
(2011) 08 CAL CK 0134
In the Calcutta High Court
Case No : C.O. No. 715 of 2011

Shri Manick Bose

APPELLANT

Vs

Shri Sandip Chakraborty

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
West Bengal Premises Tenancy Act, 1997 — Section 7(1)

Citation : (2011) 08 CAL CK 0134

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Sabyasachi Bhattacharjee and Subrata Bhattacharjee, for the Appellant; J.R. Chatterjee, for the Respondent

Judgement

Prasenjit Mandal, J.—This revisional application is at the instance of the Plaintiff and is directed against the Order No. 224 dated December 3, 2010 passed by the learned Civil Judge (Junior Division), Sealdah in Title Suit No. 56 of 1994 thereby disposing of an application u/s 151 of the Code of Civil Procedure

2. The Plaintiff / Petitioner herein instituted a suit being Title Suit No. 56 of 1994 for recovery of possession against the opposite party on the ground of default, reasonable requirement etc. before the learned Civil Judge (Junior Division), Sealdah.

3. The Defendant is contesting the said suit by filing a written statement denying the material allegations raised in the plaint.

4. It is the specific contention of the Defendant that in January 1996, he went to see his ailing mother at Barasat and stayed there for some days keeping the premises in suit under lock and key. On his return, he found that the main entrance of the door of the property in suit was kept under lock and key fixed by the Plaintiff. He at once requested the Plaintiff to remove the padlock on the main entrance door but in vain. So, he prayed for suspension of rent, although,

he is paying rent as per provisions of Section 7(1) of the West Bengal Premises Tenancy Act, 1997.

5. The Plaintiff has denied of such allegations of putting the padlock on the main entrance. His contention is that the Defendant was transferred to Durgapur and elsewhere and he shifted his belongings elsewhere and he kept the premises in suit under lock and key leaving minimum belongings at the premises in suit and thus, the Defendant is causing damage to the suit premises by its non-use for a long period.

6. Upon hearing both the sides, the learned Trial Judge allowed the prayer of the Defendant for suspension of rent from January 1996 to December 2010, that is, for 179 months and directed the Defendant for re-entry in the premises in suit forthwith failing which the remission of the future rent payable would be extended by the corresponding period for which the obstruction to the Defendant's entry continues on and from the date of order. Being aggrieved, this application has been preferred.

7. Now, the question is whether the impugned order should be sustained.

8. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the relationship of landlord and tenant between the parties with regard to the premises in suit is not in dispute. The quantum of rent is not also a matter of dispute. It is not in dispute that the Defendant is paying rent for the premises in suit in compliance with Section 7(1) of the 1997 Act. Now, the question to be decided is if the learned Trial Judge was justified in passing the orders for suspension of the rent for such long period.

9. It may be pointed out that the tenant has contended that the landlord had put a padlock on the main entrance in January 1996 and since then he could not enter into the premises in suit. Previously, the tenant filed an application u/s 151 of the Code of Civil Procedure, Annexure "P1" praying for directing the Plaintiff to remove the padlock fixed by the Plaintiff on the main entrance of the suit property and for restoration of possession of the premises in suit to the Defendant. That application was filed after two years from the so-called month of putting the padlock in January 2006. The learned Trial Judge disbelieved in such contention and rejected the application u/s 151 of the CPC. Revision was preferred against that order and so, that order had attained finality. Thereafter, in September 1998, the tenant filed another application u/s 151 of the CPC for suspension of rent over which the impugned order was passed.

10. It may be noted herein that an advocate-commissioner was appointed for local inspection and the advocate-commissioner submitted his report after inspection. But, it is unfortunate to note that the learned Commissioner did not go to the locale on the date fixed by the Court and she went to the suit property on a subsequent date but without notice to the Plaintiff or his advocate. The learned Trial Judge, by giving justified reasons, has rightly rejected the said report submitted by the learned Commissioner.

