
(1964) 07 CAL CK 0016
In the Calcutta High Court
Case No : A.F.A.D. No's. 339 to 342 of 1959

New Calcutta Binders and Another	Vs	APPELLANT
Sm. Sushila Bala Dassi		RESPONDENT

Date of Decision : 30-07-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : AIR 1967 Cal 441

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

Bench : Single Bench

Advocate : B.B. Dasgupta and A.K. Sengupta, for the Appellant; Barun Kumar Roychowdhury, for the Respondent

Final Decision : Partly Allowed

Judgement

P.N. Mookerjee, J.—These four appeals are by the tenants defendants and they arise out of as many suits for ejectment, governed by the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950.

2. The suits were brought on the ground of requisite defaults in payment of rent, disentitling the tenants to any protection under the said Act. The defaults pleaded were from November 1953 to April 1955.

3. The suits were contested and the main defence inter alia was a denial of the plaintiffs allegation of defaults on the part of the tenants defendants in payment of rent and a denial, further, of the validity and sufficiency of the notices to quit.

4. The pleadings of the parties, so far as the cases, as were ultimately put before the court on their behalf, were not very full, and they appear to have been supplemented, in material particulars, by both sides in evidence. It may be mentioned here that, at one stage, the defendants applied for amendment of their written statements by giving greater details in the matter of their defence against the validity and sufficiency of the notices to quit by alleging that the leases in question were for manufacturing purposes and required six month's

notices to quit for their termination. This prayer for amendment, however, was rejected by the learned trial judge and a revisional application against the said order appears to have been, eventually, dismissed by this Court but, in the said order, rejecting the said revisional application ex parte and without the issue of a Rule or of any notice to the opposite party, there are certain observations, which, eventually, complicated matters at the trial, with the result that the defendants were allowed to lead evidence as to the purpose of the disputed tenancies with, of course, opportunities to the plaintiff also to lead counter-evidence.

5. As far as I can see, at the present moment, there may be some difficulty in reconciling the above observations with the rejection of the amendment petition or the affirmance of that rejection by this Court but the observations, being there, must be taken on their face value and must have effect, if any, according to law. Be that as it may, the defences of the tenants defendants were rejected by both the Courts below as, according to them, the defence contention that the rent was payable under the several tenancies within the next succeeding month, so as to make the disputed payments of rent well within time, had not been established on the evidence on record. The courts below were, further, of the opinion that the defence had signally failed to prove that "he leases or any of them were for manufacturing purposes, so as to require a six months" notice for their termination with the consequence that the instant notices to quit would be invalid and insufficient.

6. Before me, in arguing these appeals on behalf of the tenants appellants, Mr. Dasgupta has pressed both the above contentions and he has elaborately argued on either of them on the materials on record and with reference to the relevant provisions of law.

7. In my view, so far as the question of default is concerned, the courts below have practically confined their attention only to the oral evidence in the cases and have recorded their decision on the point against the defendants only on such evidence. They have not adverted to the documentary evidence, particularly, the rent counterfoils (Exts. 4 series) and the letters (Exts. 3 series), which also may have some bearing on this question and may require consideration in the matter. These would, at least, show the conduct of the parties in the payment and receipt of rent, which may give some indication as to the time, within which such rents were payable. This aspect of the matter appears to have altogether escaped the notice of the courts below and, in my view, their finding on the question of default or the basic finding that the rents were payable within the seventh of the next succeeding month, as alleged by the plaintiff, does not appear to have been arrived at on a consideration of all the relevant materials on the point. I would not, accordingly, accept the finding of the two courts below on this point against the defendants but would direct reconsideration of the same on the materials on record in accordance with law.

8. On the other question, however, I feel that, although it is true that there are some documents, which might show that the defendants were negotiating for

certain machineries in connection with their book-binding business, for which, inter alia, they took the disputed premises, there is hardly any evidence, worth the name, that it was ever communicated to the landlady at the time of inception of the tenancies that the disputed leases were being taken for manufacturing purposes. Even if there was some vague reference that it was being taken, for the defendants' business, the utmost that can be said, on the materials before the court on this point, is that the defendants were taking the leases for their book-binding business. Prima facie, such business would not partake of the character of a manufacturing business, except, in certain special circumstances or in a particular context, but there is nothing to indicate that any such circumstance or context was ever intimated or brought to the notice of the landlady at the time of inception of the suit tenancies.

9. It is argued by Mr. Dasgupta that, even if that was the position at the inception of the said tenancies, the landlady must have been fully aware, all these years, that the defendants were carrying on their book-binding business with the help of machineries and on a scale, which would make such business manufacturing business and he relies on this part of his case on the recent decision of my learned brother Laik J. in *Rupeswari Debi Vs. Lokenath Hosiery Mills*, .

10. On the evidence before me, however, there is hardly anything to indicate that there was such knowledge on the part of the landlady and, in that view, the above decision would have no application. I would, however, further point out that the observations, relied on by Mr. Dasgupta from the judgment of my learned brother, should not be read apart from their context and, if they are read in their true context, it will be clear that his Lordship was there referring to the conduct of the parties, really as a piece of evidence, supporting the view that the purpose of the tenancy in question was manufacture. This will be further confirmed by the observations, made by my learned brother in the preceding page, where he was referring to an admission of the plaintiffs witness that the lease there was taken for factory purposes and was rejecting his belated and laboured explanation, trying to contradict the same. In any view, as I have said above the said decision would have no application to the instant case. I would accordingly, reject this second submission of Mr. Dasgupta.

11. The appeals, however, in the view, I have taken on the first Question, namely, on the question of default, would have to be allowed for the purpose of remanding the cases to the court of appeal below for fresh consideration and a fresh decision on the question of default on the materials on record in accordance with law in the light of the observations, made hereinbefore.

12. I, accordingly, allow these appeals in part, set aside the decrees of the lower appellate court and send these cases back to that court for the limited consideration namely, of the point of default, as indicated hereinbefore.

13. Costs of these appeals will abide the final result of the suits.

14. The court of appeal below is directed to hear out the appeals on remand as expeditiously as possible.