

(2014) 03 CAL CK 0141
In the Calcutta High Court
Case No : F.A. No. 34 of 2008

The Chief Secretary, State of West Bengal

APPELLANT

Vs

Dipak Kumar Basu

RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2014) 2 CALLT 417 : (2014) 4 CHN 371 : (2015) 1 WBLR 540

Hon'ble Judges : Ishan Chandra Das, J; Debasish Kar Gupta, J

Bench : Division Bench

Advocate : Ashok Kr. Banerjee, Sadhan Kr. Halder and Anit Kr. Rakshit,
Advocate for the Appellant; Nirmalya Pal, Advocate for the Respondent

Judgement

Debasish Kar Gupta, J.—This appeal is directed against the judgment and decree dated January 20, 2007 passed by the learned First Civil Judge (Senior Division), Alipore, in Title Suit No. 56 of 2001. By virtue of the impugned judgment and decree, the respondent/plaintiff got a decree of declaration that the appellants/defendants were occupying "A" schedule property as tenant and the respondent was entitled to realisation arrear of rent from the appellants to the tune of Rs. 1,24,800/ for the period from December 1, 1994 to March 31, 1999(52 months) at the rate of Rs. 2,400/- per month in respect of one room (800 sq. ft.) as also amounting to Rs. 1,91,400/- for the period from April 1, 1999 to August 31, 2001 (29 months) at the rate of Rs. 6,600/- per month in respect of three rooms. The appellants were directed to pay the entire decretal amount within three months from the date of order, failing which the respondent would be at liberty to realise the amount together with interest at the rate of 8 per cent per annum till realisation by filing execution case in accordance with law. 2. The facts of this case are stated in a nutshell as under:

The Officer-in-Charge of Basanti Police Station, District-South 24-Parganas, approached the respondent to let out one room of an area of 800 sq. ft. and the rate of rent was agreed at the rate of Rs. 3/- per sq. ft. payable month by month

from February 1, 1994. Subsequently, the above Officer-in-Charge of Basanti Police Station, District-South 24-Parganas further approached the respondent to let out other two rooms of the scheduled property with effect from April 17, 1999 and the total area became 2,200 sq. ft. consisting of three rooms.

2. The appellants since inception as tenant did not pay the aforesaid rents to the respondent. The respondent had issued a communication dated July 19, 2000 to the Officer-in-Charge, Basanti Police Station, District-South 24-Parganas, asking him to pay the aforesaid rents but the appellants did not pay any heed to the same. According to the respondent, the suit property had been badly damaged consequent upon an attack by the mob alleging inaction on the part of the police in a dacoity case of September 28, 2000 and the damage amount had been claimed to be Rs. 1,00,000/- (Rupees one lakh) for the purpose of repairing the suit property but the appellants did not take any step for such repairing. According to the respondent, the above tenancy of the appellants was terminated by a notice to quit the suit property. A notice u/s 80 of the CPC was also served upon the appellants by the respondent/plaintiff as the appellants failed to pay the rent in spite of service of aforesaid notice. The respondent/plaintiff filed the suit which gives rise to this appeal.

3. The appellants/defendants contested the suit by filing written statement. According to the appellants, in the year 1993-94, the situation of village Amjhar and the neighbouring area became sensitive and violent. In order to deal with the law and order problems and to combat crime, the local people of the aforesaid area requested the police authority to set up police camp of one room consisting of an area of more or less 800 sq. ft. The respondent allowed to set up a police camp in the suit property free of cost on the basis of oral contract and negotiation in the interest of public. According to the appellants, the police never took possession of the extended portion of the house and the respondent never approached either the Officer-in-Charge of Basanti Police Station, District-South 24-Parganas, or the District Police Authority for any payment of house rent.

