(2005) 07 CAL CK 0005

In the Calcutta High Court

Case No : C.P. No. 617 of 2004

United Eastern Suppliers Pvt. Ltd. APPELLANT

Vs

M/s. India Ice Aerated Water and Cold Storage Co. Ltd. RESPONDENT

Date of Decision : 12-07-2005

Acts Referred:

West Bengal Premises Tenancy Act, 1956 — Section 17(4A), 5(7), 5(8)
West Bengal Premises Tenancy Act, 1997 — Section 17(1), 17(4A), 20, 25

Citation : 109 CWN 767

Hon'ble Judges : Ashim Kumar Baneerjee, J

Bench : Single Bench

Advocate : Promothonath Banerjee and Kinjal Kumar Baral, for the Appellant; Debangsu Basak and Paritosh Sinha, for the Respondent

Judgement

Ashim Kumar Banerjee, J.—The respondent company is a tenant under the petitioning creditor at a monthly rent of Rs. 625.00 payable according to the English Calendar month. The West Bengal Premises Tenancy Act, 1956 was repealed in the year 1997 and the same was replaced by the West Bengal Premises Tenancy Act, 1997 as amended by Act of XIV of 2002. The said Act came into force w.e.f. July 10, 2001. Section 17(4A) of the said Act reads as follows:

17(4A) where a tenancy subsists for twenty years or more in respect of the premises constructed in or before the year 1984 and used for commercial purpose, the fair rent shall be determined by adding to the rent as on 1.7.1976 five times or by accepting the existing rent if such rent is more than the increased rent determined under this sub-section.

2. The section quoted (supra) provides that where a tenancy subsists for 20 years or more in respect of a premises constructed in or before 1984 and used for commercial purpose the fair rent shall be determined by adding rent as on July 1, 1976 five times or by accepting the existing rent if such rent is more flan the increased rent determined under the sub-section.

3. The present tenancy was admittedly more than 20 years old, premises constructed before 1984. The tenant was using the same for commercial purpose. Hence, the aforesaid three pre-requisites were admittedly fulfilled herein. Hence, under the sub-section quoted (supra) the landlord was entitled to rent six times to the rent paid on July 1, 1976 (no rent was increased thereafter) from the date of the said Act corning into force being July 1, 2001. The landlord demanded such rent. The company refused to pay the enhancement, however, paid the existing rent leaving an outstanding of Rs. 3125.00 being the difference of enhanced rent from July 2001 to May, 2004 amounting to Rs. 1,09,375.00. The respondent company was also bound to pay the maintenance and amenities as well as proportionate municipal tax under Sections 5(7) and 5(8) of the said Act, 1997. According to the petitioning creditor the other tenants were paying such enhanced rent, particulars whereof were set out in paragraph 10 of the petition. The petitioning creditor gave statutory-notice of demand which was replied to by the company through its advocate simply denying payment of the outstanding sum.

4. Winding up petition was contested by the company by filing an affidavit. It was contended in the said affidavit that the petitioning creditor never approached the company for enhancement of payment of rent. On the contrary they continued to accept the existing rent. It was also contended that the petitioning creditor was not entitled to take recourse to Section 17(4A) of the said Act, 1997.

5. Mr. Promothonath Banerjee, learned senior counsel appearing for the petitioning creditor, contended that 17(4A) was clear and unambiguous and once the pre-requisites were fulfilled the enhancement of rent was a natural follow up and no further action was required to be taken by the company. It was contended that there was neither any bonafide nor any legal dispute raised by the company and as such the petitioning creditor was entitled to order of admission of winding up petition.

6. The matter was heard initially on May 4, 2005 along with another winding up petition initiated by the same petitioner creditor on the identical facts against another tenant. The said matter was however disposed of by me by granting instalment to the said tenant to pay the enhanced rent. The tenant now before me, however, did not agree to pay the same and the matter was time to time adjourned enabling the parties to settle the dispute outside the court.. No such settlement could rake place. Hence, the matter was finally heard by me on the adjourned date being July 1, 2005 when hearing was concluded and judgment was kept reserved.

7. Mr. Debangsu Basak, learned counsel appearing for the company, contended that Section 17(4A) was to be read with Section 17(1) wherein the Rent Controller was the appropriate authority to determine fair rent. Mr. Basak also drew my attention to Section 20 and 25 of the said Act wherein notice was contemplated. Section 20 provides for notice to be served by the landlord upon the tenant and the increased rent would become payable from the month or

period of tenancy next after expiry of 30 days from the date on which the notice was given. Section 25 provides for waiver of such default in case rent was accepted by the landlord.

