

(1955) 04 CAL CK 0009

In the Calcutta High Court

Case No : Civil Revision Case No. 536 and 537 of 1955

Magunlal Javerchand

APPELLANT

Vs

M/s. Raja Janakinath Roy Narendra Nath Roy and Co. Ltd.

RESPONDENT

Date of Decision : 22-04-1955

Acts Referred:

Citation : 59 CWN 747

Hon'ble Judges : P.N. Mookerjee, J

Bench : Single Bench

Advocate : Dayasankar Trivedi, for the Appellant; Bankim Chandra Banerjee and Jagannath Gangopadhaya, for the Respondent

Judgement

P.N. Mookerjee, J.—These two Rules are directed against two Orders u/s 14 (4) of the Rent Control Act, 1950, passed by the learned Fifth Judge, Court of Small Causes, Calcutta. The points that have been canvassed before me in support of the Rules relate inter alia, to the rates for deposit of the "arrears and the current rents" and a further question has also been raised that the "arrears" ought to be calculated for three years back from the date of the order and not from the date of the application u/s 14 (4). It has also been contended by the learned Advocate for the petitioners that, if the three years have to be calculated from the date of the application u/s 14(4) and that is to be taken as the relevant point of time for ascertaining legally recoverable arrears, that point of time should also be accepted for purposes of drawing the line between "arrears of rent" and "current rents" for purposes of the section.

2. In my opinion, these Rules ought to fail.

3. The rates, at which the rents have been calculated by the learned Judge in the Court below, are quite in accordance with the decision of this Court in the case of Bijoy Singh Nahata Vs. Mohanlal, Chaudhuri, . To that decision I was a party and nothing has been placed before me to warrant a different conclusion.

4. It is true that the rent standardisation proceedings are still pending and Rules

have been issued by this Court against the appellate orders fixing the standard rents in the two cases at Rs. 54-4 and Rs. 46-12 p.m. retrospectively. But, as pointed out in the case cited (1), *Bijoy Singh Nahata Vs. Mohanlal, Chaudhuri*, , for purposes of the order u/s 14(4) of the Rent Control Act, 1950, the standardised rent, prevailing at the time, ought to have taken as the relevant standard rent. Otherwise, the very purpose of the section [section 14(4)] would be defeated and the section would practically become nugatory in many cases. The other possible view, namely, that, until finalisation of the standardisation proceedings, the contractual rent should prevail, would be inconsistent with the well-known legal principle that the decision of a competent tribunal governs and binds the parties until altered or set aside in appropriate proceedings. I would, therefore, reaffirm the principles, laid down in (1), (*Bijoy Singh Nahata Vs. Mohanlal, Chaudhuri*,), and overrule the petitioner's first contention in support of these Rules.

5. On the question of limitation, the learned Judge has relied upon a decision of this Court, given by Chunder, J., in the case of *Krishna Chandra Bose Vs. Radharani Ghose and Others*, , and he has held that, in calculating the arrears, the Court will take notice of the law of limitation. That appears to be a perfectly sensible view and I would not differ from it.

6. The landlords in this case have not moved against the order of the Court below, but, on their behalf, my attention has been drawn to page 783 of the 58 C.W.N. report, when I (sitting with Sen, J.) passed an order for arrears of rent for more than three years u/s 14(4) of the Rent Control Act of 1950, and it has been sought to be argued therefore that, on the authority of that decision, the tenants in the present two cases should have been directed under the said section [section 14(4) of the Rent Control Act of 1950], to deposit the entire arrears irrespective of any question of limitation. I am unable to accept this argument. The decision cited is no authority for the landlords' contention. This aspect of the matter, namely, whether, u/s 14(4) of the Rent Control Act of 1950, the landlord would be entitled to get or the tenant would be liable to deposit even the time-barred arrears did not come up for consideration in that case and that was for an obvious reason. In that there was, at different stages of the rent standardisation proceedings, which were moving from Court to Court and pending for a number of years, appropriate orders, restraining the landlord from realising rent at the rate which was eventually found relevant for purposes of calculating the arrears of rent u/s 14(4) of the Rent Control Act, and, in these circumstances, no question of time-barred rent arose before us and no such point was argued on behalf of the parties or taken into consideration by us in deciding the case (1), (*Bijoy Singh Nahata Vs. Mohanlal, Chaudhuri*,), and the learned Judge in the Court below was thus right in refusing to take it (1), (*Bijoy Singh Nahata Vs. Mohanlal, Chaudhuri*,), as any authority for directing a deposit of time-barred rents also u/s 14(4) of the Rent Control Act.

7. The next question that arises is as to the point of time from which the normal

limitation period of three years will have to be calculated backwards for ascertaining legally recoverable arrears of rent. There are two submissions before me. One is that the calculation should be for three years backwards from the date of the order; the other is that this back period of three years should be calculated from the date of the application. The learned Judge has accepted the latter submission and, in my opinion, here also he was entirely right.

