
(1984) 01 CAL CK 0002
In the Calcutta High Court
Case No : C.R. No. 3213 of 1980

Sm. Malati Chakraborty and Others APPELLANT
Vs
Ganesh Chandra Shyamal and Others RESPONDENT

Date of Decision : 19-01-1984

Acts Referred:

West Bengal Premises Tenancy Act, 1956 — Section 13, 13(1), 13(3A), 17, 17(2)

Citation : 88 CWN 440

Hon'ble Judges : S.N. Sanyal, J

Bench : Single Bench

Advocate : Manik Lal Mukherjee, for the Appellant; Durga Sankar Mallick, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Sanyal, J.—This revisional application is at the instance of the defendants and it is directed against an order of the learned Munsif, 2nd Court Alipore dated June 4, 1980 in Title Suit no. 229 of 1979. The opposite parties instituted the suit for eviction of the petitioners. It is alleged by the opposite parties that the petitioners were previously monthly tenants under Sm. Kamala Bala Sinha on a monthly rental of Rs. 55/- payable according to English Calendar month in respect of the suit premises. The opposite parties purchased the said property from Kamala Bala by a kobala dated August 12, 1977. The plaintiffs further alleged that the defendants were defaulters in payment of rent since June 1968. The plaintiffs also required the suit premises for their own use and occupation and for building and rebuilding. The suit was instituted on May 11, 1979. On September 5, 1979 the defendants filed an application under Sections 17(2) and 17 (2A) of the West Bengal Premises" Tenancy Act (hereinafter referred to as the Act). In the said application under Sections 17(2) and 17 (2A) of the Act the petitioners contended that they had paid all arrears of rent but the plaintiffs did not grant any receipt. The petitioners prayed for determination of the total arrears of rent and for allowing the petitioners to pay the sum at the rate of Rs.

5/- per month. The learned Munsif after hearing the parties came to the finding that the period of arrears was from June 1968. The learned Munsif also came to the conclusion that the total amount was Rs. 8490/- including Rs. 1120/- as statutory interest but as the defendants had paid Rs. 10/- in excess per month for the period from August 1979 to April 1980 a sum of Rs. 90/- was deducted and the defendants were directed to deposit a sum of Rs. 900/- in court on or before August 16, 1980 and go on depositing Rs. 100/- per month towards the amount due along with current rent. The second instalment was to be paid with the rent for August 1980. The defendants have challenged the said order dated June 4, 1980 in the present Rule.

2. Mr. Mukherjee, learned Advocate for the petitioners, has raised several contentions before me. It has been argued that the plaintiffs are not entitled to any time barred rent and as such the learned Munsif was wrong in asking the petitioners to deposit time barred rent. In support of his argument Mr. Mukherjee has referred to the case of Raghunath Singh v. M/s Patel & Co. 65 C.W.N. 1093. The next contention of Mr. Mukherjee is that the plaintiffs are transferee and lords and the date of transfer is August 12, 1977. The plaintiffs are thus not entitled to claim any rent accrued before the transfer and as such the petitioners cannot be asked to deposit any rent which accrued before the transfer was made, Mr. Mukherjee has referred to the decision reported in Rameshwar Chand and Another Vs. Sadhan Chandra Dey and Others, . The next contention of Mr. Mukherjee is that there was no relationship of landlord and tenant between the plaintiffs and the defendants. The plaintiffs were not landlords prior to the purchase. This question should have been gone into before deciding the application under Sec. 17(2) of the Act. In support of his argument Mr. Mukherjee has relied upon the case reported in 65 C.W.N. 149 (Biswanath Roy vs. Annapurna Roy). Mr. Mukherjee has finally argued that the plaintiffs purchased the property on August 12, 1977 and the present suit was instituted on May 11, 1979. The plaintiffs seek eviction of the defendants on the grounds mentioned in clauses (f) and (ff) of subsection (1) of Sec. 13 of the Act. The suit is barred in view of Sec. 13 (3A) of the Act. The suit is thus not maintainable. Mr. Mukherjee has referred to the case of Smt. Sudha Mukherjee Vs. Sankar Chatterjee, in support of his contention.