8. Mr. Basak lastly contended that the company was able to raise a legal dispute which required appropriate adjudication by the Rent Controller being the prescribed authority under the said Act, 1997 and winding petition was not maintainable.

9. As I have discussed before, Section 17(4A) provides three pre-requisites which are admittedly present in the instant case. It was not the case of the company that any of the pre-requisites mentioned in Section 17(4A) was absent herein. In such view of the matter the rent payable as on 1st July, 1976 should be the rent to be taken into account determining fair rent and the rent would automatically be enhanced six times of the said rent payable on and from July 1, 2001. Rent Controller is an appropriate authority under the said Act to adjudicate into the disputes. In the instant case it is a simple arithmetic calculation which is required to be done to determine the fair rent. I would have accepted Mr. Basak''s contention provided he raised an objection with regard to the pre-requisites mentioned in the said section. The building was an old building at least constructed before 1984. The building is admittedly used by the respondent company for commercial purpose. The tenancy was also subsisting for more than 20 years. The rent paid as on July 1, 1976 was Rs. 625.00 per month and no increase was made in between. No dispute was raised with regard to the above four facts. Hence, there was nothing left open to be decided by the Rent Controller as the rent is required to be enhanced six times of Rs. 625.00 being Rs. 3750.00. Hence, Mr. Basak''s contention that it required adjudication by the Rent Controller being not tenable, is rejected.

10. Mr. Basak also raised the issue of notice as well as waiver of right by the landlord as stipulated in Section 20 and 25. Section 20 has provided for general increase by the landlord which a landlord is entitled under the said Act, 1997. If Section 20 is independently read and applied here then the very purpose of Section 17(4A) would render nugatory as the said section has provided for retrospective increase Which would not be possible if the same is given prospective effect in terms of Section 20. To give harmonious construction in my view Section 17(4A) read with Section 20 would entitle the landlord to claim enhanced rent retrospectively after expiry of 30 days from the date of notice meaning thereby the landlord would not be entitled to claim any interest on the enhanced amount prior to expiry of 30 days from the date of notice in case of default.

11. Section 25 provides that where there is no proceeding pending for recovery of possession the acceptance of rent in respect of the period of default in making payment of the rent by the landlord from the tenant shall operate as a waiver of such default. This section in my view has to be read in the context of right of the landlord to claim for eviction of the tenant on the ground of default. It has not

stipulated any fetter on the landlord to ask for increase of rent by virtue of the provision of the said Act, 1997. In my view, such increase has become necessary as and by way of statutory requirement. The landlord has now become entitled to claim such increase on the basis of such statutory enactment. It is the right given to the landlord by the said Act, 1997 to claim such enhancement stipulated therein. Hence, Section 25 in my view has no application.

12. It was contended on behalf of the company in the Affidavit-in-Opposition that rent was paid by account payee cheque and the same was accepted by the company as would appear from the bank statement annexed to the Affidavit-in-Opposition. In my view, such payment of rent was not in dispute. In fact the petitioning creditor gave credit for such payment in the petition for winding up. The present law came into force on January 6, 2002 with retrospective live effect from July 10, 2001. The statutory notice of demand was issued on May 14. 2004 which was replied to by the company on June 18, 2004. The winding up petition was filed on December 23, 2004. Hence, adequate opportunity was given to the company to pay all the dues which they failed. Admittedly the petitioning creditor waited more than 30 days from the date of issuance of notice of enhancement in the statutory notice of demand. Hence, I do not find any reason as to how the company could resist such enhancement and refuse to make payment. Such refusal to make payment without any reasonable cause would presuppose that the company is unable to pay its debts. In my view, the petitioning creditor is entitled to order of admission of the present winding up petition.

13. The winding up petition is admitted for the said sum of Rs. 1,09,375.00 together interest @ 6% on and from June 14, 2004 being 31st day from the date of the issuance of notice until payment. The company is given liberty to pay off the aforesaid sum by 12 equal monthly instalments commencing from 1st August, 2005 and thereafter on 1st day of the succeeding month. In default of payment of any one instalment the petitioning creditor would be entitled to publish advertisement once in Financial Express and once in Bartaman. Publication in Calcutta Gazette is dispensed with. Returnable six weeks from the date of publication.

There will be order as to costs.

Urgent xerox certified copy would be given to the parties, if applied for.

