

(1962) 11 CAL CK 0002
In the Calcutta High Court
Case No : Civil Revision Case No. 4587 of 1960

Messrs. Bengal Wire Nails Co. (P) Ltd.	APPELLANT
Vs	
Jagmohandas Mundra and Others	RESPONDENT

Date of Decision : 19-11-1962

Acts Referred:

West Bengal Premises Tenancy Act, 1956 — Section 16(2), 16(3), 16(8), 9

Citation : 67 CWN 275

Hon'ble Judges : P.N. Mookerjee, J; Amaresh Roy, J

Bench : Division Bench

Advocate : Charu Chandra Ganguly and Satya Narayan Saraf, for the Appellant; Satyendra Prasad Sen for Opposite party No. 1, for the Respondent

Judgement

P.N. Mookerjee, J.—In our opinion, this Rule should fail. The Rule is directed against an order of the appellate authority, remanding an application u/s 16(8) of the West Bengal Premises Tenancy Act, 1956, to the Rent Controller for consideration on the merits. The application was thrown out by the learned Rent Controller on two preliminary grounds, neither of which appeared to be of substance to the learned appellate authority.

2. For an appreciation of the points involved, it is necessary to set out the facts as follows:-

Opposite Party No. 2, Rai Saheb P.C. Roy, is the owner of premises No. 6, Tiljala Road, comprising land with structures. In 1945, the said premises was let out to the petitioner at a monthly rental of Rs. 520/- (Rupees five hundred and twenty) per month. In 1950, the said premises along with certain machineries, fixtures, fittings, furniture, etc., were let out by the petitioner to the opposite party No. 1 at a consolidated rental of Rs. 1650/-, which was eventually reduced to Rs. 1050/- per month.

In November, 1956, the opposite party No. 1 applied for an order under Sec. 16(3) of the West Bengal Premises Tenancy Act, 1956, "declaring that the

petitioner's interest in the disputed premises shall cease and the said opposite party No. 1 shall become a direct tenant under opposite party No. 2 in respect of the aforesaid premises. The application was made after service of notice under Sec. 16(2) of the Act upon the landlord opposite party No. 2. The petitioner opposed the said application, contending inter alia that the application was not maintainable in law, inasmuch as what was let out by him to opposite party No. 1 was not only the premises, taken lease of by him from opposite party No. 2 but also additional structures, constructed by him, and fixtures, fittings, furniture etc., which together constituted a factory, to wit, a different premises, and secondly, because the notice under Sec. 16(2) was defective in law. The learned Rent Controller gave effect to both the above objections and dismissed the application. On appeal, however, the said decision was reversed and both the above grounds of objection were over-ruled by the learned Appellate Judge and the case was remanded to the learned Rent Controller to be dealt with on the merits in accordance with law. It is against this appellate order that the present Rule has been obtained by the petitioner.

3. In support of the Rule, Mr. Ganguly has urged the two grounds of objection, set out above and accepted by the learned Rent Controller, and he has reiterated the reasons, given in support thereof by the said learned Officer. We do not think, however that Mr. Ganguly's submissions are correct.

4. As to the defect in the sub-tenant's notice under Sec. 16 (2), it is enough to say that the governing Rule (Rule 4) has been held to be directory [Vide the unreported decision of this Court dated February 19, 1960, in the case of (1) Sm. Krishna Devi v. Shalimar Paint, Colour and Varnish Co. (Private) Ltd. (C.R. 2656 of 1959), decided by myself sitting with Niyogi, J., vide also (2) Dilip Narayan Roy Chowdhury Vs. Amarendra Kumar Dutta, . Substantial compliance with the Rule is therefore, sufficient. Now the only defect alleged is absence of any statement of rent of the present disputed premises in the said notice. It is obvious, however, that no such statement was possible in this case as the sub-tenant's rent here was a consolidated one in respect of the aforesaid Municipal premises, of which the petitioner was the tenant and the opposite party No. 2 was the owner and landlord and the machineries, furniture, fixtures, etc., of which the petitioner was the owner, and which together with the aforesaid Municipal premises, had been let out by him to the opposite party No. 1 and there was no apportionment of the same between the above two types of properties, jointly let out to the opposite party No. 1, as aforesaid, by the petitioner and held under him by the said opposite party No. 1 as tenant. In the circumstances, the non-mention of any separate rent of the present disputed premises cannot be held to be a defect at all,--at any rate, not a defect in the matter of necessary substantial compliance,--particularly, when the consolidated or total rental of the above entire premises (the municipal premises plus machineries, fixtures, furniture, etc.,) rented by the opposite party No. 1 from the petitioner, has been mentioned therein along with all relevant facts and circumstances. This plea of defect in the notice in question is, accordingly,

overruled.

5. On the other question too, the decision must go against the petitioner. It is true that the petitioner was the tenant under the owner opposite party No. 2 in respect of the above municipal premises and he let out the same along with the machineries, fixtures, fittings, furnitures, etc., to the Opposite Party No. 1, which, taken as a whole, may constitute a different premises but this premises the first or the Municipal premises together with the machineries etc., so that, strictly speaking, and as a matter of law and fact too, the opposite party No. 1, was a sub-tenant in respect of the first premises and a tenant in respect of the rest, the demise to him being a composite demise of two demises, one of the municipal premises and the other of the machineries, etc., the first making him a sub-tenant, the second a tenant. As sub-tenant, as aforesaid, he would have the rights under Sec. 16(3) in respect of the premises concerned. This view presents no difficulty either in its practical application or in the application of the Section. The fair rent of the premises, held by a tenant or a sub-tenant, may well be fixed under the statute under Sec. 9. The subtenant is, necessarily, a tenant under a tenant and under the statute (Sec. 9), the fair rent is fixed irrespective of the status of the occupier or the person concerned, whether a tenant or a sub-tenant. Under Sec. 16(3) also, the position is similar and, moreover, where, as here, the tenant has let out the whole of his demised premises to the sub-tenant, he ceases to have any interest in the said premises under and in view of the said Section and no question arises of fixing the tenant's fair rent in such cases. All that is required to be done is to fix the subtenant's fair rent in respect of his sub-tenanted premises and neither the statute nor anything else presents any obstacle to such fixation. The machineries, etc., which do not form the subject-matter of any sub-tenancy are not, of course, relevant for purposes of Sec. 16(3) and they may be safely left out of account here, leaving the parties concerned to have their rights in the matter settled in appropriate proceedings or by appropriate methods. The Section [Section 16(3)], again, cannot be avoided by combining the sub-tenancy with a tenancy. Under it, not only the subtenant but the landlord also has rights and those rights cannot be affected or prejudiced by any action on the part of the tenant and/or the sub-tenant. Only on the above view of the law, as set out by us in the preceding lines, can these rights be preserved and protected. The Section, as we have seen above, presents no conflict with it and all its terms are satisfied by acting upon the said view of the law. The Section concerns only the sub-tenanted premises and makes the sub-tenant a tenant in place of the tenant whom it effaces, and provides for fixation of rent of the sub-tenant, to wit, of the sub-tenanted premises. In the premises, the application of opposite party No. 1 cannot be thrown out as not maintainable and, accordingly, the order, complained against in this Rule, is correct, legal and valid. For the foregoing reasons, this Rule will fail and it will be discharged. There will, however, be no order as to costs in this Court.

Amaresh Roy, J.

I agree.