

(1949) 09 CAL CK 0045
In the Calcutta High Court
Case No : Civil Revn. No. 277 of 1949

Sm. Nagendra Bala Hore and Another APPELLANT
Vs
Sree Sree Iswar Dakhina Kalimata Thakur RESPONDENT

Date of Decision : 13-09-1949

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 41
West Bengal Premises Rent Control (Temporary Provisions) Act, 1948 — Section 11,
12, 12(1), 18

Citation : AIR 1950 Cal 503 : 54 CWN 499

Hon'ble Judges : G.N. Das, J

Bench : Single Bench

Advocate : Diptendra Mohan Ghose, for the Appellant; Apurba Charan Mukherjee, for the Respondent

Judgement

G.N. Das, J.—This rule was obtained by the petitioners who are tenants against an order dated 1st February 1949 passed by Mr. M Mukherji, learned Judge, Court of Small Causes, Calcutta, 6th Bench, rejecting an application u/s 18, West Bengal Premises Rent Control (Temporary Provisions) Act (XXXVIII [38] of 1948).

2. The case of the petitioners is that their predecessor was a tenant in respect of premises No. 38/4B Baghbazar Street. The landlord served a notice to quit u/s 106 T. P. Act, and started proceedings u/s 41, Presidency Small Cause Courts Act on the ground of default. The petitioners filed written statements disputing the fact that they were defaulters. On 24th August 1948 an order was made u/s 41, Presidency Small Cause Courts Act. It appears that the petitioners deposited the arrears up to July 1948. It is alleged that since the passing of the order u/s 41 they are depositing rent before the Rent Controller. On 1st December 1948 the West Bengal Premises Rent Control (Temporary Provisions) Act (XXXVIII [38] of 1948) came into force. On 7th January 1949 the petitioners made an application u/s 18 of the said Act. It is alleged by the petitioners that they tendered the costs of the ejectment proceedings to the landlord on 27th December 1948 and on the refusal by the landlord to accept the same deposited the amount in Court

on 14th January 1949. On 1st February 1949 the learned Small Cause Court Judge rejected their application u/s 18 of the Act on the ground that the costs were not deposited within time. No finding was arrived at as regards the allegation of tender. The tenants moved this Court and obtained this Rule.

3. Mr. Diptendra Mohan Ghose appearing for the petitioners contended that the tender on 27th December 1948 followed by a deposit on 14th January 1949 was sufficient compliance with the provisions of Section 12 (1) (b) of the said Act. Mr. Apurba Charan Mukherji appearing for the opposite party contended that the aforesaid tender, even if true, was not sufficient compliance with the statute. He also contended that Section 18, West Bengal Premises Rent Control Act cannot be invoked by the petitioners. He also contended that interest on arrears of rent was not paid as required by Section 12 (1) (b) of the Act.

4. In my view of S 12 (1) (b) the tender as alleged coupled with the deposit did not satisfy the requirements of the Statute.

5. The question as to how far Section 18, West Bengal Premises Rent Control (Temporary Provisions) Act, hereinafter called the Act, helps the tenants, is one of some difficulty.

6. Section 18 runs as follows:

"Where any decree or order for the recovery of possession of any premises has been made, before the date of commencement of this Act but the possession of such premises has not been recovered from the tenant by the execution of such decree or order, the Court by which the decree or order was made may, if it is of opinion that the decree or order would not have been made if this Act had been in operation at the date of the making of the decree or order, rescind or vary the decree or order in such manner as the Court may think fit for the purpose of giving effect to the provisions of this Act."

7. The effect of Section 18 of the Act is obviously to give the Act a retrospective operation for the limited purpose of rescinding or varying a decree or order for possession passed before 1st December 1948 which is the date of the commencement of the Act. To test whether the decree or order for possession is to be rescinded or varied the Act is to be deemed to be in operation when the decree or order for possession was made. The suit or proceeding for possession must also be deemed to be alive on the date when the decree or order for possession was made and we are to see whether the Court would have made the decree or order for possession on that date if the Act was then in force. This requires a consideration of the other provisions contained in the Act.

8. Section 11 of the Act provides that no decree or order for possession can be made if the tenant pays the full rent allowable by the Act and performs the conditions of the tenancy subject however to the qualifications stated in the proviso.

9. Section 12 (1) then provides that the benefit of Section 11 can be availed of

by the tenant if he complies with Clauses (a) (b) and (c) thereof. These clauses are conjunctive as appears from the use of the word "and" in between these clauses. The effect of Sections 11 and 12 is that the tenant will have protection against eviction (1) if he pays rent to the full extent allowable under the Act within the prescribed period; (2) if he pays all arrears of rent to the full extent allowable under the Act "within one month of the date of the commencement of the Act" and also pays interest at the rate of 6 1/4 per cent, on the arrears of rent which is the subject of a suit or proceedings before a Court or of any decree or order of a Court as also such costs as the Court may award ; (3) if there has been an increase of rent by the Controller he pays the increased rent within one month of the date specified by the Controller or of the date of the order of the Controller as the case may be.

