

(1993) 05 CAL CK 0029
In the Calcutta High Court
Case No : C.O. No. 4207 of 1991

Sumant Chandra Mishra and others

APPELLANT

Vs

Smt. Anjali Ghatak and another

RESPONDENT

Date of Decision : 14-05-1993

Acts Referred:

Transfer of Property Act, 1882 — Section 108, 109, 37

West Bengal Premises Tenancy Act, 1956 — Section 17(2), 17(2A), 21, 22

Citation : AIR 1993 Cal 275 : (1993) 2 CALLT 156

Hon'ble Judges : N.K. Bhattacharyya, J; Mukul Gopal Mukherji, J

Bench : Division Bench

Advocate : Mr. Santanu Mukherjee and Prahalad Ghosh, for the Appellant; Sudhis Dasgupta, Subhro Kamal Mukherjee and Debasish Roy, for the Respondent

Judgement

Mukul Gopal Mukherji, J.—This revisional application filed by the tenant-defendants impugns an Order No. 95 dated October 4, 1991 passed by the Assistant District Judge, First Court, Alipore in Title Suit No. 42 of 1987 whereby an in application u/s 17(2) and (2A) of the West Bengal Premises Tenancy Act, 1956 filed by the tenants-defendants, they were found defaulters in payment of rent from February, 1983 to May 1987 at the rate of Rupees 810-07 paise per month according to English Calendar and further they were made liable to pay interest accrued for the rents from August, 1982 to January, 1983 which were already lying deposited before the Court. The arrears were computed at Rs. 42,123-64 paise for February, 1983 to May, 1987 which they were directed to deposit along with interest at the rate of 8.33% per annum at a cumulative rate together with interests calculated at the aforesaid rate from the date of deposit of the rent from August, 1982 to January, 1983. They were given opportunity to pay in 15 equal instalments, the first of instalments being payable by 15th November, 1991 and thereafter month by month. The defendants-petitioners were further directed to continue depositing current rents month by month @ Rs. 810-07 per month according to English Calendar as they are depositing in the Court below.

2. It is the case of the petitioners that their agent Gaurav Mishra always paid rent by cheque for the suit premises. Dr. Phanindranath Brahmachari the previous landlord having died intestate leaving behind a Will whereunder he bequeathed the suit premises to his two daughters, the present opposite parties in equal shares and having appointed his wife, Smt. Gopa Rani Devi as sole executrix, the agent of your petitioners Sri Gaurav Mishra duly paid rent of the suit premises month by month by cheques to the said Smt Gopa Rani Devi who accepted these payments without any demur against proper receipts. On or about May 4, 1981 the said Smt. Gopa Rani Devi obtained probate of the Will of her deceased husband and on July 1, 1982 assented to the legacies in favour of the opposite parties. By a letter dated August 16, 1982 Smt. Gopa Rani Devi informed the petitioner No. 1 that her husband bequeathed the suit premises to their daughters, the opposite parties, and she obtained probate of her husband's Will and requested the petitioner No. 1 to pay rent to the opposite parties on and from October 1, 1982 after attorning their tenancy to the opposite parties as owners/ landladies. The petitioners remitted rents for the months of August and September, 1982 by two separate cheques to Smt. Gopa Rani Devi who after receiving the said two cheques by a letter dated November 5, 1982 returned them to the petitioners giving out inter alia that in view of the earlier letter dated August 16, 1982 they should make payment of rent to the opposite parties from October 1, 1982. Thereafter the petitioners through their agent Sri Gaurav Mishra remitted rents for the months of August, 1982 to October, 1982 on 26-11-82 separately by cheques by registered post to the opposite parties in respect of their respective half shares at the rate of Rs. 405-04 p. and Rs. 405-03 p. per month, but both the opposite parties refused to accept the said cheques which were returned with the postman's endorsement "refused". The petitioners remitted rents for the month of February, 1983 separately to the opposite parties in respect of their half shares in the said premises by two postal money orders by that too was refused by the opposite parties. The petitioners thereafter deposited with the Rent Controller rents for the month of February, 1983 onwards in respect of the suit premises separately to the credit of the opposite parties after apportioning the total rent in equal half shares at Rs. 405-04 p. and Rs. 405-03 p. respectively. That in February, 1984 the opposite parties filed Title Suit No. 200 of 1984 in the 2nd Court of Munsif at Alipore praying for declaration that the petitioner No. 1 was their sole tenant in respect of the said premises and prayed for permanent injunction restraining the petitioner No. 1 from subletting the suit premises and from making any construction therein. In the plaint the opposite parties more or less admitted the position that C. P. Bhagat and G. C. Chaturvedi were residing in the suit premises as sub-tenants. In the said suit the opposite parties also applied for temporary injunction restraining the petitioner No. 1 from further subletting the premises whereupon the learned Munsif granted the said temporary injunction as prayed for by the opposite parties, The petitioner No. 1 preferred an appeal therefrom being Misc. Appeal No. 370 of 1984 and by order dated 30th September, 1986 the learned Additional District Judge, 11th Court, Alipore allowed the appeal and

