
(1976) 01 CAL CK 0008
In the Calcutta High Court
Case No : Civil Rule No. 3041 of 1975

Ramendra Nath Ganguly

APPELLANT

Vs

Ashutosh Saha

RESPONDENT

Date of Decision : 12-01-1976

Acts Referred:

Constitution of India, 1950 — Article 227

West Bengal Premises Tenancy Act, 1956 — Section 17(2), 17(2A)

Citation : (1976) 1 CALLT 378 : (1976) 2 ILR (Cal) 474

Hon'ble Judges : N.C. Mukherji, J;B.C. Roy, J

Bench : Division Bench

Advocate : Bijitendra Mohan Mitra, for the Appellant;None, for the Respondent

Final Decision : Allowed

Judgement

N.C. Mukherji, J.—This Rule arises on an application under Article 227 of the Constitution of India and is directed against order No. 40 dated July 26, 1975, passed by Shri R.B. Banerjee, Judge, Sixth Bench, City Civil Court, Calcutta, in Ejectment Suit No. 1220 of 1973.

2. The Petitioner filed a suit for ejectment against the opposite parties on the ground of default in payment of rent. The opposite parties appeared in the suit and filed an application u/s 17(2) and also another application u/s 17(2A)(b) of the West Bengal Premises Tenancy Act.

3. The contention of the opposite parties amongst others was that the Petitioner started a distress proceeding in the Court of Small Causes, Calcutta and in the said proceeding the suit room was padlocked through the Bailiff of the Court. And that being so, for the period during which the room was padlocked, the Petitioner is not entitled to get any rent as the opposite parties during that, period could not possess the said room. The learned Judge upheld this contention of the opposite parties and held that as the room was kept under lock and key from February 25, 1972, to December 19, 1974, the opposite parties were entitled to

get remission of rent for the said period. Being aggrieved by the aforesaid order the Petitioner has come up in this Court.

4. Mr. Bijitendra Mohan Mitra, learned Advocate appearing on behalf of the Petitioner, contends that the lower Court was wrong to hold that the opposite parties were entitled to get remission of rent for the period during which the room in question remained locked. Mr. Mitra contends with all force that this is not a case where the doctrine of suspension of rent applies. Mr. Mitra referred to us the decisions in *Adhar Chandra Dey Vs. Bipin Chandra Dey and Another*, and AIR 1943 24 (Privy Council) . Mr. Mitra very much relied on the observations in the case *Surendra Nath Bibra Vs. Stephen Court Ltd.*, : Also *Surendra Nath Bibra Vs. Stephen Court Ltd.*, . After discussing the principles regarding suspension of rent as laid down in several cases, their Lordships of the Supreme Court held that the doctrine of suspension of rent has no application in India in cases of failure of the landlord to give possession to the tenant of a part of the demised premises.

Their Lordships further held:

Whether the doctrine has application to cases of eviction of the leasee by the lessor from a part of the property leased, we do not decide. We only mention in passing that in a case reported in *Nilkantha Pati v. Kasitish Chandra Satpati*, ILR (1952) 1 Cal. 59 ; AIR 1961 Cal. 338. *Mookerjee and Lahiri JJ.* expressed the opinion that even in *Ramlal Dutt's* case, 70 Ind. App 18, there was a distinction drawn between cases where the lessor evicted the lessee from and where the lessor failed to give part possession to the lessee of the demised premises and in the first class of cases, if the test of justice, equity and good conscience was satisfied, a Court may allow total suspension of rent.

In the present case, there was no failure on the part of the landlord to give possession to the tenant of a part of the demised premises. It is also not the case that the landlord evicted the tenant from tile premises for a certain period. The facts of the case, as has been indicated earlier, are rather peculiar. It is true that for a particular period the tenant could not use the room but that was not due to any wrongful or tortuous act on the part of the Plaintiff. The Defendant defaulted in payment of rent and that being so, the Plaintiff started a legal proceeding in the Court of Small Causes, namely, a distress proceeding and in the said proceeding in pursuance of the order for attachment passed by the Court the suit room was locked by the Court Bailiff. Subsequently, it transpired that at a dime when the distress proceeding was started, the original tenant was already dead and at the instance of the successors-in-interest of the original tenant, the distress processing was quashed and the room was unlocked and the tenant got back possession of the room. It is true that for a considerable time the opposite parties could not use the room but that was because of some process of law due to their own laches. The case *Surendra Nath Bibra Vs. Stephen Court Ltd.*, went up to the Supreme Court and the decision of the Supreme Court has been reported *Surendra Nath Bibra Vs. Stephen Court Ltd.*, .

Their Lordships have laid down--

The doctrine of suspension of rent should not be regarded as a rule of justice, equity and good conscience in India in all circumstances. The doctrine cannot be justified as a dependable rule to be adhered to notwithstanding heard cases. On the one hand, it does not seem equitable that when a tenant enjoys a substantial portion of the property of the landlord, leased to him, without much inconvenience, he should not pay only compensation for the use of the property, in other words he should enjoy a windfall. On the other hand, it is unfair that if a tenant is not given possession of a substantial portion of the property, he should be asked to pay any compensation for the use of the property while he is taking appropriate measures for specific performance of the contract. It will depend on the circumstances of each case whether a tenant would be entitled to suspend payment of the rent or whether he should be held liable to pay proportionate part of the rent. Where, therefore, the landlord has failed to give possession of one out of the three bed-rooms of the demised premises, the tenant is not entitled to suspend the payment of rent but he must pay a proportionate part of the rent.

With regard to the question whether the tenant is liable to pay a proportionate part of the rent the decision of the Calcutta High Court was reversed by the Supreme Court. On going through the decision carefully we find that their Lordships of the Supreme Court after elaborately discussing the principles regarding suspension of rent very clearly laid down that whether a tenant would be entitled to suspend payment of the rent or whether he should be held liable to pay proportionate part of the rent would depend on the circumstances of each case. The circumstances of the case in which the room was locked have been stated earlier. There is no doubt that the room was locked through legal process and that legal proceeding was started by the Plaintiff as the Defendant failed to pay rent. It is true that subsequently the said distress proceeding was quashed, but for that it cannot be said that the Plaintiff started an illegal proceeding. We are of the opinion that the learned Court below misdirected itself and erred in the exercise of its jurisdiction in not taking into consideration the fact that the padlocking of the disputed shop-room was by operation of process of law which was set in motion because of the wilful laches and deliberate non-payment of rent by the Defendants for which the Plaintiff can neither be held responsible nor made to suffer.

5. For the reasons stated above we hold that this is not a case where the doctrine of suspension of rent can be said to have applied and that being so, the opposite parties are not entitled to remission of rent for the period from February 25, 1972, to December 19, 1974.

6. In the circumstances, the application succeeds and the Rule is made absolute. The order passed by the learned Judge is set aside. The learned Judge is directed to pass a fresh order in the light of the observations indicated above. There will be no order for costs.

B.C. Roy J.

7. I agree.