
(1950) 01 CAL CK 0010
In the Calcutta High Court
Case No : Civil Revn. No. 1109 of 1949

Jyotindra Nath Sanyal

APPELLANT

Vs

Sm. Taradasi Ghose and Others

RESPONDENT

Date of Decision : 11-01-1950

Acts Referred:

West Bengal Premises Rent Control (Temporary Provisions) Act, 1948 — Section 45(2)

Citation : AIR 1950 Cal 213

Hon'ble Judges : Roxburgh, J

Bench : Single Bench

Advocate : Nalini Kumar Mukherjee, for the Appellant; Sarat Chandra Jana, for the Respondent

Judgement

Roxburgh, J.—This is a rule against an order of the Additional Court of the Munsif at Sealdah refusing the defendants' prayer that a plaint in an ejectment suit be returned under Order 7, Rule 11, Civil P.C. The suit in question was brought in 1945, under the provisions of the Calcutta Rent Control Order, 1943. At the time when it was brought the amendment made by the insertion of Clause 9A, in the order which took effect on 22nd May 1944, was in force; in other words, the permission of the Rent Controller was necessary in respect of a suit filed on the ground mentioned in Clause 9 (1) (c) of the Order which may be briefly referred to as the ground of bona fide requirement by the landlord. The plaint here includes a cause of action on this ground of bona fide requirement and also one on the ground of default in payment of rent.

2. On 1st October 1943, the Rent Control Ordinance replaced the order and on 1st December 1918 the West Bengal Premises Rent Control Act replaced the Ordinance. The plaintiff had not obtained the permission of the Rent Controller as required under the provisions of Clause 9A of the Order. In fact, he had applied for permission and it had been refused.

3. The learned Munsif has disposed of the matter by referring to Section 45 (2), Rent Control Act of 1948 holding that as permission is now no longer required in

such cases the absence of permission at the time when it was required is immaterial. I have no doubt that the learned Munsif is in error in this view and the reference to Section 45 (2) certainly does not in any way help in arriving at that view. A similar question was considered in the case of *Tarini Gupta v. Manmatha Nath* 53 C. W. N. 855 : (A. I. R 1949 Cal. 674). That was a case filed under the Ordinance, Section 13 (1) of which, required permission of the Rent Controller in the case of a suit for ejectment on the ground of bona fide requirement by the landlord. The suit was pending after the Ordinance was replaced by the Act and it was held that the absence of permission as required under the Ordinance was fatal to the suit. A contrary view appears to have been taken in *Hari Mohan Dutt v. C. K. Sen & Co. Ltd.* 83 Cal. L. J. 278. It would appear that in fact the present question really was never in issue there because the suit in question was not based on the ground of bona fide requirement by the landlord. It appears to have been assumed therein however, that in the particular case permission of the Rent Controller was necessary for the suit, when it was filed and it was held that subsequent amendments had rendered this unnecessary. My own view is that the decision in the first mentioned case is clearly correct. I may point out that a similar problem arose, as it was on the obverse side, when Clause 9A was introduced in the Rent Control Order. The question arose then as to what should be the law as regards pending cases when an amendment was being made requiring the sanction of the Rent Controller for the entertainment of certain suits. The problem then was specifically dealt with both as regards pending suits and indeed as regards suits disposed of but still pending in execution. If that specific provision had not been made, there can be no doubt that it would have been held that suits instituted at a time when no permission was necessary would be good and would not be barred by the amendment which would clearly only apply, to suits instituted after the amendment came into force. The same principle clearly applies, in my opinion, where the requirement of permission has been removed, the position which we are now considering in the present case.

4. The ground therefore given by the learned Munsif for rejecting the application of the defendants cannot be supported, but Mr. Jana rightly contends that as his other cause of action on the ground of default in payment of rent is not in any way hit by the requirement for permission, his suit so far as that cause of action is concerned is good and therefore the plaint ought not to be rejected under Order 7, Rule 11, Civil P. C. The suit will continue on that cause of action. It cannot be entertained on the other cause of action in the absence of the permission of the Rent Controller.

5. The result is that the present rule must be discharged. There will be no order as to costs.