

(1951) 05 CAL CK 0031
In the Calcutta High Court
Case No : Civil Rule No. 1953 of 1950

Ramesh Chandra Majumdar	Vs	APPELLANT
Sm. Sobodhbala Dasi		RESPONDENT

Date of Decision : 02-05-1951

Acts Referred:

West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 — Section 14, 14(4)

Citation : AIR 1952 Cal 198 : 55 CWN 508

Hon'ble Judges : Harries, C.J

Bench : Single Bench

Advocate : Biswanath Roy, for the Appellant; Paresh Nath Bhattacharjee, for the Respondent

Judgement

Harries, C.J.—This is a petition for revision of an order made by a learned Judge of the Small Cause Court directing certain security u/s 14 (1) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950.

2. The suit had been brought by the landlord for ejectment and for a large sum as arrears of rent. An application was made to the Court u/s 14 that the Court should ascertain in the amount of the arrears of rent and direct the tenant to deposit the same and the future monthly rent as it fell due in Court pending the disposal of the case.

3. The case for the tenant is that there is no rent due at all because under an agreement made between him and the landlord the tenant was entitled to deduct from a future rent the cost of repairs. The tenant claims that the repairs cost Rs. 2,000/- and if that was deducted from the rent as it fell due, nothing was due and owing for rent.

4. It seems to me that the Court must decide this question before it can make any order calling upon the defendant to deposit the arrears of rent. If there are no arrears by reason of this agreement, then an order calling upon him to

deposit would be gross injustice. It appears to me that before such an order can be made the Court must go into the question whether there are any arrears of rent and it can only decide that if it has decided whether, in the first place, the tenant had any right to set off the cost of repairs against the rent which had accrued due and which would accrue due, and secondly whether if such an agreement existed the amount of set off would balance or more than balance the claim for arrears. Until this enquiry is held it cannot be said that there are any arrears of rent and that being so no order u/s 14 (4) of the Rent Control Act can be made.

5. The order of the learned Judge is therefore set aside and the case is sent back for the matter to be re-considered in the light of the observations made in this judgment.

6. For, these reasons this petition is allowed, the order of the lower Court is set aside and the case is sent back to that Court to be heard and decided according to law. The costs of these proceedings will abide the event in the Court below.

7. The Rule is accordingly made absolute.