
(2014) 05 CAL CK 0022
In the Calcutta High Court
Case No : S.A. No. 89 of 2004

Usha Agarwal @ Usha Goyal and Others APPELLANT
Vs
Kailash Prosad and Others RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

West Bengal Premises Tenancy Act, 1956 — Section 17, 17(2), 17(3), 17(4), 21

Citation : (2014) 05 CAL CK 0022

Hon'ble Judges : Debabrata Mookerjee, J

Bench : Single Bench

Advocate : Jiban Ratan Chatterjee, Advocate and Mr. Swapan Kumar Mullick, Advocate for the Appellant; Kartick Ch. Bhattacharya, Advocate and Ms. A. De (Ganguly), Advocate for the Respondent

Final Decision : Dismissed

Judgement

Debangsu Basak, J.—A judgment of affirmation was challenged by way of the present second appeal. A suit for eviction on the ground of default of payment of rent was filed by the respondents against the appellants. In the previous suit for eviction between the parties, the appellants were found to be defaulters in payment of rent and were afforded the protection against eviction u/s 17(4) of the West Bengal Premises Tenancy Act, 1956. The appellants claimed that, they were not defaulters for the second time, since they deposited rent for the period of alleged default in the previous suit between the same parties. The Trial Court held that, the deposits made in the previous disposed of suit were not valid. The appellants were found to be a defaulter of payment of rent for a period of four months within a period of 12 months and not being entitled to protection against eviction. The suit was decreed against the appellants. The appellants were directed to vacate the suit premises. On appeal, the judgment of the Trial Court was upheld which gave rise to the second appeal.

2. By an order dated November 24, 2003 the second appeal was admitted. The second appeal was directed to be heard on the following substantial question of

law:--

whether the deposits made in the previous suit, since disposed of, could be treated to be a default on the ground that the defendant had obtained the benefit of Section 17(4) in the earlier suit without any proof of mala fide on the part of the defendant when the alleged deposit is stated to have been made on the wrong advice of the Counsel which has not been disbelieved by both the Courts and a decree for eviction could be passed.

3. Mr. Jiban Ratan Chatterjee learned Senior Advocate for the appellants contended that, the appellants had deposited the rent for the alleged period of default bona fide in the previous disposed of suit. He referred to Rule 665 of the Civil Rules and Orders and submitted that, a deposit Challan was required to be passed by a Court before any money could be deposited in Court. In the instant case, Challans for deposit of rent were passed by the Court in the previous disposed of suit. Only after such Challans were passed did the appellants deposit the rent in the previous disposed of suit. The deposit of rent in the previous suit was a mistake of the Court. The appellants should not be made to suffer due to the mistake of Court. He contended that, it was the duty of the Court to verify whether the amounts deposited by the appellants were correct. He relied upon 2002 1 CLJ 600 (Sri Sanat Kumar Dey v. Anil Kumar Das). Mr. Chatterjee also relied on 86 Calcutta Weekly Notes page 1081 (Ahi Bhusan Maitra v. Sm. Ira Bose & Anr.) and submitted that, the respondents never demanded rent from the appellants after the disposal of the first suit. The respondents not having demanded payment of rent after the disposal of the first suit, his clients could not be held to be a defaulter.

4. Mr. Kartick Chandra Bhattacharya, learned Advocate for the respondents contended that, Section 21 of the West Bengal Premises Tenancy Act, 1956 was clear. u/s 21 of the West Bengal Premises Tenancy Act, 1956 a deposit was permitted only under the circumstances specified. Those conditions were not satisfied in this case. Reliance was placed on All India Reporter 1969 Calcutta page 104 (Manickchand Durgaprasad & Bros. v. Balukidas Baheti) in support of such contention.

5. It was next contended on behalf of the respondents that, the appellants did not enjoy any right of protection from eviction on the ground of default u/s 17(4) of the West Bengal Premises Tenancy Act, 1956 in case of second default. In the instant case the appellants were defaulter for the second time. Reliance was placed on 86 Calcutta Weekly Notes page 495 (Kartick Paul v. Monorama Dassi) in that regard.

6. In reply Mr. Chatterjee contended that, there was no quarrel with the proposition that, a tenant was not entitled to protection against eviction on second default u/s 17(4) of the West Bengal Premises Tenancy Act, 1956. He reiterated that, the appellants should not be evicted for the fault of the Court. Act of Court should not prejudice the appellants.

