CPC was filed by the appellant only.

13. For the reasons aforesaid, we do not find any merit in this appeal.

14. No other point was raised on behalf of the appellant. Accordingly, the appeal is dismissed. There will be no order as to costs.

D.K. Jain, J.

I agree.