(2011) 11 CAL CK 0025

In the Calcutta High Court

Case No : C.O. No. 444 of 2011

M/s. Popat and Kotacha Property and Others — APPELLANT

Vs

Qaseem Ahmed — RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 178(6), 193, 194, 230
Constitution of India, 1950 — Article 227
West Bengal Court Fees Act, 1970 — Section 17(2), 7
West Bengal Premises Tenancy (Amendment) Act, 2002 — Section 17, 17(1), 17(4A), 17(4B), 3
West Bengal Premises Tenancy Act, 1997 — Section 17, 20, 21, 22, 5
West Bengal Premises Tenancy Rules, 1999 — Rule 4, 8

Citation : (2011) 11 CAL CK 0025

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Aniruddha Chatterjee, Mr. D. Dey and Mrs. S. Mitra, for the Appellant; Washim Ahamed, for the Respondent

Final Decision : Allowed

Judgement

Harish Tandon, J.—This revisional application is directed against an order No. 14 dated 3.1.2011 passed by the learned Judge, 5th Bench, Small Causes Court, Calcutta in ejectment suit no 279 of 2006 by which an application u/s 7(2) of the West Bengal Premises Tenancy Act 1997 was disposed of.

2. The petitioner instituted a suit for recovery of possession on the ground of default in payment of rent against the opposite party. According to the petitioner, the opposite party being a monthly tenant is defaulter in payment of rent since the month of April 2003. It is a specific case of the petitioner that a notice u/s 20 of the said Act was served upon the opposite party and as such the opposite party was obliged to pay the enhanced rent to the petitioner.

3. The opposite party filed an application u/s 7(2) of the said Act disputing the rate of rent and also the factum of default. It is a specific case of the defendant/

opposite party that the rent was paid to the landlord @ Rs. 195 per month till the month of March 2003 against the rent receipt. The rent for the month of April 2003 was tendered to the petitioner who refused to accept the same. Thereafter the rent for the said month was again tendered by money order which, upon refusal, is being deposited in the office of the Rent Controller, Kolkata. It is further stated in the said application that the rent is inclusive of the maintenance charges as well as the corporation tax.

4. In written objection to the said application the petitioner took a stand that u/s 5(7) of the said Act it is an obligation of the tenant to pay the maintenance charges calculated @ 10 per cent on the fair rent or the rent agreed. u/s 5(8) of the said Act it is also the obligation of the tenant to pay the municipal rates and taxes in accordance with the Kolkata Municipal Corporation Act 1980.

5. Initially the said application was disposed of by the trial court holding that there is no arrear of rent due and payable by the defendant/opposite party. The said order was assailed by the petitioner before this court in CO No. 3882 of 2007 and this court while disposing of the said revisional application on 11.4.2008 directed the trial court to consider the said application afresh, after giving reasonable opportunity to the parties to adduce evidence. In terms of the said order the parties adduced evidence and the trial court by impugned order disposed of the said application u/s 7(2) of the said Act in holding that the defendant/opposite party is liable to pay maintenance charges @ Rs. 19.50 together with an interest within one month from the date of the order.

6. Mr. Chatterjee, learned Advocate appearing for the petitioner assailed the said order in contending that the trial court while holding that the tenant is liable to pay the corporation tax and commercial surcharge, failed to determine the said amount on the plea that the same is to be done by the municipal corporation. He further says that section 178(6) of the Kolkata Municipal Corporation Act 1980 provides for ascertainment of the apportioned liability of the occupier. He strenuously argues that it is a statutory obligation of the occupier to approach the municipal commissioner u/s 178(6) of the Kolkata Municipal Corporation Act 1980 by making an application for determination regarding the apportionment of the property tax and the tenant having failed to do so cannot escape from his liability even in absence of quantification of such property tax. In support of such submission he relies upon a judgment of the apex court in case of Calcutta Gujrati Education Society and Another Vs. Calcutta Municipal Corporation and Others, . He further argues that there is no mode prescribed under the Kolkata Municipal Corporation Act 1980 regarding the determination and/or ascertainment of the owner''s or occupier''s share of corporation tax. Lastly it is contended by Mr. Chatterjee that the tender of rent by the defendant/tenant was not in conformity with the agreement of tenancy and as such all deposits are bad and invalid.

