

(2008) 04 CAL CK 0087
In the Calcutta High Court
Case No : F.A. No. 231 of 2004

Rabindra Nath Dutta

APPELLANT

Vs

Smt. Ira Dutt and Others and Rajat Mohan Dutta

RESPONDENT

Date of Decision : 18-04-2008

Acts Referred:

West Bengal Premises Tenancy Act, 1956 — Section 1(3), 13, 3, 3(2), 31

Citation : (2008) 3 CHN 748

Hon'ble Judges : Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : S.P. Roy Chowdhury, Jahar Chakraborty and Sabita Mukherjee, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—This first appeal is at the instance of a plaintiff-landlord in a suit for eviction on the ground of expiry of lease of 20 years and is directed against the judgment and decree dated 18th May, 2004 passed by the learned Judge, 9th Bench, City Civil Court at Calcutta, in Title Suit No. 461 of 1993 thereby dismissing the suit.

2. The aforesaid suit was filed for eviction on the ground that by virtue of a registered deed of lease for 20 years commencing from September 1, 1972 and expiring with August 31, 1992, an option was given to the defendant to renew the lease for further term on certain conditions, but on the expiry of that period, although the defendant expressed his desire for renewal, the plaintiff agreed to execute a fresh lease-deed on condition that the rent should be on the basis of prevailing market rate. According to the plaintiff, the defendant did not agree to such proposal and consequently, no fresh deed of lease was executed. The plaintiff, therefore, was entitled to get recovery of possession on the expiry of the lease of 20 years. On the death of the defendant, his heirs and legal representatives, sixteen in number, were substituted and they filed three sets of written statement.

3. The substituted defendant Nos. 1 to 8 claimed that the original defendant wanted to purchase the premises at a price of Rs. 50,000/- and there was an agreement for sale in between the plaintiff and the original defendant and the latter duly paid such amount but the plaintiff No. 1 did not execute the sale-deed and as such, a charge was created over the premises as the plaintiff No. 1 sold the suit premises to the plaintiff No. 2 without making refund of the consideration money taken from the original defendant. Although, the defendants made a counterclaim of specific performance, yet, did not either value the counterclaim nor did they pay the court fees on such counterclaim.

4. The defendant Nos. 9 to 14 made the same averments and they claimed that lease period was not extended by the plaintiff and as such, original tenancy was governed under the West Bengal Premises Tenancy Act.

5. The defendant No. 16 pleaded that the original defendant was her father and the original plaintiff allowed the original defendant to reside in the suit premises and executed first, a lease-deed of 20 years on 10th September, 1952 and a fresh lease-deed of further 20 years on 31st August, 1991 and in both the lease-deeds there was a clause that the lessee would have option for renewal. It was the intention of the original defendant to purchase the suit property but he had no money and as such, her husband paid Rs. 60,000/- to the plaintiff and one agreement for sale was executed between the plaintiff No. 1 and the original defendant but the plaintiff No. 1 did not execute the sale-deed.

6. The learned Trial Judge on consideration of the materials on record came to the conclusion that in the lease-deed, there was no clause permitting the lessor to enhance the rate of rent or to impose new condition at the time of renewing the lease and as Rs. 60,000/- was paid by the defendant, he acquired a charge or lien over the suit property towards the said amount and was entitled to enforce that agreement for sale. The Court, however, held that the lease being one for a period of 20 years, the tenancy came within the mischief of Section 3 of the West Bengal Premises Tenancy Act and, therefore, the suit for eviction on the expiry of lease of 20 years was not maintainable without proving grounds mentioned in Section 13 of the said Act. The suit, thus, was dismissed.

7. Being dissatisfied, the plaintiff No. 2 has come up with the present appeal. None has appeared on behalf of the respondents in spite of service.

8. After hearing Mr. Roy Chowdhury, the learned senior advocate appearing for the appellant and after going through the terms of the lease, we find that the lease having been executed after 24th August, 1965 and being one for a period of not less than 20 years, the West Bengal Premises Tenancy Act is not supposed to be attracted. However, there is a clause of earlier termination of the lease at the option of both the landlord and the tenant.

9. Mr. Roy Chowdhury, the learned senior advocate appearing on behalf of the appellant, at this stage, placed strong reliance upon the decision of the Supreme Court in the case of Pabitra Kumar Roy and Another Vs. Alita D" Souza, wherein

a two-Judges-Bench of the Supreme Court held that by mere inclusion of such a clause of earlier determination, the fixed period of the lease would not cease to be so unless the option of prior determination was actually exercised. In other words, the Supreme Court held that if the lessor or the lessee does not exercise the option of earlier determination of lease and the tenancy continues for 20 years or more, the West Bengal Premises Tenancy Act as regards the provisions of eviction would not be applicable simply because there was a clause for earlier termination at the option of either of the parties. Mr. Roy Chowdhury contends that in view of the aforesaid decision of the Supreme Court, the judgment and decree passed by the learned Trial Judge should be set aside as a lease for 20 years does not come within the mischief of Section 3 of the West Bengal Premises Tenancy Act if such lease was executed after 24th August, 1965.

