

.....Plaintiffs Vs. Abl International Ltd. and anr.

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Court : Kolkata

Decided On : Jan-31-2014

Judge : Debangsu Basak

Appellant :Plaintiffs

Respondent : Abl International Ltd. and anr.

Judgement :

IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction Original Side Before: The Honble Justice Debangsu Basak C.S.No.601 of 1989 G.A.No.298 of 2009 G.A.No.1340 of 2005 G.A.No.1746 of 2005 G.A.No.2699 of 2012 G.A.No.2778 of 2002 G.A.No.3049 of 2006 Paramanand Agarwal & ORS..Plaintiffs -Versus- ABL International LTD.& Anr.

..Defendants For the Plaintiff : Mr.Jaydip Kar, Advocate Mr.Billwadal Bhattacharya, Advocate For the Defendant : Mr.Surajit Nath Mitra, Sr.Advocate Mr.Arindam Mukherjee, Advocate Heard on : January 29, 2014 Judgment on : January 31, 2014 DEBANGSU BASAK, J.

Five applications came up for consideration in this suit.

A centrally air-conditioned building was constructed in the city of Kolkata at Shakespeare Sarani.

Such building subsequently became popularly known as air-conditioned market.

The occupants of the buildings can be categorized into two groups, namely, occupants of shops and occupants of office spaces.

The entire building was let out to diverse tenants.

The air-conditioned market was owned by the Defendant No.1.

The electricity at the air-conditioned market was supplied by the Defendant No.2 through a high-tension line.

A transformer was installed at the air-conditioned market for stepping down the high voltage electricity.

A Section of the tenants of shop at the air-conditioned market in Kolkata filed the instant suit after obtaining leave under Order I Rule 8 of the Code of Civil Procedure, 1908.

The Plaintiff No.3 claimed itself to be a society registered under the West Bengal Societies Registration Act, 1961.

It claimed to be an association of tenants of the air-conditioned market.

According to the plaintiff, the Defendant No.1 was at a superior bargaining position.

The Defendant No.1 was able to dominate the will of the tenants at the air-conditioned market.

The Defendant No.1 was able to negotiate the terms and conditions of the tenancy conducive to the Defendant No.1.

The Defendant No.1 unilaterally fixed the total amount of monthly rent payable, and after such agreed rent was fixed, divide such rent into two portions, namely, service charges and air-conditioning charges according to the convenience and benefit of the Defendant No.1.

The Defendant No.1 would show rent at a low figure while keeping the air-conditioning charges disproportionately high.

The plaintiffs contended that the Defendant No.1 broke up the component of the rent into two portions ostensibly to prevent higher incidence of municipal tax for the tenants.

It was claimed by the plaintiffs that since the Defendant No.1 was in a superior bargaining position in relation to the members of the plaintiffs, the tenants did not have any option other than accepting the terms of the Defendant No.1.

The plaintiffs alleged that the agreement provided for upward revision of rent on the increase of the electricity tariff.

It was claimed by the plaintiffs that instead of an upward revision of the electricity tariff there was every likelihood of a downward revision.

The Clauses in the agreement which required an upward revision of rent was claimed to be against public policy and contrary to the provisions of West Bengal Premises Tenancy Act, 1956.

The Plaintiffs claimed protection under the West Bengal Premises Tenancy Act, 1956 so far rent and its revision were concerned.

During the pendency of the suit the quantum of rent to be payable by a tenant at the air-conditioned market was referred to the Rent Controller under the West Bengal Premises Tenancy Act, 1956.

Such quantum of rent was fixed by a formula adopted in such proceedings by the Rent Controller.

The order of the Rent Controller was challenged by way of an appeal.

Such appeal failed.

The order passed on appeal was the subject matter of revisional applications pending before this Honble Court.

G.A.3049 of 2006 The plaintiffs sought amendments to the plaint as indicated, by way of G.A.No.3049 of 2006.

Mr. Jaydip Kar, learned Advocate appearing for the plaintiffs submitted that the amendments sought for were necessitated due to events developing during the pendency of the suit.

The proposed amendments did not change the nature and character of the suit in any manner whatsoever.

The proposed amendments were necessary to prevent multiplicity of judicial proceedings.