4. It is submitted by Mr. Ashok Kr. Banerjee, learned Government Pleader, High Court, Calcutta, appearing on behalf of the appellants, that the suit was filed on December 4, 2001. Therefore, it was barred by law of limitation. It is also submitted by the learned Government Pleader that no notice for eviction was issued by the respondent/plaintiff. No evidence was adduced in support of letting out the suit property to the appellants/defendants before the learned Court below to substantiate the claim of occupation of the suit property as a monthly tenant.

5. On the other hand, it is submitted on behalf of the respondent/plaintiff that the suit was filed for realisation of arrear rent and damages. It was not a case of eviction of the appellants from the suit premises. So, the suit was independent in itself which had been filed for specific relief after paying entire court-fees to that effect. Therefore, according to the respondent, the same was maintainable.

6. It is also submitted on behalf of the respondent that in course of deposition before the learned Court below, the respondent/plaintiff was examined as P.W. 1 and it was categorically stated that the then Panchayat Pradhan of Amjhar Gram Panchayat issued a certificate (Exhibit. 2) in support of the above claim of the respondent. Our attention is drawn towards the above communication to submit that the Panchayat Pradhan was requested by the Sub-Divisional Police Officer concerned and the Officer-in-Charge, Basanti Police Station to find out a safe building for running police camp in the area and as a result, the suit property was selected to be let out. Our attention is also drawn towards Exhibit. 4 which was a message sent by the Officer-in-Charge, Basanti Police Station to the respondent asking him to come to Police Station along with relevant documents relating to the suit property regarding letting out of the same for the purpose of running a police camp. Relying upon the Exhibits. 6/1 to 6/4, it is submitted on behalf of the respondent that the demands were made from time to time for realisation of arrear rent.

7. We have heard the learned Counsel appearing for the respective parties at length and we have considered the facts and circumstances of this case carefully. It is settled principles of law that when a statute has conferred a benefit on the tenant to avoid a decree for eviction and the tenant has not deposited the entire amount due, which includes the amount time-barred, the protection under the Limitation Act is not available to him. The expression "entire amount of rent due" includes the rent, the recovery whereof has become barred by time. The law is well settled that though the remedy is barred, a debt is not extinguished. Reference may be made to the decision of Khadi Gram Udyog Trust Vs. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur, and the relevant portions of the above decision are set out below:

4. It will be seen that u/s 20(2) of the Act, the landlord gets a cause of action for evicting the tenant when the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand. If the tenant pays the entire arrears of rent due at the first hearing of the suit the Court may relieve the tenant against eviction even though he had not complied with section 20(2). The tenant can take advantage of the benefit conferred by section 20(4) only when he pays the entire amount of rent due as required u/s 20(4). The question that arises for consideration in this appeal is whether the entire amount of rent due would include even rent which cannot be recovered as having been time-barred. There is ample authority for the proposition that though a debt is time-barred, it will be a debt due though not recoverable, the relief being barred by limitation. In Halsbury's Laws of England (Third Ed.) Vol. 24 at p. 205, Article 369, it is stated "except in the cases previously mentioned, the Limitation Act, 1939 only takes away the remedies by action or by setoff; it leaves the right otherwise untouched and if a creditor whose debt is statute-barred has any means of enforcing his claim other than by action or set-off, the Act does not prevent him from recovering by those means.

8. The above settled principles of law was repeated and reiterated in the matter of Rakesh Wadhwan & Ors. v. M/s. Jagdamba Industrial Corporation & Ors., reported in 2002 SAR (Civil) 539 that the expression "rent due" in eviction suits implies that the obligation of the tenant to pay or tender the rent extends to depositing all the arrears of rent without regard to period of limitation. The relevant portions of the above decision are set out below:

13. The expression employed is "the rent due". A Full Bench of the High Court of Rullia Ram Hakim Rai Vs. S. Fateh Singh S. Sham Sher Singh, has taken the view that the expression "rent due" in contradistinction with the words "rent legally due" or "rent recoverable" or the "arrears of rent within the period of limitation" implies that the obligation of the tenant to pay or tender the rent extends to depositing all the arrears of rent without regard to the period of limitation. This view finds support from a decision of this Court in Khadi Gram Udyog Trust Vs. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur, wherein, interpreting the *pari materia* provision contained in the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, this Court has held that the expression "entire amount of rent due" includes the rent the recovery whereof has become barred by time, for, the statute of limitation bars the remedy but does not extinguish the right. The learned counsel for the tenants conceded during the course of hearing that on the present framing of the provision under examination, the obligation of the tenant to pay or tender even time barred rent, to take advantage of the provision cannot be denied.