3. Mr. Mallick, learned Advocate for the opposite parties, has argued that by the kobala rents which had not been paid by the defendants to the previous landlord were assigned in favour of the plaintiffs and the plaintiffs are entitled to claim the said rents. Mr. Mallick has contended that the plaintiffs have not prayed for rent in the suit. They have filed the suit for eviction. In view of the provisions of the Premises Tenancy Act the defendants have to pay the entire arrears in order to get the benefit of protection against eviction. Mr. Mallick has argued that the decision reported in 65 C.W.N. 1093 has been over ruled by the Full Bench decision of this Court reported in Sudhir Chandra Ghosh and Others Vs. Sachindra Nath Ghosh, . Referring to the case of Kanta M. Mallick vs. Jyotish Chandra Mallick, AIR 1949 Cal 571. Mr. Mallick has argued that the landlord can

avail himself of the benefits of default committed by tenant at the time of his predecessor-in-title. Mr. Mallick has further submitted that in view of the decision in *Gordhandas Jerambhai vs. U.D. Banerjee & Ors.* 77 C.W.N. 70 the transferee landlord is entitled to get the benefit of default committed by the tenant during the time of the transferor. It has been submitted by Mr. Mallick that the petitioners cannot now urge the contention that there is no relationship of landlord and tenant. No such contention was raised in their application under Sec. 17(2). Moreover, the order of the learned Munsif shows that the defendants did not raise any contention as regards relationship of landlord and tenant at the time of the hearing of the application under Sec. 17(2). Mr. Mallick has further contended that the plaintiffs instituted the suit for eviction on two grounds, namely, on the ground of default and on the ground of reasonable requirement. The plaintiffs may not be able to urge the grounds regarding reasonable requirement in view of Sec. 13 (3A) of the Act, but the plaintiffs are entitled to maintain the present action on the ground of default. Unless the plaintiff fail in their claim for eviction on the ground of default the entire suit cannot be dismissed. Mr. Mallick has also referred to the Full Bench decision of Gujarat High Court in the case of *Champaklal Dehyabhai vs. Saraswati Ben*, AIR 1977 Gujarat 48.

4. In *Biswanath Roy vs. Annapurna Roy*, 65 C.W.N. 149 it was held that any kind of dispute which affects the amount of rent payable by the tenant including a dispute as to existence of relationship of landlord and tenant between the parties would be a dispute under or within the contemplation of Sec. 17 of the Premises Tenancy Act. It thus appears that before making an order under Sec. 17(2) of the Premises Tenancy Act asking the defendants to pay or deposit any amount it would be necessary for the court to determine the question whether there is relationship of landlord and tenant when any such dispute is raised. In the instant case no dispute as to relationship of landlord and tenant was raised by the petitioners in their application under Sec. 17(2) and 17 (2A) of the Act. The petitioners, however, in their written statement contended that there was no relationship of landlord and tenant between the plaintiffs and the defendants. The impugned order of the learned Munsif would show that the contentions raised before him were that the plaintiffs landlords could not claim the arrears of rent which were not assigned to them expressly in the sale deed. No contention regarding the existence of the relationship of landlord and tenant appears to have been raised at the time of hearing of the application under Sec. 17(2) of the Act.

5. There was no dispute regarding the rate of rent and the learned Munsif has found that the defendants are defaulters from June 1968. This was also admitted before learned Munsif by the learned Advocate for the defendants. The question is whether the petitioners are required to pay arrears of rent from June 1968 as the same includes the time-barred rent. The learned Advocate for the petitioners has argued that in view of the decision in *Raghunath's case* 65 C.W.N. 1093 Sec. 17 of the Act does not require the tenant to deposit or pay the amount in respect

of time-barred arrears of rent. This contention of the learned Advocate for the petitioners cannot be accepted. Raghunath's case was overruled by the Full Bench decision of this Court in Sudhir Chandra Ghosh and Others Vs. Sachindra Nath Ghosh, . It has been held by the Full Bench that in the context of Sec. 17 of the Act amount of arrears which is barred will have to be deposited and the court will have to consider all the amounts whether it is barred or not to come to a finding about the actual amounts deposited if the tenant wants to avail himself of the protection of Sec. 17 of the Act. There is thus no restriction about the period of default and the tenant is enjoined to deposit the entire arrears. Having regard to the principle of law laid down in the Full Bench decision, the decision reported in 65 C.W.N. 1093 is no longer a good law. The tenant is thus to deposit the entire amount of default (whether time barred or not) under Sec. 17 of the Act.

