
(2014) 03 CAL CK 0129
In the Calcutta High Court
Case No : CO Number 1048 of 2010

Sri Shyam Sundar Ghosh

APPELLANT

Vs

Sri Baidyanath Mondal and Others

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227
West Bengal Premises Tenancy Act, 1956 — Section 17(1) 17(2) 17(2A)

Citation : (2014) 3 CHN 33 : (2014) 2 WBLR 892

Hon'ble Judges : Subrata Talukdar, J

Bench : Single Bench

Advocate : Diptendu Majumdar and Sri Tapabrata Bhattacharya, for the Appellant; Pinaki Ranjan Mitra, for the Respondent

Judgement

Subrata Talukdar, J.—This application under Article 227 is directed against Order impugned no. 493 dated 11th June, 2010 passed by the Learned First Civil Court (Junior Division) at Howrah in Title Suit no. 7 of 1980. By the said impugned Order the Learned Trial Court was pleased to allow the substituted defendant-tenants fresh opportunity to deposit rents due to the plaintiff - landlord in respect of the tenanted property. The Learned Trial Court, inter alia, held that the substituted defendants ought to have filed an application u/s 151 of the CPC praying permission to deposit arrear rents due for the period between Kartik 1412 to Chaitra 1412, instead of filing an application u/s 17(2) of the West Bengal Premises Tenancy Act, 1956.

2. Sri Diptendu Majumdar, Learned Counsel, appearing on behalf of the petitioner plaintiff - landlord Sri Shyam Sundar Ghosh, has argued that the eviction suit for recovery of possession with arrears of rent and mesne profit was filed by his client against the original defendant-tenant, Sri Shyam Sundar Ghosh, in the Court of the Learned First Munsif at Howrah (now Learned Civil Judge (Junior Division, First Court, Howrah)) being Title Suit no. 7 of 1980. In the eviction proceedings the son of the original defendant - tenant, Baidyanath Mondal, who

is the present - opposite party 1(a) in this revisional application deposed as opposite party (OPW) 1 on 13th February, 2003. In his deposition, a copy whereof is annexed to the instant revisional application the said Baidyanath Mondal has stated as follows:- "I depose for my father."

3. The said Baidyanath Mondal also deposed to the effect that the challans of the tenanted property are in his name and he had forgotten to bring the challans. He has further deposed that the rate of rent is Rs. 35 per Bengali calendar month. He has also denied that rent was not paid for the period Falgun, 1387 BS and Jaistha - Aghrayan 1388 BS. He has denied that it is not a fact that he did not comply with the Order passed in the proceedings u/s 17(2) and 17(2A) of the West Bengal Premises Tenancy Act, 1956. He has stated that hotel business is carried on in the said property and the monthly income from the said business is about Rs. 2000 to Rs. 3000.

4. The said Baidyanath Mondal filed a total of 31 challans marked Exhibits 1 to 31.

5. He was cross examined and reiterated that he deposed in favour of his father. He has admitted to knowledge of the eviction suit filed against his father and also to the fact that rent was duly deposited after the death of his father. He has denied that he had no knowledge about the eviction suit and admitted that he runs a hotel in the suit premises and also has a business of selling vegetables.

6. It is relevant to mention and such fact is admitted by both parties that the original tenant-defendant, Sri Kanailal Mondal died after the deposition of Baidyanath Mondal, as noted above on 13th February, 2003. The said Baidyanath Mondal along with the other legal heirs of the deceased original defendant were substituted before the Learned Trial Court in the year 2006.

7. Sri Majumdar brings to the notice of this Court Order no. 34 dated 12th March, 1981 by which the Learned Trial Court was pleased to dispose of the application filed by the original defendant during his lifetime under Sections 17(2) and 17(2A) of the West Bengal Premises Tenancy Act, 1956. The Learned Trial Court was pleased to allow the original defendant to deposit the arrear rent in five instalments.

8. On the death of the original defendant and his substitution by Baidyanath Mondal and other legal heirs, a fresh application under Sections 17(1), 17(2) and 17(2A) of the West Bengal Premises Tenancy Act, 1956 read with Section 151 of the CPC was filed by Baidyanath Mondal and the other legal heirs who were the substituted defendants. A copy of such application has been annexed to the present revisional application.