11. The tenant has adduced evidence contending that he had been kept out of the possession since January 1996. He was cross-examined and from his cross-examination the contention of the landlord that the tenant was transferred to Durgapur and he had shifted most of his belongings from the premises in suit, has been proved. Thus, from the evidence of the tenant, it transpires that the contention of the Plaintiff has been proved to some extent. The learned Trial Judge did not accept the contention of the Plaintiff on the ground that the Plaintiff avoided cross-examination and as such, his contention cannot be accepted. This is, I hold, not enough reason for rejection of the contention of the Plaintiff / landlord. The question is whether the evidence as tendered by the Defendant in support of his contention is believable or not and whether the suspension of rent is justified.

12. From the materials on record, it appears that the Plaintiff has denied that he had put padlock on the main entrance. Admittedly, none of the members of the family of the tenant resided at the premises in suit and the tenant had been transferred to Durgapur and his mother resides at her own house at Barasat.

13. As per provisions of Section 7(1) of the 1997 Act, a tenant is entitled to get the benefit of protection against eviction provided, he complies with the provisions of Section 7(1) of the 1997 Act. So, the tenant is under an obligation to pay to the landlord or deposit with the civil judge, all arrears of rent as determined by the learned Trial Judge along with 10 per cent interest of the same. The tenant is also under an obligation to continue to pay rent to the landlord or deposit with the civil judge month by month by the 15th of each succeeding month, a sum equivalent to the rent at the rate last paid. If the provisions of Section 7(1) of the said 1997 Act are not complied with by the tenant according to the provisions of Section 7(3) of the said Act, the Civil Judge shall order the defence against delivery of possession to be struck out and he shall proceed with the hearing of the suit. Therefore, if the rent is not paid or deposited as per provisions of Section 7(1), the tenant loses the benefit of protection against eviction as per Section 7(3) of the said Act. Thus, the tenant is bound to discharge his obligation u/s 7(1) of the said Act in every suit for eviction whatever may be the ground for eviction.

14. Suspension of rent may be granted for special reasons. Under certain circumstances, when the landlord fails to discharge his obligations towards the tenant or to pay the charges and taxes which he is bound to pay; the suspension of rent may be allowed. But, before allowing suspension, the Court must be satisfied from the materials on record that the suspension of rent is justified. In the instant case, as recorded above, the learned Trial Judge has rightly rejected the report of the learned Commissioner. So, if this report is kept outside the picture of the case, the evidence as tendered by the tenant, appears to be doubtful by the fact that at present the tenant is posted at Durgapur and the members of his family reside either at Barasat or elsewhere and there are minimum belongings of the tenant in the premises in suit which does not justify

for habitation of a family member. Thus, it has been proved that the tenant does not reside at the premises in suit and so, the landlord may keep the main gate under lock and key for safety and security if the situation demands.

15. So, the findings of the learned Trial Judge in support of suspension of rent, I hold, are not based on sound reasonings and if the impugned order is allowed to continue, it will be unjustified, because of the fact that, the tenant did not take prompt action when the allegation of putting the padlock had been raised in January 2006 but No. step was taken for two years. The findings of the learned Trial Judge cannot be, therefore, supported.

16. When the earlier report of the Commissioner was not enough, the learned Trial Judge should have issued another commission for local inspection to know the exact position of the property in suit in presence of both the sides. While disposing of the earlier revisional application being C.O. No. 2757 of 2000 one of the Single Benches of the Hon'ble High Court against the order of rejection of the tenant's prayer for abatement of rent directed the learned Trial Judge for deciding the matter afresh upon taking evidence of both the sides. This Revisional Court has also held that the report of the Commissioner is not conclusive with regard to putting the padlock.

17. Since, the possession of the property lies with the tenant as yet and he is complying with the provisions of Section 7(1) of the said 1997 Act, the tenant is at liberty to renew his prayer before the learned Trial Judge for re-entry into the premises in suit at any time and for that reason, the learned Trial Judge is at liberty to pass appropriate orders as the situation demands.

18. The impugned order cannot, therefore, be supported. It is, therefore, set aside. The revisional application is disposed of with the above observations.

19. Considering the circumstances, there will be No. order as to costs.

20. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.