

(1958) 07 CAL CK 0013
In the Calcutta High Court
Case No : Civil Revision Case No. 3453 of 1956

Nagendra Nath Geosal, Tenant	Vs	APPELLANT
Barada Kanta Nandan, Landlord		RESPONDENT

Date of Decision : 04-07-1958

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : 63 CWN 866

Hon'ble Judges : Das Gupta, J

Bench : Single Bench

Advocate : Ram Mohan Bhattacharjee, for the Appellant; Shyama Charan Mitter, for the Respondent

Final Decision : Allowed

Judgement

Das Gupta, J.—The question raised in this case is whether in making an order u/s 6 of the Thika Tenancy Act for payment of the amount of rent in arrears, the Thika Controller can include in the amount ordered to be paid such portion of the unpaid rent in respect of which a decree has already been obtained by the landlord. The petitioner was a thika tenant within the meaning of the Thika Tenancy Act, paying originally rent at the rate of Rs. 75/- per month, and thereafter, on the basis of a consent decree at Rs. 90/- per month. On 24th February, 1954, the landlord, who is the opposite party in this Court, brought a suit for realisation of arrears of rent; and on the 23rd June, 1954, made an application for ejectment of the petitioner u/s 5 of the Thika Tenancy Act, on the ground of default. On 29th September, 1955, the landlord obtained a decree for Rs. 2,588-8-9 of which Rs. 2,205-0-0 was on account of arrears of rent. On 19th November, 1955, the Thika Controller made an order in the following terms on the landlord's application for ejectment:

The opposite party will be ejected from the holding, unless he deposits Rs. 2,385/-- as arrears of rent, and Rs. 1,710/- as damages and the costs of the proceedings within 30 days of this order.

2. This order has been confirmed in appeal.

3. Though the Controller does not clearly indicate how this figure of Rs. 2,385/- was arrived at, it is sufficiently clear that he was of opinion that rent was in arrears for 27 months, from December, 1951 to January, 1954, at the rate of Rs. 90/- except for Rs. 45/- which had been paid.

4. It may be mentioned that a contention was raised both before the Thika Controller and the Court of Appeal below that legally rent was payable only at Rs. 75/- and the consent decree was void. This was rejected. It was raised before me also though rather half-heartedly. I can see nothing that would justify the view that the consent decree was void, and I hold that the Thika Controller and the Appellate Court rightly proceeded on the basis that rent was payable at Rs. 90/- per month.

5. The important circumstance which has given rise to the question mentioned at the outset is that on the date this order was passed a decree for the arrears for the months of January, 1952 to January, 1954 had already been passed. The question is: Could the rent due for these months be considered to be "arrear of rent" within the meaning of section 6 of the Thika Tenancy Act, even after the decree had been passed? On behalf of the petitioner, it is contended that the amount payable as rent, which remained unpaid, is an arrear of rent, so long as there had been no decree made for it; but once a decree has been obtained, it ceases to be an arrear of rent.

6. In my opinion, this contention should be accepted. The word "arrear" is rightly used in respect of something which is due, but has not been received, When something is due on account of wages, but has not been paid, it is an arrear of wages. When work is due to be done, and has not been done, it is an arrear of work. And similarly, when rent is due and has not been paid, it is an arrear of rent. When the party entitled to such arrear goes to Court, and obtains a decree for the same and the decretal amount has not been paid, it may, at first sight, seem that the rent due has not been paid, and thus continues to be an arrear of rent is it correct to say however that after the decree has been obtained anything still remains due on account of rent? I think not. It has been held by the highest authorities that when a decree has been obtained on enforcement of a mortgage, the debt loses its character of mortgage debt, but assumes the character of a decretal debt. I can see no reason why the same reasoning should not apply to the case of rent-debts. Applying that reasoning, I think it reasonable to hold that when a decree has been obtained for arrears of rent, but the decree has not been satisfied, nothing remains due any longer on account of rent. What remains due is on account of the decree; and consequently, there is no longer any arrear of rent, in respect of the period for which a decree has been obtained.

7. I am, therefore, of opinion that the Thika Controller, and the Court of Appeal have erred in law in including the amount covered by the decree in the amount to be paid u/s 6; and this error is of such a nature that I think it necessary and

proper that this Court should interfere with that order, in the exercise of its powers of superintendence under Article 227 of the Constitution.

8. In coming to this conclusion, I have left out of account the inconvenience that may result, if in spite of payment being made in accordance with the directions u/s 6 of the Thika Tenancy Act, the landlord presses for execution of the decree already obtained and the execution proceeding is not stayed. It has been argued that even if it be possible to relieve the tenant, ultimately against double payment, once under the directions made u/s 6 of the Thika Tenancy Act and again in execution of the decree, very difficult positions may arise, causing great immediate injustice,-as for example, if the tenant's movables be attached and sold, even after payment has been made in accordance with that order u/s 6 of the Thika Tenancy Act, but before the executing Court has taken notice of such payment. I think it unnecessary to consider the cogency of this argument as, quite apart from it, I have reached the conclusion that after a decree has been obtained for arrears of rent, the amount unpaid ceases to be an arrear of rent within the meaning of section 6 of the Thika Tenancy Act.

9. I would, therefore, set aside the orders passed by the Courts below and direct that the case be sent back to the Thika Controller for making a proper order in accordance with the section 6 of the Thika Tenancy Act. I think it necessary to point out that the order passed by the learned Controller was not correct in form. What section 6 of the Thika Tenancy Act directs is that when the Thika Controller allows an application u/s 5 and directs the thika tenant to vacate the holding and put the landlord in possession thereof, he shall specify the amount of the arrear and of the interest, if any, due thereon. That is all the Thika Controller has to do. The concluding portion of the section provides that no such order shall be executed if that amount, the costs of the proceedings arising out of such application and such damages as the Controller may allow, are deposited with the Controller within thirty days from the date of the order. Because of this concluding portion, it is necessary for the Thika Controller also to work out the costs of the proceeding and the damages. But the form in which the present order has been made, namely, that the opposite party (tenant) will be ejected unless he deposits a certain amount as damages is not correct. The Thika Controller should take note of these directions in making the final order. The Rule is, therefore, made absolute, but in the peculiar circumstances of the case, I direct that each party will bear its own costs.