8. When the party makes an application before the Court, he should not suffer for the delay which is caused due to the Court's inability to take up the matter forthwith and dispose of it. This rule is sufficiently well recognised and it has often been applied in practice to relieve litigants against prejudice, caused by an act or omission of the Court or any delay or lapse of time involved in Court proceedings. Particular application of this Rule has been made in construing statutes of limitation [vide, e.g., *Ramkrishna Moreswar v. Ram Bai*, (3) ILR 17 Bom. 29; *The South Indian Industrials Ltd. v. Mothey Narasimha Rao*, (4) ILR 50 Mad. 372 and *Prafula Kumar v. Rao Gajendra Singh*, (5) ILR 1944 Nag. 768]. I myself have applied it recently in a case u/s 22 of the Indian Limitation Act (vide F.A. Nos. 111 and 135 of 1948, decided on 8.9.54), and I see no reason, why the same consideration should not apply to cases u/s 14(4) of the Rent Control Act of 1950, when the question that arises is really one of testing the effect of the time bar on the landlord's claim for arrears of rent. The rule is based on statutory principles and it is, indeed, a sound rule which should receive a wide and liberal application, and I am not prepared to depart from it or to refuse to apply it in the determination of the landlord's rights in the matter of arrears of rent u/s 14(4) of the Rent Control Act of 1950. When the landlord had made his application under the section it is for the Court to pass appropriate orders as contemplated therein. If the Court passes orders on that very day, there can be no doubt that the landlord, if he is otherwise entitled to it under the section, would get an order for at least three years' arrear rents, outstanding on that date and I find no adequate reason why the Court's liability to pass the relevant orders on that day or any delay in that behalf should prejudice the landlord or deprive him of a part of his outstanding dues, legally recoverable on the date of his application. Any other view would be not only extremely unjust in many cases, but even unsafe to follow in practice and I will not be prepared to adopt it when the relevant statute does not compel its adoption. In effect, the order will only relate back to the date of the application for purposes of calculating legally recoverable arrears and to that, I can see no valid objection. The section no doubt provides for the giving of "an opportunity to the parties to be heard" in the matter, but to hold therefrom that the back period of three years should be calculated from a date to be fixed upon this consideration would not be proper, as apart from any other consideration, it would introduce an element of uncertainty and the relevant point of time would vary from case to case. I would rather avoid such a construction.

9. In the present cases, the application u/s 14(4) was filed on November 17, 1954. The actual order under that section was made on February 12, 1955. The

landlord in his claim for arrears should not, as I have already said, suffer due to the liability of the Court to dispose of the applications forthwith when they were filed on November 17, 1954. The learned Judge was, therefore, right in calculating arrears for three years backwards from the date of the applications, namely, 17th November, 1954, and his decision in this regard must be upheld.

10. Lastly, the petitioners contend that, as the date November 17, 1954, is being taken as the relevant date for back calculation of the legally recoverable arrears, the rents for November and December, 1954, should be treated as "current rents" for purposes of section 14(4) of the Rent Control Act of 1950. I am unable to accept this contention. From the wording of the section [section 14(4)], it is perfectly clear that the order to be passed under that section for deposit of arrears of rent would be for such arrears up to the date of the order and, if that is the correct position, the rents for November and December, 1954, would also be classed as arrear rents for purposes of section 14(4) and the learned Judge in the Court below was perfectly right in calculating the same on that basis.

11. The order to be passed u/s 14(4) is to be for deposit of "arrears of rent" and "current or future rent". Obviously all rents which have fallen due and are in arrears up to the date of the order and outstanding on such date would be "arrears rents" on that date and rents falling due on or since that date would be "current or future rent". This is the classification plainly intended by the section and the fact that, for ascertaining legally recoverable arrears, an earlier date may have to be taken for calculating backwards the period of limitation in a particular case will not affect that classification. All rents due and outstanding on the date of the order would, undoubtedly be arrears, although in a particular case the landlord may be entitled to an extension of the period of limitation and the recoverable arrears may be for a period, exceeding the normal period of limitation. Classification under the section and application of the law of limitation are two different matters and one should not be confused with the other. When the section speaks of an order for deposit of "arrears" of rent and also of rent "month by month", the latter has obvious reference to "future or current rents" and it would be quite inappropriate to include within the latter category rents which have already fallen into arrears between the date of the application and the order and which cannot, therefore, from the very nature of things, be ordered to be deposited month by month. Indeed, the frame and text of the statute precludes any application of the theory of "relation back" or the shifting of the demarcating point of time in the matter of classification into "arrears" and "current" rents.

12. I hold, therefore, that, for purposes of the order u/s 14(4), the rents due upto the date of the order would have to be taken as "arrear rents" and rents subsequently due, that is, rents which have not fallen into arrears on that date, would be within the other classification of "future or current rent". This distinction appears to be inherent in the wording and working of the section and I do not think that the learned Judge was unjustified in proceeding on that basis.

In the above view of the matter, these Rules must fail and they are discharged. In the circumstances of these cases, I direct the parties to bear their own costs in this Court.