9. The learned Trial Court after perusal of the records came to the conclusion that the respondent filed the suit for realisation of arrear rent and damages and there was no case of eviction of the appellants from the suit premises. We find no error in the above finding of the learned Court below that the suit was independent in itself which had filed for a specific relief of realisation of arrear rent after paying entire court-fees to that effect. Therefore, it was not liable to be dismissed in limine on the ground of not issuing eviction notice upon the appellants. Taking into consideration that due to non-payment of entire rent due from the date of taking possession of the suit premises from December 1, 1994, it was maintainable on the basis of settled principles of law as discussed hereinabove.

10. With regard to the claim of the appellants of possessing the suit premises free of cost for the purpose of setting up of a police camp at the suit premises, we find that the learned Court below found from Exhibit. 2 that the Pradhan of Amjhar Gram Panchayat issued a certificate to the effect that he had been approached by the Sub-Divisional Police Officer concerned and the Officer-in-Charge, Basanti Police Station to find out a safe building for running police camp in the area concerned. It is necessary to point out here that the genuineness of the above document was not denied by the learned lawyer appearing for the appellants. Relying upon a message sent by the Officer-in-Charge, Basanti Police Station to the respondent (Exhibit. 4), the learned Court below found that the

respondent was asked to come to Basanti Police Station with all relevant documents relating to the suit property for the purpose of letting out the same for starting a police station therein. The respondent was also asked to bring a consent letter showing his willingness to let out the building. Therefore, we do not find any error in the finding of the learned Court below that the Officer-in-Charge, Basanti Police Station himself had approached the respondent to let out the same for starting a police station.

11. There was no error in the finding of the learned Court below that the appellants had been occupying three rooms of the suit property till the date of issuance of the above certificate for running police camp and the appellants were occupying one room in the suit property during the pendency of the suit because the learned Court below arrived at the above conclusion on the basis of the deposition of the D.W. 1 and the Exhibit. 5.

12. With regard to the demand for realisation for payment of arrear rents, the learned Court below relied upon Exhibits. 6/1 to 6/4 to come to the conclusion that the respondent made several demands for realisation of rent of the suit premises and the Officer-in-Charge, Basanti Police Station forwarded the same to the Superintendent of Police, South 24-Parganas, for taking necessary action in the matter. We find no error in the finding of the learned Court below that the above conduct of the appellants was admission of the fact on the part of the appellants of letting out the suit premises. We further find that original Exhibit. A was not produced before the learned Court below and the same was purported to be signed during the pendency of the suit and the P.W. 1 categorically stated in his cross-examination that the signature of Exhibit. A was forcibly obtained from him by the Officer-in-Charge of Basanti Police Station during the pendency of the suit. It is necessary to point out that the State Government cannot claim any benefit from their own fault.

13. We find no error in the order, decree under reference because the claim of damages for repairing of the suit premises was rightly rejected by the learned Court below restricting the decree in part on contests so far as the realisation of rent for the period from December 1, 1994 to March 31, 1999 at the rate of Rs. 2,400/- per month and for the period from April 1, 1999 to August 31, 2001 at the rate of Rs. 6,600/- per month are concerned.

14. In view of the above, this appeal stands dismissed.

15. There will be, however, no order as to costs. Let there be a direction for sending the L.C.R. to the learned Court below expeditiously.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

Ishan Chandra Das, J.

I agree.