10. We have already stated that the effect of Section 18 is that the Act is to be assumed to be in operation on the date of the passing of the decree or order for possession. This necessarily connotes that the Act has commenced to operate on the said date. The expression "date of commencement of the Act" in Section 12 must therefore be considered to mean the date when the decree or order for possession is made or an earlier date. If this is the correct position then the payments or deposits contemplated by Section 12 of the Act must be made within one month of the aforesaid date, that is, the date when the decree or order for possession is made. It is true that this interpretation may lead to the conclusion that Section 18 would be unworkable in a large majority of cases. Mr. Panchanan Ghose who appeared in a similar case before me, contended that the Court should shrink from a construction which would render Section 18 futile. This is quite true but if the words of the statute are plain the Court has to accept the plain meaning of the words used by the Legislature. The argument ab inconvenient is only admissible in construction where the meaning of the statute is obscure. Where the language is explicit, its consequences are for Parliament and not for the Courts to consider. (Craies on Statute Law Edn. 4, p. 87). To the same effect are the observations made by Jervis C. J., in the case of *Abley v Dale* (1851) 20 L. J. C. P. 233 : (87 R. R. 697) :

"Where the words used are plain and unambiguous, Courts are bound to construe them in their ordinary sense even though it does lead to an absurdity or manifest injustice."

I am not unmindful of the rule enunciated by Lord Hobhouse in *Simms v. Registrar of Prebates* 1900 A. C. 323 : (69 L. J. P. C. 61) :

"Where there are two meanings each adequately satisfying the meaning (of a statute) and great harshness is produced by one of them, that has legitimate influence in inclining the mind to the other."

It is true that if the words used are ambiguous and susceptible of a narrower and wider meaning the Court would adopt the one or the other in order to give effect to the intention of the Legislature. But in the present case, as I have already

stated, we have not to give the words "commencement of the Act" its plain interpretation. We cannot construe the said expression in two different senses while applying Section 18 read with Section 12 of the Act.

11. There are other difficulties in applying Section 18 of the Act and to fit it in with cases which were disposed of sometime before 1st December 1948. This would appear if we refer to Section 12 (3) of the Act which lays down that if the tenant fails to pay or deposit the rent due after the commencement of the Act for three consecutive months the interest of the tenant shall ipso facto cease and he shall no longer be deemed to be a tenant. Thus in a case where the tenant fails to pay his rent for three months after the passing of the decree or order for possession and before 1st December 1948 the tenant would on the meaning to be put on the words "commencement of the Act" be a trespasser and no relief can be given to him u/s 18 of the Act, The same difficulty arises in applying Section 17 which requires the Court to decide if there is sufficient cause for proceeding with the suit or proceedings for recovery of possession. This has to be done at the first hearing of the suit or as soon as there may be thereafter. The draftsman was oblivious of the fact that the Act may operate to suits pending on the original side of this Court where there is no such procedure as the first hearing of the suit. The expression "first hearing of the suit" is to be found in Order 13, Rule 1 and Order 15, Civil P. C., and was explained by the Judicial Committee of the Privy Council in the case of *Gopika Raman v. Atal Singh* 56 I. A. 119 : (A. I. R. 1929 P. C. 99), to mean the framing of issues. If Section 18 has the effect of resuscitating the suit to the date when the decree or order for possession was made the expression "first hearing of the suit" would be wholly inappropriate at that stage. The "resume of the different provisions of the Act shows that the Act was drafted with a view mainly to its having prospective operation. Section 18 was inserted without adequate consideration of the incongruities which would arise. I quite agree with the submission of Mr. Panchanan Ghose that the avowed policy of the Act was to give the tenant who was in arrears a period of grace and to afford him an opportunity to pay. We have however to construe the Act as it is expressed and not to give it a meaning which may have been intended by the Legislature. That would be to usurp the function of the Legislature. Mr. Panchanan Ghose also relied on the decision in the case of *Nanda Lal v. Suresh Chandra* 50 C. W. N. 171 : (A. I. R. 1946 Cal. 113). That case however turned on the particular words of para, 10C, Bengal House Rent Control Order, 1942, as amended on 6th July 1944. The inconveniences and incongruities which have been suggested above did not arise in that case. The view taken by me receives support from the Bench decision in the case of *Mrs. Julia Sen v. Surjendra Mohan Roy*, 49 C. W. N. 700, which turned on the interpretation of Section 11, Calcutta House Rent Control Order, 1943, which is in similar term.

12. I am in entire agreement with the opinion of Henderson J., in the case of *Sm. Radharani Debi and Others Vs. Sanat Kumar Chatterjee and Another*, where his Lordship referring to the analogous provisions of the Calcutta House Rent Control

Order, 1943, said that it was impossible to transfer para. 11 of the Order simpliciter. The same difficulty, in my opinion, arises in applying Section 18 of the Act simpliciter.

13. In my opinion Section 18 of the Act has failed in its object. One feels sorry for the tenant whom the Legislature wanted to give relief against the consequences of his default but on an interpretation of the Act the conclusion follows that no relief can be given to the tenant in the facts of this case. The alleged tender and the subsequent deposits do not help the tenant.

14. The result therefore is that this Rule is discharged but there will be no order for costs.