7. I have considered the respective submissions of the parties and the materials on record. The suit was for eviction on the ground of default. The respondents were the owners of a premise in Kurseong. The appellants were the tenants in respect of a shop room in such premises. The respondents had initially filed a suit for ejectment of the appellants from the shop room on the ground of reasonable requirement and default. Such suit was dismissed on contest on March 31, 1988 after finding the appellants to be defaulters and after affording the appellants protection against eviction u/s 17(4) of the West Bengal Premises Tenancy Act, 1956. The appeal therefrom was also dismissed. The appellants, therefore, continued to remain as tenants of the respondents.

8. The appellants defaulted in payment of rent from the month of June 1990 to October 1991. The respondents had issued a notice to quit dated December 23, 1991. In spite of receipt of such notice to quit, the appellants did not vacate the suit premises compelling the respondents to file the suit for ejectment.

9. The appellants contested the suit. The appellants admitted the tenancy. The appellants denied default in payment of rent. The appellants claimed that, on the advice and instruction of his learned advocate they deposited rent in the previous suit. The appellants claimed relief and protection u/s 17(4) of the West Bengal Premises Tenancy Act, 1956.

10. Eight issues were framed for trial. The second issue was whether the appellants had defaulted in payment of rent for the second time after getting protection u/s 17(4) of the West Bengal Premises Tenancy Act, 1956 in O.C. No. 11 of 1985. The third issue was whether the appellants were entitled to protection u/s 17(4) of the West Bengal Premises Tenancy Act, 1956.

11. The second and the third issues were taken up together by the Trial Court. The Trial Court found that, the appellants deposited rent in O.C. No. 11 of 1985 from June 1990 to September 1991. The Trial Court found the appellants to be defaulters of payment of rent for more than 4 months within a period of 12 months. The Trial Court noted that, Section 21 of the West Bengal Premises Tenancy Act, 1956 permitted a tenant to deposit rent with the authority specified and in the circumstances contemplated in that section. The Trial Court found that, the appellants after getting protection from eviction u/s 17(4) of the West Bengal Premises Tenancy Act, 1956 deposited rent in O.C. No. 11 of 1985 which was already disposed of. The Trial Court found the appellants to dilute the mandatory provisions of Section 21 of the West Bengal Premises Tenancy Act, 1956. The appellants were found to be negligent. The Trial Court found that, the respondents ought not to be denied the benefit of the rights which accrued in favour of the respondents due to the negligence on the part of the appellants. The Trial Court also quoted from the order dated November 26, 1997 passed by this Court on a revisional application between the parties. By such order this Court held that, the deposit made in the earlier disposed of suit could not be said to be a valid deposit. The Trial Court found that, the appellants as tenants availed of the protection u/s 17(4) of the West Bengal Premises Tenancy Act, 1956 once

in the previous suit being O.C. No. 11 of 1985. Such protection could be afforded under the provisions of the West Bengal Premises Tenancy Act, 1956 to a tenant only once. Therefore, the appellants could not be afforded the same protection for the second default.

12. On appeal, the appellants had conceded that, the deposits made in the earlier disposed of suit were not valid. The appellant, however, in the second appeal contended that, the intention of the appellants should be taken into consideration and that a liberal view may be taken. It was submitted on behalf of the appellant that, there was no mala fide intention on their part and that, the appellants were wrongly advised by the learned advocate for depositing the rent for the said period in the earlier disposed of suit.

13. The lower Appellate Court had considered such submissions on behalf of the appellants and found that, there was no scope of sentiment in the eye of law. It was found that, the deposit for the period was not valid and that the appellants were not entitled to the protection u/s 17(4) of the West Bengal Premises Tenancy Act, 1956. The appeal was therefore dismissed.

14. Rule 665 of the Civil Rules and Orders had many parts. One of such part was that the tender of money must be receivable by law. Under such Rule a deposit could only be made after an express order of the presiding Judge was recorded on the Challan. In the instant case, the previous suit O.C. No. 11 of 1985 attained finality on March 31, 1988 with such suit being dismissed by affording the appellants protection u/s 17(4) of the West Bengal Premises Tenancy Act, 1956. The appeal therefrom being O.C. Appeal No. 7 of 1988 was disposed of on May 26, 1990. The rent tendered by the appellants for the period June 1990 to September 1991 was, therefore, not receivable in the previous suit. The Court had no jurisdiction to allow the appellants to deposit rent in O.C. No. 11 of 1985 subsequent to its disposal. The orders of the learned Judge in passing the challans for deposit of rent for the period June 1990 to September 1991 were, therefore, a nullity.