set aside the order of injunction, holding inter alia that the petitioners had prima facie the right to sublet the suit premises. Thereafter the opposite parties moved this Hon'ble Court in revision. This Hon'ble Court was pleased to issue Civil Order No. 3468 of 1986 and the parties were directed to maintain status quo. On July 18, 1986 the opposite parties gave a notice to the petitioners through their learned advocate and asked them to quit and vacate the suit premises on the expiry of the month of August, 1986. In the said notice the opposite parties alleged that your petitioners had illegally sublet the suit premises, violated clauses(m), (o) and (p) of Section 108 of the Transfer of Property Act, 1882 and defaulted in payment of rent and that the opposite parties reasonably required the suit premises for their own use and occupation. The opposite parties thereafter filed Title Suit No. 42 of 1987 against the petitioners in the First Court of the learned Assistant District Judge at Alipore praying for recovery of possession of the suit premises on the alleged grounds inter alia of default in payment of rent, unauthorised construction in the suit premises and for their own reasonable requirement. In the month of June, 1987, the petitioners entered appearance in the said suit and duly filed an application under S. 17(2) and (2A) of the West Bengal Premises Tenancy Act, 1956 disputing the alleged amount of rent in arrears and prayed for determination of the exact amount of arrears and for permission to deposit the same in easy monthly instalments. The petitioners also filed an application u/s 17(1) of the West Bengal Premises Tenancy Act, 1956 and regularly continued to deposit the current rents of the suit premises month by month in the trial Court from June, 1987 onwards as required by law. On or about November 2, 1987 the opposite parties filed written objection to the said petitions under Sec. 17(2) and (2A) of the West Bengal Premises" Tenancy Act, 1956 reiterating that the petitioners defaulted in payment of rent as alleged by them and also contended that rents were not validly deposited by the petitioners with the Rent Controller because those deposits had not been preceded by any valid tender of rent to the opposite parties. The petitioners also filed their written statement in the suit denying the material allegations contained in the plaint and prayed for dismissal of the said suit.

3. By the order dated October 4, 1991 the learned Assistant District Judge, First Court at Alipore was pleased to dispose of the application u/s 17(2) and (2A) of the West Bengal Premises Tenancy Act, 1956 directing the petitioners to deposit Rupees 42,123-64 p. towards rent in arrears for the suit premises from February, 1983 to May, 1987 at the rate of Rs. 810-07 p. per month. The learned Assistant District Judge also ordered to pay them interest on the petitioners* belated deposit of arrears of rent in court for the period August, 1982 to January, 1983. Over and above the said aggregate amount, the learned trial Court imposed interest at the rate of 8.33% per annum at cumulative rate. The learned Assistant District Judge held that the petitioners had not validly tendered rent to the opposite parties for the month of February, 1983 before depositing the rent for the month of February, 1983 with the Rent Controller and as such the said

deposit of rents for the months of February, 1983 to May, 1987 were all invalid deposits. The trial Court also ordered the petitioners to redeposit the rents from February, 1983 to May, 1987 over again in Court.