6. Mr. Mukherjee contends that the default which occurred in the period of the previous landlord is not to be deposited in this suit at the instance of the plaintiffs who purchased on August 12, 1977. It is argued that the plaintiffs may claim rent for the period subsequent to their purchase and as such the learned Munsif was not justified in asking the defendants to deposit arrears for the period earlier to the plaintiffs purchase. Relying on the decision in Rameshwar Chand and Another Vs. Sadhan Chandra Dey and Others, , the learned. Advocate has argued that the plaintiffs may have a claim to the money due on account of arrears of rent which had been assigned to them by the kobala. The plaintiffs, however, cannot urge it to be default in payment of rent. Mr. Mallick has contended that in the instant suit the plaintiff's have not claimed for decree in payment of arrears of rent. The defendants are defaulters from June 1968 and in order to get benefit of Sec. 17 of the Act the defendants under the law are required to deposit the entire amount. In Gordhandas's case (77 C.W.N. 70) there was a default for four months though the default was in respect of payment of rent to the previous landlord. The question arose whether the subsequent landlords could take advantage of the said default. It was held by Their Lordships that the question has to be looked at not from the stand point what the landlord will get whether the rent as such or only the money due, but whether the tenant has defaulted in payment of rent due. It has been further held that so far as the tenant is concerned there can be no room for doubt that rent was payable by him whether to the transferor landlord or to the transferee landlord. If rent is payable and if rent is not paid the default is a default in payment of rent and not merely a default in payment of money. In the Full Bench case of Gujarat High Court (Champaklal vs. Saraswati Ben AIR 1977 Guj 48) it has been held that where the lessor transferred the entire interest in the property including arrears of rent due prior to the transfer the assignee also obtains right to such arrears of rent. On such a transfer would vest in the transferee all the rights of the lessor relating to the property transferred and this includes right in respect of arrears of rent due prior to the transfer.

7. The learned Munsif was thus justified in taking into account the entire arrears of rent from June 1968 as rent for the said period had admittedly not been paid

by the defendants. The next question is whether the suit is maintainable as the plaintiffs in contravention of Sec. 13(3A) of the Act have included the grounds mentioned in clauses (I) (ff) of Sec. 13(1) of the Act as two of the grounds for eviction. Mr. Mukherjee has referred to the case of Smt. Sudha Mukherjee Vs. Sankar Chatterjee, . In that case the plaintiffs instituted the suit for eviction on the sole ground that the tenant defendant had transferred, assigned and\\or sublet portions of the premises to several persons without previous consent in writing of the: landlord. During the pendency of the suit the plaintiff prayed for amendment of the plaint by addition of two more grounds, namely, that she required the suit premises for her own use and occupation and also she required the suit premises for building and rebuilding. This court held that as the plaintiffs failed to establish ground of subletting the suit would have been dismissed. The amendment cannot be made as the same was hit by sub-section (3A) of Sec. 13 of the Premises Tenancy Act. In the instant case the plaintiffs had instituted the suit not only on the grounds mentioned in clauses (f) and (ff) of Sec. 13(1) of the Act but also on the ground mentioned in clause (1) of Sec. 13(1). Unless the plaintiff fail to establish their right to claim for eviction on the ground of default the suit cannot be held to be not maintainable. It is true that in view of sub-section (3A) of Sec. 13 of the Act the plaintiffs are not entitled to include the grounds mentioned in clauses (f) and (ff) of Sec. 13(1) of the Act as the suit was instituted before the expiry of three years from the date of plaintiffs purchase. The plaintiffs have thus no right to sue for eviction on the ground of reasonable requirement but they can maintain the suit on the ground of default. In the circumstances, it cannot be held that the suit is not maintainable. The suit is to be considered to be a suit only on the ground of default as the other grounds mentioned in the plaint will not be available to the plaintiffs. In the result, the revisional application fails and the Rule is discharged. Interim order if any, stands vacated. There will be no order as to costs.

Let the records be sent down as early as possible.