7. Mr. Washim Ahamed, learned Advocate appearing for the defendant/opposite party submits that the petitioner has not taken any objection with regard to the

deposits being invalid and/or bad either in its written objection to an application u/s 7(2) of the West Bengal Premises Tenancy Act 1997 or before the court below in course of submissions/arguments. He strenuously argued that the point which is neither taken in the written objection nor before the trial court cannot be entertained by this court in exercise of jurisdiction under Article 227 of the Constitution of India. He further argues that the rent is inclusive of the maintenance charges as well as the municipal tax which would be evident from the terms and conditions embodied in the tenancy agreement. Lastly he submits that the rent was always paid to the landlord in terms of the tenancy agreement which would be evident from the evidence of the petitioner.

8. He concludes by saying that the court should not interfere with the order passed by the trial court.

9. Admittedly the opposite party has been inducted as a tenant in respect of the suit premises on the strength of an agreement dated 24th March 1982. Clause 1(a) of the said tenancy agreement provides the monthly rent being Rs. 150/- per month which shall be payable in advance by the tenant at the office of the landlord within 10 days of the each and every current month.

10. Clause 1(b) of the said tenancy agreement speaks of the monthly rent being inclusive of the existing municipal rates and taxes but it further provided that in the event of any enhancement of such rates and taxes in future then the tenant shall pay the proportionate share of increased occupier''s share of municipal rates and taxes in proportionate to the area of the covered space comprised in the tenancy. Thus there is no dispute that the initial rent which was fixed is inclusive of the then existing municipal rates and taxes. Section 5(8) of the West Bengal Premises Tenancy Act 1997 casts an statutory obligation upon every tenant to pay his share of municipal tax as an occupier of the premises in accordance with the provisions of the Kolkata Municipal Corporation Act 1980. Admittedly the petitioner never intimated the opposite party about the increment of the corporation tax so as to make him liable to pay the proportionate share in terms of the said tenancy agreement.

11. Mr. Chatterjee put much emphasis on the provision contained u/s 178(6) of the Kolkata Municipal Corporation Act 1980 which enshrined that the tenant or the occupier should make an application for determination of their apportioned share of the property tax and having failed to do so they cannot escape from the obligation and/or liability of payment of corporation tax. Upon reading the said provision there is no dispute that an additional right is created upon the tenant or occupier to make an application to the Municipal Commissioner for furnishing an information regarding the apportionment of the property tax amongst the several occupiers/tenants of the building. It is imperative on the part of the Municipal commissioner to furnish the information regarding the apportionment of the property tax amongst several occupiers of a building if an application is made by any tenant or occupier but it does not mandate that the defaulted tenant/occupier should approach the Municipal Commissioner for determination

of their liability. Section 193 of the Kolkata Municipal Corporation Act 1980 has earmarked the person primarily liable for payment of the corporation tax, in case of the land or building is let, upon the lessor and in case of the land or building is sub-let, upon the superior lessor and landlord if the land and building is sub-let upon the person in whom the right to let such land or building vests. Section 194 read with section 230 of the said Act confers a right upon the landlord to recover the amount of the property tax from the tenant.

12. Thus in absence of any evidence being adduced by the landlord/petitioner with regard to the enhancement of the corporation tax after the creation of the tenancy, the petitioner cannot claim the corporation tax u/s 5(8) of the West Bengal Premises Tenancy act 1997 as the contractual rent is inclusive of the corporation tax which existed at the time of creation of tenancy.

13. It would be profitable to quote the observation of the Division Bench of this court in case of Smt. Shikha Dutta and Sri Prosanta Kumar Lahiri reported in 1988 (2) CLT 115 (HC) which are as follows :

6. In view of the above provisions of the Act and the rival contentions of the parties the first question which requires an answer in the instant case is what was the rent agreed to be paid by the tenant. As already noticed in the agreement it is specifically stated that the tenant shall pay a sum of Rs. 1,230 per month as rent and another clause of the agreement provides that the municipal taxes would be borne by the tenant during the period of his occupation. It has, therefore, to be ascertained whether the municipal tax, which admittedly is to be paid by the tenant can be considered to be a part of the rent. In the case of Karnani Properties (supra) on which Mr. Dasgupta relied, the relevant clause of the tenancy agreement read as under :

That the tenant shall occupy the said flat paying there for unto the Bank a monthly rent of Rs. 100 including hire of 2 A.C. fans and extra Government duty on electric current without any reduction or abatement to be paid at the bank on or before the 7th of succeeding month for which the rent is due and that the said rent is inclusive of charges for current for fans, lights, radio and electric stove not exceeding 600 Watts for heating meals and making tea only, use of life, hot and cold water, the owner and occupier''s shares of Municipal Taxes."