9. From a perusal of the said fresh application under Sections 17(1), 17(2) and 17(2A) of the West Bengal Premises Tenancy Act, 1956 read with Section 151 of the CPC it transpires that the applicants have averred that the present substituted defendants have no knowledge regarding the eviction suit and only

on enquiry they came to know that the original defendant had paid rent up to Ashwin 1412 BS. They have further averred that since the original defendant died in Kartik 1412 BS the rent could not be deposited as the substituted defendants were not then parties to the suit.

10. Sri Majumdar has emphatically reiterated the contentions in the written objection filed by the petitioner - plaintiff to the fresh application under Sections 17(2) and 17(2A). He has submitted that such fresh application is an abuse of the process of law particularly when one of the substituted defendants, Baidyanath Mondal has deposed on 13th February, 2003, that is during the lifetime of the original defendant to the effect that he was deposing for his father, the original defendant. Sri Majumdar submits that the opposite party no. 1A had deposed to having complete knowledge of the eviction suit as well as the particulars of the rent in respect of the tenanted premises. He points out that such a fresh application under Sections 17(2) and 17(2A) is not contemplated in proceedings under the West Bengal Premises Tenancy Act, 1956 particularly when all along the heirs of the original defendant had knowledge of the eviction proceedings and had deposed to such effect.

11. Sri Majumdar has further argued that the Learned Trial Court fell into error by allowing the fresh application filed by the substituted defendants for depositing arrears of rent under the provisions of Section 151 of the Code of Civil Procedure. He submits that in the face of a specific provision under Sections 17(2) and 17(2A) of the West Bengal Premises Tenancy Act, 1956 the provisions of Section 151 of the CPC cannot be pressed into service and the Learned Trial Court fell into patent error in doing so.

12. Sri Pinaki Ranjan Mitra Learned Counsel appearing for the opposite parties supports the Order of the Learned Trial Court and has argued that there is no infirmity in allowing the substituted defendants to deposit the arrear rents which have arisen during the period of their tenancy. Sri Mitra has pointed out that only when the present defendants - opposite parties were substituted in place and of the original defendant, their obligation to pay the rent and the arrears of rent arose in the eyes of law.

13. This Court is respectfully unable to accept the submission of Sri Mitra. This Court notices the judgment of another Hon'ble Single Bench of the Court reported in Sm. Chapalabala Dutta Vs. Arati De, Chapala Bala's case has also been noticed by an Hon'ble Judge of this Court while passing the interim order dated 11th April, 2011 in the present revisional application staying the order impugned of the Learned Trial Court dated 11th January, 2010.

14. In Chapala Bala's case this Court was clearly of the view that when the original tenant - defendant filed an application under the provisions of Sections 17(2) and 17(2A) of the West Bengal Premises Tenancy Act, 1956 and the said application was decided by the Learned Trial Court, the substituted heirs who inherit the estate of the deceased tenant cannot file such an application afresh

long after the period of limitation. At paragraph 6 of the said judgment the Court held as follows:-"Where the original tenant-defendant filed an application under the provisions of Sections 17(2) and 17(2A) of the West Bengal Premises Tenancy Act which stood rejected, the substituted heirs who inherit the estate of the deceased tenant, cannot file such an application afresh long after the period of limitation."

15. Respectfully expressing its unison with the ratio laid down in Chapala Bala's case as noticed with approval by an Hon"ble Judge of this Court while passing the interim Order dated 11th April, 2011 this Court also notices the deposition of the opposite party no. 1 on 13th February, 2003 prior to the death of the original defendant in which the opposite party no. 1 unequivocally deposed on behalf of his father and admitted to all knowledge of the eviction suit as well as the particulars of rent.

16. This Court also observes with anguish the divergent stand taken by the opposite party no. 1 and the other defendants in their fresh application under Sections 17(2) and 17(2A) of the West Bengal Premises Tenancy Act, 1956 disclaiming any knowledge of the suit. Such stand, in the opinion of this Court, is worthy of reproach and ought not to have been lost sight of by the Learned Trial Court while deciding the plea of the substituted defendants for depositing arrears of rent afresh.

17. For the aforesaid reasons CO 1048 of 2010 is allowed. The Order impugned no. 493 dated 11th January, 2010 is set aside on contest. There will, however, be no order as to costs.

18. Having regard to the fact that the eviction suit is pending for the past 32 years the Learned Trial Court must expedite hearing and conclude the same preferably within six months from the date of communication of this Order. Urgent certified photocopies of this judgment, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.