4. It was averred that there was material irregularity in the exercise of jurisdiction by the learned Assistant District Judge in holding that all such deposits were invalid deposits which he did hold by way of misconstruing and on a misreading of the two refused money order forms. The learned Assistant District Judge it was contended proceeded on an erroneous conjecture that the money orders have not been remitted by the petitioners in a valid manner, but they were so tendered by a stranger called Chaturbedi on behalf of the petitioner No. 2 since it appeared from the said money order forms that the said Chaturbedi had posted the said money orders on behalf of the petitioners. It was on the other hand averred by the learned advocate for the opposite parties that there was a deliberate attempt on the part of the present petitioners to create two separate tenancies by sending two separate money orders to the opposite parties in respect of their respective half shares in the total rent of the suit premises. The petitioners however contended that the trial Judge overlooked the well settled principle of law that two separate tenancies were not created thereby but the tenants were entitled to apportion the rent in between the co-landlords/co-landladies. According to the petitioners, the Assistant District Judge thus failed to exercise his jurisdiction vested in him by law in misinterpreting the letter dated August 16, 1982 written by the executrix Smt. Gopa Rani Devi whereby a request was conveyed to the petitioners to pay rents separately to the two opposite parties in respect of their separate half shares. The learned Assistant District Judge thus erroneously held on such a misinterpretation that the petitioners had unilaterally attempted to create two separate tenancies under the opposite parties which sought to justify them in refusing the tenders by way of money orders. It was further averred by the petitioners that the Assistant District Judge was incorrect in holding that the opposite parties were justified in refusing to accept the cheques sent by the petitioners to the opposite parties separately, thereby overlooking the admitted fact that the landladies had no occasion to see the said cheques sent to them since they had refused even to accept registered covers which contained those cheques without opening the envelopes and examining the contents thereof. It was further alleged that the Assistant District Judge did not consider at all the evidence on record, both oral and documentary and held erroneously that the two cheques Ext. F and FI were validly refused by the opposite parties when these two cheques were returned by their mother Smt. Gopa Rani Devi directing the petitioners to effect payments to the opposite parties directly.

5. Mr. Mukherjee appearing for the petitioners contended that the learned Assistant District Judge improperly held that Gaurav Mishra who had no connection with the said tenancy, had sent cheques towards payment of rent of the suit premises ignoring the accomplished fact that the original landlord Dr. P. N. Brahmachari and even after his death his wife Smt. Gopa Rani Devi who

happens to be the executrix of the will of Dr. Brahmachari had all along accepted the cheques from the said Sri Gaurav Mishra who continued to be a duly authorised agent on behalf of all the petitioners. It was further averred that the learned Assistant District Judge completely overlooked the provisions of Sections 21 and 22 of the West Bengal Premises Tenancy Act, 1956 in that the deposit of rent for the month of February, 1983 with the Rent Controller which was so done on March 30, 1983 was a belated and invalid one. The learned Assistant District Judge also incorrectly doubted the authenticity of the power of attorney Ext. A on the plea that it was signed by one of the petitioners, thereby failing to appreciate that one co-tenant can alone on behalf of all the other co-tenants, authorise an agent to represent the entire body of co-tenants.

6. Mr. Sudish Desgupta, Senior Advocate appearing for the opposite parties contended before us by citing the annotations from Mulla's Transfer of Property Act in connection with Section 37 under the heading "apportionment by estate" for the proposition that unless apportionment had been agreed to by all the parties or had been ordered in a suit to which all concerned were parties, the tenant was obliged to pay the rent in respect of all the shares jointly. Notice to the tenant by landlord is sufficient under the present law to convert the single obligation to pay rent to all the landlords into several obligations to pay rent to each co-sharer. On receipt of the notice from the landlords a tenant is under an obligation to pay to each co-sharer landlord his proportionate part of the rent but if a suit is necessary to enforce this obligation, it is still necessary to joint all the sharers as parties. If no apportionment is made in between the landlords, the obligation remains single and the lessor will not be allowed to split up the tenancy by recovering the rent of a part only nor can a purchaser of a part interest of a colessor insist on payment of rent of his part only.

