
(1949) 04 CAL CK 0003
In the Calcutta High Court
Case No : Civil Rule No. 1171 of 1948

Sobha Rani Roy

APPELLANT

Vs

S.N. Guha Roy

RESPONDENT

Date of Decision : 12-04-1949

Acts Referred:

Citation : (1949) 04 CAL CK 0003

Judgement

Sen, J.—This rule has been obtained by Mrs. Sobharani Roy who was the opposite party in a case filed before the Rent Controller by Mr. S.N. Guha Roy for fixation of the standard rent of certain premises. The Rent Controller fixed the rent and fixed the date from which the standard rent should take effect but passed no order as to the claim for refund of rent paid in excess of the standard rent. Against this order there was an appeal taken by the present petitioner as well as by Mr. Guha Roy. On appeal the Chief Judge of the Court of Small Causes raised the standard rent from Rs. 175 to Rs. 200 per month and fixed 1st October 1946 as being the date from which the standard rent would take effect. He also ordered that Mr. Guha Roy would be entitled to a refund of any amount paid in excess of the standard rent from that date. This judgment was put into execution by Mr. Guha Roy in the Court of the second Munsif at Alipur. The learned Munsif transferred the case to the Court of Small Causes, Calcutta and that Court has attached the petitioner's deposit in the Grindlays Bank for the payment of the refund. Against this order two petitions were filed by the petitioner Mrs. Sobbarani Roy. In the first petition, the objection was that the Court of Small Causes had no jurisdiction to execute the order of refund and the second objection was that the order of refund passed by the Chief Judge of the Court of Small Causes was without jurisdiction. A third objection was taken but with that I am not concerned as that was not pressed in this Court. The learned Judge of the Court of Small Causes rejected the objections of the petitioner and she has now obtained this Rule.

2. The facts which need be stated briefly are as follows: The premises were first leased by Mr. J. De, I.C.S. Thereafter from him the petitioner took a lease some

time in 1946 at a rental of Rs. 450 per month. The opposite party, Mr. S.N. Guha Roy, I.C.S., who is a distant relation of the petitioner, requested the petitioner to let out the lower flat to him. This she did and on 1st October 1946 the opposite party paid rent at the rate of Rs. 350 per month. The rent was paid from September 1946 and both parties seemed to be satisfied. On 9th April 1947 Mr. Guha Roy filed a case before the Rent Controller for fixation of the standard rent and claimed a refund. Thereafter the events which I have mentioned in the early part of the judgment took place.

3. The first question which was argued before me by learned advocate appearing for the petitioner is that the Munsif had no jurisdiction to transfer the case for execution to the Small Cause Court Judge and that, therefore, the order passed in execution by the Small Cause Court Judge was without jurisdiction. He refers me to the provisions of S.9(2) , Calcutta Rent Ordinance, 1946. This sub-section says that an order of refund passed by the Controller shall be executed by the Court having jurisdiction to entertain a suit for the recovery of arrears of rent in respect of the premises in relation to which the sum ordered to be refunded was paid as if such order of refund were a decree of that Court. Now, the Munsif undoubtedly had jurisdiction to execute the order of refund as if it were a decree of the Munsif's Court. The question which arises is whether he had the power to transfer it to another Court namely the Judge of the Court of Small Causes for execution. There is no express provision in the Calcutta Rent Ordinance, 1946, giving the Munsif any such power. The power given to the Munsif is to execute the order as if it were a decree of that Court. Learned advocate for the petitioner contends that this section should be construed strictly and it should not be taken that this subsection makes an order for refund a decree of the Court of the Munsif who was first moved to execute it. The order does not become a decree for all purposes but it is merely to be executed as a decree. I am of opinion that this contention is perfectly sound. Section 39, Civil P.C. provides for the transfer of a decree for execution by the Court which passed the decree to another Court. There is no other section which provides for a transfer of decree. The question which arises is whether S. 39 of the aforesaid Code can be availed of in the matter before us. Section 39 of the said Code applies to a decree passed and recorded under the Code of Civil Procedure. It cannot be made to apply to an order for refund passed under the Calcutta Rent Ordinance, 1946, unless there are words in that Rent Ordinance which makes it applicable. There are no such words. The Munsif is given only the power to execute it and not to transfer it. In this connection I would refer to the case of Nur Mohammad v. Khan Saheb S.M. Solaiman, 49 C.W.N. 10 at p. 16, where certain principles are laid down. Their Lordships say this:

(1) that the general rule is that when a matter reaches a civil Court, the procedure of civil Courts would be attracted including the provisions regulating appeals from its judgments, decrees or orders, but

(2) this general rule is applicable only when the matter comes to that Court as

part of its ordinary jurisdiction and not by reason of a special jurisdiction having been conferred upon it:

The last mentioned proposition defines the precise scope of that principle. Now, in this case the matter comes to the civil Court not as a part of its ordinary jurisdiction but by reason of a special jurisdiction being conferred upon the Munsif by the provisions of S. 9(2) , Calcutta Rent Ordinance, 1946. That being so, the general rule that when the matter reaches a civil Court the procedure of the civil Court should be attracted including the provisions regulating appeals from its judgments, decrees and orders will not apply. I, therefore, hold that the learned Judge of the Court of Small Causes had no jurisdiction to execute the order for refund inasmuch as the Munsif had no jurisdiction to transfer the execution of that order to the Court of Small Causes. There is also another difficulty in the way of the opposite party. Section 3, Calcutta Rent Ordinance, 1946, says that where the rent of any premises has been increased so as to exceed the standard rent, the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable. The power of refund is given in S. 9 of the said Ordinance which says that where any sum has been paid on account of rent being a sum which is by reason of the provisions of Ordinance irrecoverable the Controller may on application to him direct a refund of such sum, Section 3 of the aforesaid Ordinance expressly lays down that where rent is increased so as to exceed the standard rent, such excess shall be irrecoverable. Thus before it can be said that a sum is irrecoverable it must be proved that there was an increase. There is no other provision in the Ordinance which makes any sum paid in excess of the standard rent irrecoverable. The amount paid by Mr. Guha Roy, it is true, is in excess of the standard rent fixed, but there was no increase of rent. The rent remained the same from the very inception. Payment in excess of the standard rent, therefore, was not due to any increase of rent and consequently it does not come within the ambit of S. 3 of the Ordinance. Now, S. 9 of the Ordinance allows a refund only when the amount paid on account of rent is made irrecoverable by the provisions of the Ordinance. As S. 3 of the Ordinance has no application, the amount paid by Mr. Guha Roy is not an amount made irrecoverable by the provisions of the Ordinance. Therefore, there can be no order of refund. The order passed by the learned Chief Judge of the Court of Small Causes was entirely without jurisdiction and was a nullity. That being so it was not capable of execution.

4. In these circumstances I set aside the order of the Court below and make this rule absolute with costs.