

(1961) 12 CAL CK 0005

In the Calcutta High Court

Case No : Letters Patent Appeal No. 7 of 1960 arising out of S.A. No. 602 of 1953

The Indian Iron And Steel Co. Ltd.

APPELLANT

Vs

Anil Kumar Fouzdar

RESPONDENT

Date of Decision : 01-12-1961

Acts Referred:

Letters Patent Act, 1865 — Clause 15

West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 — Section 14(3)

Citation : 66 CWN 687

Hon'ble Judges : P.N. Mookerjee, J; Amaresh Roy, J

Bench : Division Bench

Advocate : Jitendra Nath Guha, Ajoy Kumar Basu and Dinesh Chandra Basu, for the Appellant; Bhawani Sankar Choudhury and Baidyanath Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Mookerjee, J.—This is a Letters Patent Appeal under clause 15 of the Letters Patent against the judgment of our learned brother Banerjee, J. The appeal arises out of a suit for ejectment. The suit was brought on November 21, 1951. It was based on a notice to quit, dated September 14, 1951. and duly served by registered post on September 15, 1951, asking the tenant (defendant) to quit and vacate the suit premises with the expiry of the month of September, 1951. The suit tenancy was held by the defendant at a monthly rental of Rs. 4/-, payable according to the English calendar. The premises was situate at Burnpur. The appellant before us was the plaintiff in this ejectment suit. In the plaint, an allegation was made that the defendant had been a defaulter since April 1950, and that, consequently, he had forfeited any claim of protection under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, which was the rent control legislation, applicable to the case.

2. The defence, inter alia, was that the defendant was not a defaulter, as alleged,

or, at all. The trial court decreed the suit, holding, inter alia that the defendant was a defaulter since April, 1950. The facts upon which this finding was based were found as follows:

That, for the months of April, May and June, 1950, the defendant tendered rent by Money Order on July 4, 1950. That Money Order was refused by the plaintiff landlord. Thereafter, however, the defendant took no further step until about September 27, 1951, when he sent, again, by Money Order, the rents for the months of April, 1950, to September, 1951. This Money Order also was refused by the plaintiff landlord. Since then, no doubt, but only since then, that is, from October 1951, the tenant defendant has been depositing rents month by month in the office of the Rent Controller.

3. It is clear from the above that the defendant was a defaulter in payment of rent from April, 1950, to September, 1951. But the point arises as to whether the above default disentitles the tenant defendant from claiming protection under the above rent control legislation, namely, the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, in view of the admitted fact that the said Act was extended to Burnpur, where the disputed premises is situate, only in July, 1951.

4. The Act, no doubt, had come into force on March 30, 1950. But, at that time, Burnpur was not included within its scope or area of operation. The extension to this area as we have said above, came only in July, 1951. The point thus arose as to whether defaults in payment of rent prior to July, 1951, would be relevant or available in, or, for purposes of the present suit under the above Act.

5. It is clear that, if the aforesaid prior defaults are relevant and available to the plaintiff, then the defendant would obviously be out of court, as he would, beyond dispute, be a de-defaulter for much more than the requisite statutory period, namely, three occasions of two consecutive months each within a period of 18 months, as required under the relevant statutory provision, to wit, the proviso to sub-section (3) of sec. 14 of the Act. If, on the other hand, defaults prior to July, 1951, be not relevant or available as aforesaid, there would be defaults only for the 3 months of July, August and September 1951, prior to the institution of the suit, This would be insufficient for purposes of attracting the above proviso or bringing the defendant within the mischief thereof.

6. The learned trial Court held that defaults prior to July, 1951, that is, prior to the extension of the Act to the disputed area, namely, Burnpur, would be relevant and available to the plaintiff and, in that view, it held that the defendant was not entitled to any protection under the relevant rent control law by reason of the above proviso to sec. 14(3) and the plaintiff, having successfully proved termination of the defendant's tenancy by the service of a valid and sufficient notice to quit, would be entitled to a decree for ejectment.

7. The first appellate court also was of the same opinion and it affirmed the decision of the learned trial Judge. The defendant, then, took up the matter to

this Court in Second Appeal (S. A. No. 602 of 1953), which was heard by our learned brother Banerjee, J. In view of the several decisions of this Court, reported in *Ajit Kumar Roy Vs. Surendra Nath Ghose*, , *Keshab Chandra Sarkar Vs. Hemenlal Gupta*, , and *Gopal Chandra Narayan Choudhury v. Murari Mohan Dey* (3) 62 C.W.N. 614, which, according to our learned brother, were authorities for holding that pre-act defaults were not relevant for purposes of the aforesaid proviso to sub-section (3) of section 14 of the above Act, it was held by him that the defendant was not a defaulter for the requisite period in the facts of this instant case, so as to fall within the mischief of the above proviso, and, upon that view, he held that the plaintiff's suit was liable to be dismissed. He, accordingly, reversed the decisions of the two Courts below and dismissed the plaintiff's suit, granting, at the same time, leave to the plaintiff to appeal under clause 15 of the Letters Patent, "regard being had" as stated by him in his aforesaid judgment, "to the attractive nature of the argument, made by Dr. Gupta."