10. In the instant case, both in the plaint and the objection to the application u/s 17(2) of the Act filed by the tenant, the landlord specifically stated that the tenant was liable to pay the municipal tax along with the rent. In other words, it was not averred therein that municipal tax was a component of the rent. On the contrary, liability of the tenant to pay municipal tax has been treated as independent of her rent liability. Even in computing Court Fees for the suit in accordance with Section 7(xiii)(d) of the West Bengal Court Fees Act, 1970 the landlord has treated the sum of Rs. 1,230 as rent.

11. Having considered the facts and circumstances of the instant case in the light of the judgments of the Supreme Court discussed earlier we must hold that as

the municipal tax was not treated as a part of the ''rent'' agreed to be paid by the tenant, the learned trial Court was not justified in directing the petitioner to deposit the arrear municipal taxes. Since we have rested our above finding on the decisions of the Supreme Court we need not detail or discuss the English authorities and decisions cited by Mr. Dasgupta; nor do we need to consider and decide the question as to whether in law municipal tax can form. part of the rent or not: In the result the order of the learned trial Judge so far as it directed the tenant to pay the arrear municipal taxes is hereby set.aside. Needless to say, this order of ours will not debar the landlord from initiating appropriate proceedings against, the tenant for realisation of municipal taxes.

14. There is a difference between section 20 and section 17 of the West Bengal Premises Tenancy act 1997. Section 20 cannot imbibe the provisions contained u/s 17 where the rent controller has been given power to determine the fair rent as has been held by the apex court in case of Pallawi Resources Ltd. Vs. Protos Engineering Company Pvt. Ltd., in these words:

21. Furthermore, a plain reading of Section 20 of the Act would show that Section 20 allows the landlord to only give a notice of his intention to increase the rent, which becomes due and recoverable from the month or period of tenancy next after the expiry of thirty days from the date on which the notice is given. We are of the considered view that the requirement of giving by the landlord a notice of intention to increase the rent instead of a notice of increase of rent and the period of one month which has been allowed before the increased rent becomes due and recoverable from the tenant by the landlord sufficiently indicate that the legislature did not intend to make the rent fixed by the landlord automatically applicable without any reference to the Rent Controller.

22. The stand of the learned Senior Counsel appearing on behalf of the appellant that under sub-section (4-A) of Section 17 there is automatic fixation of the fair rent without any reference to the Rent Controller is untenable as it is not in conformity with the cardinal rule referred to above by us.

23. Section 17 of the West Bengal Premises Tenancy Act, 1997, as it stands today, consists of a number of sub-sections. Sub-sections (4-A) and (4-B) were both inserted in Section 17 by the West Bengal Premises Tenancy (Amendment) Act, 2002 with retrospective effect from 10-7-2001. Sub-section (1) of Section 17 clearly states that the Controller shall be the authority to fix the rent in respect of any premises in accordance with the provisions of that Act. Sub-section (4-A) of Section 17 lays down the mode for the determination of fair rent where a tenancy subsists for twenty years or more in respect of the premises constructed in or before the year 1984 and used for commercial purpose.

24. Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature in a certain manner, the only reasonable interpretation which can be resorted to by the courts is that such was

the intention of the legislature and that the provision was consciously enacted in that manner. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is the determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to the recent decision of this Court in Ansal Properties & Industries Ltd. v. State of Haryana.

25. We must also take note of the submission made by the learned Senior Counsel appearing for the respondent that sub-section (4-A) of Section 17 employs the word "determine". The learned Senior Counsel has placed reliance on the judgment of a three-Judge Bench of this Court, which is binding on us, reported as Southern Railway v. T.R. Chellappan, the relevant portion of para 21 is reproduced hereinbelow: (SCC p. 201, para 21)

"21. ... The word ''consider'' has been used in contradistinction to the word ''determine''. The rule-making authority deliberately used the word ''consider'' and not ''determine'' because the word ''determine'' has a much wider scope. The word ''consider'' merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words, the term ''consider'' postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person."

26. We may also add herein that all the sub-sections included in Section 17 are independent provisions laying down different criteria on the fulfilment of which an application could be filed before the Rent Controller praying for increasing the fair rent. In other words, Section 17 lays down different types of causes of action as to when such an increase could be sought for. Sub-section (1) of Section 17 makes it crystal clear that on the happening and fulfilment of the criteria laid down in each of the cause of action, an application would be required to be filed before the Rent Controller who would then determine as to what would be the fair rent. Although, it could only be a case of mathematical calculation yet an order in that regard is to be passed by the Rent Controller on the basis of an application filed before it by determining the quantum of such fair rent.