15. It was contended that, since Rule 665 required an express order of the presiding Judge to be recorded on the Challan, the Court committed a mistake in allowing the appellants to deposit rent in the previous suit. Act of Court should not prejudice any party was the principle which the appellants canvassed. According to them, the appellants deposited rent, albeit at a wrong forum and that too after the Court permitted such deposit of rent. The rent was deposited by the appellants in the previous suit on the wrong advice of the learned Advocate as well as due to the mistake of the Court who allowed the appellants to deposit such rent. The appellants, therefore, should not be prejudiced by such mistake of the Advocate and of the Court.

16. When there was mistake of the Advocate and of the Court in deposit of rent the tenant ought not to be penalized. In support of such proposition Sanat Kumar Dey (supra) was relied upon. In Sanat Kumar Dey (supra) the Court was

considering a revisional application. In a suit for eviction an application u/s 17(2) of the West Bengal Premises Tenancy Act, 1956 was disposed of by holding that, the rate of rent was Rs. 186/- per month. The landlord in such suit applied u/s 17(3) of the West Bengal Premises Tenancy Act, 1956 for striking of the defence of the tenant as the tenant did not deposit the entirety of such rent in the suit. At the hearing of such application it was detected that, although the tenant deposited the arrears of rent as was directed, it did not comply with the portion of the order which directed the tenant to pay current rent at the rate of Rs. 186/- per month. The tenant deposited Rs. 140/- per month. The Court, considering the facts and circumstances of that case, held that the tenant did not act mala fide. Section 17(3) of the West Bengal Premises Tenancy Act, 1956 required a Court to consider whether the tenant deliberately and willfully violated the order passed u/s 17(2) of the said Act. In the facts of that case, it was held that, in the event the mistake was pointed out by Court while passing the challans the tenant could have rectified the mistake. The lawyer's clerk was found to be negligent. The landlord was compensated by cost.

17. The facts of the instant case were different. It was not a case of striking out the defence u/s 17(3) of the West Bengal Premises Tenancy Act, 1956. In Sanat Kumar Dey (supra) the mistake happened in the suit pending between the parties. There was a valid tender of rent. The tenant in such circumstances was afforded the right to defend the suit. The defence of the tenant was not struck off u/s 17(3) of the West Bengal Premises Tenancy Act, 1956. In this case, the appellants deposited rent in a suit which was disposed of. The tender of rent in disposed of suit cannot be held to be a valid tender.

18. Ahi Bhusan Maitra (supra) was concerned with a tenant who was depositing rent with the rent controller. There was a previous suit between the parties to that case. In such earlier suit it was held that, the deposit of rent with the rent controller was valid. It was held that, once the landlord refused to accept a valid tender of rent made to him, the tenant's right to continue to deposit rent with the rent controller would subsist until the landlord in his turn signified by a notice in writing to the tenant, his willingness to accept rent if tendered to him validly once again. It was contended on behalf of the appellants that, after the disposal of the first suit, the respondents did not signify their willingness in writing to accept rent from the appellants. The ratio of this judgment, in my view, could not be read to permit the tenant to continue to deposit rent in a disposed of suit. With the disposal of the first suit the appellants as tenants were obliged to pay rent to the respondents. Only upon refusal of the respondents to accept rent validly tendered by the appellants could the appellants invoke the provisions of Section 21 of the West Bengal Premises Tenancy Act, 1956. In the facts and circumstances of the instant case, the appellants did not tender rent to the respondents subsequent to the disposal of the first suit. The appellants did not invoke the provisions of Section 21 of the West Bengal Premises Tenancy Act, 1956 for the period of default.