7. Mr. Mukherjee cited before us a Supreme Court decision in Mohar Singh (Dead) by Lrs. Vs. Devi Charan and Others, for the proposition that a landlord cannot split the unity and integrity of the tenancy and recover possession of a part of the demised premise, from the tenant. But Section 109 of the Transfer of Property Act is a statutory exception to this rule and enables an assignee of a part of the reversion to exercise all the rights of the landlord in respect of the portion respecting which the reversion is so assigned, subject, of course, to the other covenant running with the land. There is no need for a consensual attornment, which is brought about by operation of law. The limitation on the right of the landlord against splitting up of the integrity of the tenancy, inhering in the inhibition of his own contract, does not visit the assignee of the part of the reversion. There is no need for the consent of the tenant for the severance of the reversion and the assignment of the part so severed. In the said reported decision two adjacent shops were owned jointly by two co-owners and those two shops were obtained on lease by a tenant under a single lease. On partition one of the shops came to the share of a co-owner. The transferee of that co-owner sought eviction of the tenant from that shop on ground of bona fide need. It was held in that context that on partition the co-owner and consequently his

transferee became the exclusive owner of one of the shops which came to that co-owner's share. There was thus no question of splitting up of the integrity and unity of the tenancy. On proof of bona fide need the transferee landlord was entitled to evict the tenant and there was no necessity of joining another co-owner in the action. We are afraid that the reported decision has no manner of application to the facts of the present one.

8. Mr. Sudhis Dasgupta appearing for the opposite parties drew our attention to a Division Bench judgment of our Court in *Dr. Amar Prosad Gupta Vs. Arun Kumar Shaw*, for the proposition that even if there was some apportionment of rent in between co-landlords, such apportionment had not the effect of severing the tenancy. u/s 37 of the Transfer of Property Act the tenant is bound to apportion rent if so asked for by the landlords or anyone of them. Under the third paragraph of Section 109 of the Transfer of Property Act there is a provision for apportionment of rent by mutual agreement among the lessor, the transferee and the lessee, failing which the same may be made by the Court. The relationship of landlord and tenant arises out of a contract. The contract is between the tenant and the lessors where the different lessors are co-sharers to each other in respect of the whole of the premises, even after a partition, there can be no new tenancies in respect of different parts of the premises allotted to the co-sharers without fresh contract with the tenant. The reported decision in *Dr. Amar Prosad Gupta v. Arun Kumar Shaw* (ibid) was a case, however, where the plaintiff appellant did not contend that there was a fresh contract between him and the tenant-defendant, whereby a fresh tenancy was created in respect of the part of the premises allotted to the plaintiff. The Division Bench held that the contention that since there had been an apportionment of rent, the tenancy was split up and a new tenancy came into existence for the part of the premises allotted to the plaintiff, was unacceptable. A Single Bench judgment of Madhya Pradesh High Court in *Subhash Chandra Sardarmal Lalwani Vs. Radhavallabh Saligram and Others*, was expressly differed from by the Division Bench and reliance was placed upon an earlier judgment of Bachawat, J. in *Smt. Durgarani Devi v. Mahiuddin* (1950) 86 CLJ 198.

9. The Division Bench further held in *Dr. Amar Prosad Gupta V. Arun Kumar Shaw* (ibid) that there not having been any demarcation of the portion allotted to the plaintiff and the tenant defendant not having been told about the portion of the premises allotted to the plaintiff and the notice to quit also not having specified the plaintiff's portion and the plaint also not having made any specification thereabout, the Court could not pass any effective decree since such a portion was yet to be determined, more so, when it was not demarcated by metes and bounds and let out separately. The other observations in the said judgment are however not relevant for the purpose of our case.