27. In case there is a case of deemed increase of fair rent or an automatic increase, as suggested by the counsel appearing for the appellant, still somebody would have to determine that it has so increased and that authority is definitely the Rent Controller who could exercise the jurisdiction only when he receives an application. Unless an application is received in that regard, nobody would know

that in fact a case for increase of fair rent has accrued or is sought for by the party concerned.

28. Thus, it cannot be said that sub-section (4-A) of Section 17 was sought to be brought in by way of an exception to the general rule of Section 17. Had the legislature intended otherwise, it would have specifically, in its wisdom, made sub-section (4-A) an exception to sub-section (1) by adding a proviso or by making a specific provision thereto u/s 3, where the Act itself provides some exemptions and provides for specific cases where the Act is not applicable. The fact that the West Bengal State Legislature did not, even after insertion of sub-section (4-A), amend or modify Rule 8 of the West Bengal Premises Tenancy Rules, 1999 which prescribes the manner of making applications u/s 17 for fixation of fair rent also fortifies the fact that the State Legislature did not intend to incorporate sub-section (4-A) as an exception to sub-section (1) of Section 17. On the contrary, the non-amendment of Rule 8 goes on to show that the legislature intended the same procedure to be followed with regard to making an application under any provision of Section 17 for the fixation of fair rent.

15. The contention of Mr. Chatterjee that the deposit of the rent without the deposit of the corporation tax as well as maintenance charges being the statutory obligation u/s 5 of the said Act is invalid, is not sustainable. Section 7 of the said Act postulates that on a suit being instituted on any ground referred to in Section 6 the tenant shall deposit with the Civil Judge all arrears of rent calculated at the rate on which it was last paid together with the statutory interest. In case of any dispute as to the amount of rent payable by the tenant the Court shall determine having regard to the rate at which the rent was last paid and the period for which the default may have been made. Therefore, the rent which is deposited by the tenant must be a rent which has been paid lastly to the landlord.

16. The contention of Mr. Ahmed that by accepting the rent, the petitioner has waived the tenancy agreement is not tenable. The right to enforce the eviction on the ground of default in payment of rent can be waived by the landlord by accepting the rent tendered beyond the agreed period by accepting the said rent. The landlord has in fact extended the time upon condoning the delay in remitting the same but I find that there is no specific objection taken by the petitioner in the written objection to an application u/s 7(2) of the West Bengal Premises Tenancy act 1997 that the initial tender of rent by the tenant was not in accordance with the said tenancy agreement even the tenancy agreement was not placed before the trial court.

17. Section 21 of the said Act provides that if the landlord does not accept the rent tendered by the tenant within the prescribed period, the tenant shall remit the rent to the landlord by postal money order within fifteen days of such refusal. Rule 4 of the West Bengal Premises Tenancy Rules 1999 prescribed the period for payment of the rent as the time fixed by the contract or in absence of such contract by the 15th day of month following the month for which it is payable

whereas Section 22 of the said Act envisage that no deposit of rent with the controller shall be valid unless there is a strict compliance of the provision contained in Section 21 of the said Act.

18. The determination u/s 7 of the said Act is not restricted to the rate of the rent or the period of default but includes within the determination as to the validity of the deposits of rent u/s 21 of the said Act as well. Such consideration is one of the necessary ingredients u/s 7 of the said Act.

19. Since the aforesaid point has been taken for the first time before this Court and there is no pleading to that effect in the written objection filed by the petitioner but this Court finds that such consideration is necessary for determining the dispute as envisaged u/s 7(2) of the said Act.

20. The petitioner is permitted to take a plea of invalid deposit before the Trial Court by filing a supplementary affidavit which shall be filed within two weeks from date. The opposite party is permitted to file an objection to the said affidavit within a week thereafter. The Trial Court shall thereafter reconsider the application u/s 7(2) of the West Bengal Premises Tenancy Act afresh after giving an opportunity to the parties to adduce evidence in support of the pleading made in the supplementary affidavit.

21. The Trial Court shall make all efforts to dispose of the said application as expeditiously as possible without granting unnecessary adjournment to either of the parties and preferably within two months from the date of the communication of this order.

22. In view of the above, the impugned order is, therefore, set aside.

23. The revisional application is allowed.

24. However, there shall be no order as to costs.

25. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