10. Therefore, the sole question that arises for determination in this appeal is whether the learned Trial Judge was justified in dismissing the suit on the ground that in view of the terms of the lease, which is for 20 years, the provision of Section 13 of the West Bengal Premises Tenancy Act is applicable.

11. To appreciate the question involved herein, it will be necessary to examine the provisions contained in Section 3 of the West Bengal Premises Tenancy Act, 1956 which are quoted below:

3. Certain provisions of the Act not to apply to certain leases.(1) The provisions relating to rent and the provisions of Sections 31 and 36 shall apply to any premises held under a lease for residential purpose of the lessee himself and registered under the Indian Registration Act, 1908, where:

(a) such lease has been entered into on or after the 1st December 1948, and

(b) such lease is for a period not more than 20 years, and save as aforesaid nothing in this Act shall apply to any premises held under a lease for a period of not less than 15 years.

(2) Notwithstanding anything to the contrary in Sub-section (1) but subject to Sub-section (3) of Section 1, this Act shall apply to all premises held under a lease which has been entered into after the commencement of the West Bengal Premises Tenancy (Amendment) Ordinance, 1965:

Provided that if any such lease is for a period of not less than 20 years and the period limited by such lease is not expressed to be terminable before its expiration at the option either of the landlord or of the tenant, nothing in this Act, other than the provisions relating to rent and the provisions of Sections 31 and 36, shall apply to any premises held under such lease.

12. After going through the said provision, we find that in case of a registered deed of lease executed after 24th August, 1965, the date of coming into operation of the West Bengal Premises Tenancy (Amendment) Ordinance, 1965, for a period of not less than 20 years, where the period limited by such lease is not expressed to be terminable before its expiration at the option either of the

landlord or of the tenant, the provisions contained in the West Bengal Premises Tenancy Act, 1956, other than the provisions relating to rent and the provisions of Sections 31 and 36, will have no application.

13. In the case before us, the lease was for a period of 20 years and therefore, on the expiry of 20 years the tenant was bound to vacate if the period was not extended. In this case, the defendants prayed for specific performance of the agreement for sale of the property but such prayer has been refused and the defendants have not filed any appeal against rejection of their counterclaim. Now the question is whether in spite of existence of a clause of earlier termination of the terms of the lease at the option of both the landlord and the tenant in the deed of lease admittedly executed after the coming into operation of the Ordinance of 1965, the eviction of such tenant should be governed by Section 13 of the West Bengal Premises Tenancy Act.

14. In view of the decision of the Supreme Court in the case of Pabitra Kumar Roy v. Alita D'Souza (supra), where the Apex Court has interpreted the phrase "expressed to be terminable" used in the expression "such lease is not expressed to be terminable before its expiration at the option either of the landlord or of the tenant" as "terminated", we are left with no other option but to hold that the provision of Section 13 of the Act will have no application to the facts of the present case as the clause of earlier termination was not exercised by any of the parties. The following observations of the Supreme Court will clinch the issue:

In other words, if such a lease is terminated before its fixed period expired, the proviso to Section 3(2) would be attracted as a defence against eviction. If, however, the lease was allowed to run its full course, both the lease and the conditions contained therein would come to an end and would cease to be operative and the clause for prior determination would no longer be available as a defence against eviction.

15. We, therefore, find that the learned Trial Judge erred in law in dismissing the suit for eviction filed by the appellant on the ground that in the absence of compliance of the provisions contained in Section 13 of the Act the same was not maintainable as the said decision is in conflict with the law laid down by the Supreme Court. The counterclaim of the defendant having failed, there was even no scope of declaring charge over the suit property for the alleged payment of Rs. 50,000/- in favour of the defendants in the suit for eviction filed by the plaintiffs. The defendants have not filed any appeal against the rejection of the counterclaim and as such, we set aside the judgement and decree passed by the Trial Court.

16. The plaintiff No. 2 is entitled to get not only a decree for eviction but also a decree for mesne profits, which will be assessed in separate proceedings under Order XX Rule 12 of the Code. The defendants are directed to vacate the suit property within a period of one month from today.

17. The appeal is allowed. In the facts and circumstances, there will be, however,

no order as to costs.

Rudrendra Nath Banerjee, J.

18. I agree.