8. The argument, referred to above, may broadly be stated as follows:

That all the aforesaid three decisions are distinguishable.

9. That the Full Bench decision in (1) *Ajit Kumar Roy Vs. Surendra Nath Ghose*, was dealing with the question whether, in granting relief to a tenant u/s 18(5) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, as amended by Act LXIT of 1950, section 14 of the said Act was to be applied with or without the proviso. The suit there related to a case of ipso facto determination of the tenancy under the earlier Act of 1948 and it was in that context that the observations in question on pre-Act defaults were made. In the instant case, there was no question of ipso facto determination of tenancy and, therefore, the aforesaid observations, made by the Full Bench in a different context, would not apply.

10. That the case, reported in (3) 62 C.W.N. 614, was also distinguishable on similar grounds. That also was a case of "ipso facto" determination of tenancy and was similarly distinguishable.

11. That, so far as the case, reported in (2) *Keshab Chandra Sarkar Vs. Hemenlal Gupta*, , is concerned, it was pointed out that the defaults there were for the periods between July, 1947 and January, 1948. The suit in that case, however, was actually instituted on September 11, 1950. The defaults were for a period when even the prior Act of 1948 had not come into operation. In that context, it was observed that there had been no defaults while the two cases, reported in (1) *Ajit Kumar Roy Vs. Surendra Nath Ghose*, , may well be effectively distinguished, it is difficult to argue that, in (2) *Keshab Chandra Sarkar Vs. Hemenlal Gupta*, , their Lordships did not definitely express the view that such pre-Act defaults were irrelevant for purposes of the above proviso. That view was, no doubt, based upon a particular construction of the aforesaid Full Bench decision but such construction would, ordinarily, be binding upon a Bench of this Court. Mr. Guha, however, argues that, even if pre-Act defaults have to be

excluded, the defaults in this case from April, 1950 to June, 1951, cannot be held to be pre-Act defaults, as the Act had obviously come into effect from March 30, 1950, although, it was extended to Burnpur only in July, 1951. Mr. Guha wants to draw a distinction between the enactment of a statute and its extension to a particular area or extension of its area or field of operation and he argues that the term "pre-Act" would apply only to a state of things, prior to enactment, but not, necessarily, to a state of things, prior to the extension of the Act to a particular area.

12. It is difficult for us to accept the above argument or suggested distinction, as the Act, until extended to a particular area, would not govern the relations of parties or litigants, so far as that area is concerned, and, in that context, pre-Act or pre-extension defaults would connote the same thing and if the one be irrelevant for purposes of the proviso to sub-section (3) of section 14, the other also would be equally so. Indeed, the proviso in question forms the exception to the relieving part of the section and the scheme of the statute is perfectly clear. In the main part of section 12(1) it forbids ejectment of tenants. In proviso (1) an exception is engrafted in the case of defaulters. This proviso, however, is expressly made subject to section 14, which, in its main part, provides for relief against the consequence of default u/s 12(1) proviso (i) except in cases covered by the proviso to sub-section (3) of the said section 14. It is clear, then, that this proviso cannot apply unless the main part of section 14 applies. The Act contemplates protection to the tenant subject to certain reservations or exceptions or certain cases or circumstances, in which that protection is withdrawn. Until the protection itself is available, the question of any reservation or exception thereto or its withdrawal cannot obviously arise.

13. The defaults, again, contemplated under the above proviso, are defaults under cl. (i) of the proviso to sub-sec. (1) of sec. 12. Such defaults arise only on non-payment and non-deposit under sec. 19, as expressly mentioned in the said clause. No question, however, of non-deposit under sec. 19 can arise until that section is in force and, before the extension of the statute to a particular area, sec. 19 would obviously, have no application there.

14. We need only add that the above view is greatly aided and re-inforced by the admitted fact that the statute in question is a remedial statute.

15. We would, accordingly, hold that the defaults, prior to July 1951, would not be relevant for purposes of the instant case and the tenant, accordingly, has not forfeited his claim to the benefit or protection of the relevant statute, namely, the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950.

16. In the above view we would affirm the decision of our learned brother Banerjee, J. and dismiss this appeal.

17. In the circumstances of this case, we would direct the parties to bear their own costs in this appeal.

Amaresh Roy, J.

I agree.