19. In *Manickchand Durgaprasad* (supra) the Division Bench of this Court considered the provisions of Section 21 of the West Bengal Premises Tenancy Act, 1956. Their Lordships were of the view that, it was only when the deposit was made in the prescribed manner and also in the circumstances specified in Section 21 that, the deposit was a valid deposit and could be treated as a deposit of rent. Their Lordships went on to hold that, in a case where the tenant deposited amount representing rent into Court without first tendering them to the landlord, it was held that there being no refusal on the part of the landlord to receive rents, the deposits were invalid and of no effect, so much so, the tenant must be held to have committed default of payment of rents. Applying such a ratio to the facts of this case, it must be held that, the appellants did not tender rent to the respondents for the respondents to refuse to accept such rent. Deposit of rent with the Court in the previous suit was, therefore, not a valid tender of rent to the respondents. That the deposit of rent with Court in the previous suit was not valid was accepted by the appellants in the first appeal and recorded in the judgment impugned. Such recording was not challenged at the hearing of the second appeal also.

20. In *Kartick Chandra Paul* (supra) the Division Bench of this Act held that in view of the proviso to sub-section 4 of Section 17 of the West Bengal Premises Tenancy Act, 1956 a tenant forfeited its right to obtain relief against ejectment on the ground of default in payment of rent when such tenant was afforded the protection u/s 17(4) in a previous suit. It was fairly submitted on behalf of the appellants that, they were not seeking to distinguish the ratio laid down in *Kartick Chandra Paul* (supra).

21. The principle that, Act of Court should not prejudice the parties, did not help the appellants. The principle applied to both the parties to the suit with equal force. The mistake of the Court in allowing the appellants to deposit rent in the disposed of suit could not prejudice the respondents also. The appellants were obliged to pay rent to the respondents. Upon a valid tender of rent by the appellants to the respondents, and the refusal of the respondents to accept such rent, were the appellants entitled to deposit the rent in terms of Section 21 of the West Bengal Premises Tenancy Act, 1956. In the instant case, there was neither a valid tender of rent nor was rent deposited in terms of Section 21 of the West Bengal Premises Tenancy Act, 1956. The action of the appellants, therefore, led to accrual of rights in favour of the respondents. The rights accruing in favour of the respondents could not be wiped away on the ground of sympathy or on the principle that Act of Court should not prejudice any party. The appellants may have laboured under a wrong advice of their lawyer by depositing rent in the previous disposed of suit. The Court of the previous disposed of suit may not be right in allowing the appellants to deposit rent in such disposed of suit. However, these facts taken together or singularly did not dilute the rights which accrued in favour of the respondents, namely, the right to have eviction of the appellants on the ground of default in payment of rent.

22. It was contended on behalf of the appellants that, the deposit made in the earlier suit was on the wrong advice of the Advocate and that there was no mala fide intention involved. According to the appellants, there were no finding by the Courts below that the deposit were made mala fide or that the same were not made on the advice of the Advocate. Relying on such position, the appellants contended that, the deposit in the earlier suit should be accepted as sufficient. The Trial Court considered such contention. The Trial Court was of the view that, the appellants were required to act within the parameters of the West Bengal Premises Tenancy Act, 1956 in payment of rent. The appellants were seeking protection against eviction. Such protection could be afforded within the parameters of the West Bengal Premises Tenancy Act, 1956. The appellants did not comply with Section 21 of the West Bengal Premises Tenancy Act, 1956. The appellants did not deposit rent with the rent controller u/s 21 of the West Bengal Premises Tenancy Act, 1956. The West Bengal Premises Tenancy Act, 1956 contemplated that on the refusal of the landlord to accept rent a tenant was entitled to deposit such rent with the rent controller. The mechanism to pay rent by the tenant where the landlord refused to accept rent from the tenant was provided by the said Act of 1956. The appellants did not avail of such mechanism. The Act of 1956 did not contemplate any other mechanism by which a tenant who did not avail of the mechanism u/s 21 could not be considered as a defaulter in payment of rent. Moreover, the appellants accepted before the lower Appellate Court that the deposit of rent in the previous disposed of suit was not valid.

23. In such light, therefore, the question whether the appellants deposited rent in the previous suit bona fide and on the wrong advice of the Advocate paled into insignificance. Answers to such questions in favour of the appellants would not afford the appellants protection against eviction.

24. A deposit made in the previous suit, since disposed of, could be treated to be a ground of default when a tenant had obtained the benefit of Section 17(4) of the West Bengal Premises Tenancy Act, 1956 in the earlier suit. A decree for eviction could be passed in the second suit on the ground of default.

25. In view of the observations made herein the second appeal is dismissed. The judgments and decrees of the lower Courts are affirmed. There will be no order as to costs.

26. Urgent photostat certified copy of this order, if applied for, be given to the learned Advocate for the parties upon compliance of all requisite formalities.