10. Mr. Mukherjee the learned advocate appearing for the petitioners also pointed out a single Bench judgment of Mysore High Court in *C. Venkatasetty v. Rangasetty* reported in AIR 1952 Mys 68 where it was held that in the absence of

proof of agreement between two colessors that the rent paid shall be held by them jointly, each being owner of the whole or of a mutual grant of authority, between them to receive the rent, the tenant, by payment to one of the lessors is not discharged from his liability to pay the rent to the other and the other is entitled to one-half of the rent, the shares being equal in the absence of anything else to show that they were unequal. In view of the clear pronouncement on the point by our Calcutta High Court Division Bench we need not abide by the judgment of Mysore High Court which does not finally decide the point. We are of the view that unless there was a clear cut instruction forthcoming from the opposite parties to split up the rent in between them in the manner as indicated by them or there having been any fresh contract to the contrary it was not open on the part of the petitioners to tender rent into two halves by splitting up the rent and tender it by halves to opposite parties in that manner. We do not find any fault with the observations made by the learned Trial Judge that the deposit with the Rent Controller regarding the rent of February, 1983 was not preceded by a valid tender and that being so, the deposits with the Rent Controller from February 1983 onwards were all invalid deposits. We may, however, empower the petitioners to withdraw such amounts lying so deposited with the Rent, Controller without prejudice to their rights and contentions but the liability on the part of the present petitioners to deposit the amount as indicated by the learned Assistant District Judge needs no interference at all.

11. It is indeed true that the consideration may flow from the promisee or any other person and the law is somewhat different on the point from the English Law of Contract whereby the promisee himself has to tender the amount of consideration. However, unless and until it is specifically disclosed that the rent is tendered by or on behalf of all the petitioners who are the tenants of the opposite parties, there is no obligation on the part of the opposite parties to accept rent if so tendered by a stranger. We do not think that the legal position as contended by the petitioners could be sustained that they were so empowered in law to split up the rent into two halves as they chose so to do without an express permission and/or instruction of opposite parties. It is indeed true that the defendants petitioners contend that since the landladies refused to accept tender of rent from the month of January, 1983 they deposited rents with the Rent Controller from February, 1983 to May 1987 and the plaintiffs opposite parties submitted that no valid tender was made and there is no question of an unlawful refusal and hence all the deposits before Rent Controller were all invalid, we perfectly agree with the ultimate conclusion drawn by the learned Assistant District Judge that the refusal on the part of the opposite parties could not be questioned even though it is immaterial as to whether Chaturbedi sent the money orders for Mahesh Mishra, the petitioner No. 2. It is however not correct on the part of the learned Assistant District Judge to hold that the rent cannot be validly tendered by one of the tenants viz. Mahesh Mishra. The tender of the cheques by one Gaurav Mishra who was found to be nobody in connection with the tenancy despite the fact that he paid rents all along and the refusal in the

part of the opposite parties only in this context cannot be justified. We do not agree with this particular line of approach of the learned trial Judge in this perspective. We do think that even though the defendants have deposited rent from August, 1982 to January, 1983 at the rate of Rs. 810-07p. and the court accepted such payments, there is still an obligation on the part of the defendants petitioners to tender interests on such deposits calculated till the date of such deposits for the period of August 1982 to January, 1983. With this modification the order of the learned Assistant District Judge, First Court at Alipore is sustained. Let the arrears be deposited along with interest at the rate of 8.33% per annum as indicated by the learned Assistant District Judge in 15 equal instalments spreading over 15 months, the first of such deposit is to be made by 15th June, 1993. The interests for the deposit for the period August, 1982 till January, 1983 is to be deposited in the trial Court within one month.

12. With this modification the revision case stands disposed of.

13. There will be no order as to costs.

14. Let a xerox copy of this order be given to the learned advocates for the parties on usual undertaking.

N.K.Bhattacharrya, J.

15. I agree.

16. Order accordingly.