The Courts ought to take a liberal view while considering an application for amendment.

In support of his contentions Mr. Kar relied on 2001 Volume 2 Supreme Court Cases page 472 (Ragu Thilak D.

John v. S. Rayappan & Ors.). 2002 Volume 7 Supreme Court Cases page 559 (Sampath Kumar v.

Ayyakannu & Anr.). and 2006 Volume 4 Supreme Court Cases page 385 (Rajesh Kumar Aggarwal & Ors. v. K. K. Modi & Ors.). Mr. Surajit Nath Mitra, learned Senior Advocate, for the Defendant No. 1 contended that, amendments on the basis of orders passed by any forum need not be incorporated.

In support of such contention Mr. Mitra relied on AIR 1961 Patna page 302 (State of Bihar v.

Ramgarh Farms and Industries LTD. & Ors.). He submitted that the order passed by the Rent Controller and confirmed on appeal were subject matter of the revisional applications pending before this Honble Court.

Although there was no stay in the revisional applications, he submitted that, any order passed in the suit after allowing the proposed amendments would reflect on the revisional applications and that the Defendant No. 1 would be seriously prejudiced in the revisional proceedings.

He contended that, the proposed amendments were inconsistent with the existing pleadings and the reliefs sought for in original plaint, and were downright contradictory.

According to him, the plaintiffs challenged the agreement existing between the tenant and the landlord in the original plaint.

By way of the proposed amendments, the plaintiffs sought to alter their stand and were now accepting the agreement.

Inconsistent and contradictory pleadings ought not to be allowed by way of an amendment.

The plaintiffs should not be allowed to change their original stand in the plaint by way of the proposed amendment.

He contended that prayer (ci) which was sought to be incorporated by way of the proposed amendment did not have any foundation in the original plaint.

By way of prayer (ci) the plaintiffs sought refund for which the original plaint did not contain any pleadings.

The plaintiffs sought to introduce a new cause of action.

According to him, prayer (ci) of the proposed amendment was changing the nature and character of the suit.

Similarly, with regard to prayer (di) and (fi) of the proposed amendments he submitted that the same did not have any basis in the original plaint and again such prayers, if allowed, would change the nature and character of the suit.

He submitted that the proposed amendments taken together would show that the plaintiffs sought to change the stand of the plaintiffs in the original plaint to something new.

This change of stand should not be permitted at all.

On the point that the parties should not be allowed to introduce a new cause of action or allowed to shift their stand Mr.Mitra relied on AIR1978 Madras page 285 (Kumaraswami Gounder & Ors.v.D.R.Nanjappa Gounder (dead) & Ors.).1994 Volume 2 Supreme Court Cases page 29 (Arundhati Mishra (Smt) v.

Sr.Ram Charitra Pandey).2008 Volume 14 Supreme Court Cases page 632 (South Konkan Distilleries & Anr.v.Prabhakar Gajanan Naik & Ors.).He contended that the proposed amendments were barred by the law of limitation.

The order of the Rent Controller fixing the fair rent was passed on February 14, 2002 and the appeal was disposed of on August 5, 2003.

The present application was made in September, 2006 beyond the period of limitation.

The claim which was barred by the laws of limitation could not be allowed to be introduced by way of an amendment.

In this regard he relied on 2008 Volume 15 Supreme Court Cases page 610 (Ashutosh Chaturvedi v.

Prano Devi alias Parani Devi & Ors.).I have considered the application for amendment as also the proposed amendment.

I have considered the submissions advanced on behalf of the parties as well as the materials on record.

Amendment to pleadings was governed by Order VI Rule 17 of the Code of Civil Procedure, 1908.

Various authorities were cited on behalf of the parties on the point of amendment.

In Ragu Thilak D.

John (Supra) the Supreme Court was concerned with a plaintiffs application for amendment of the plaint.

Various authorities with regard to amendment were noted in Paragraph 5 of the judgment.

The Supreme Court applied the dominant purpose test of allowing an amendment to minimize the litigation and found that although a plea of limitation was taken with regard to the proposed amendment such plea being disputed could be made subject-matter of issue to be framed in the suit after allowing the amendment as was prayed for.

In Sampath Kumar (Supra) the Supreme Court was concerned with an application for amendment of the plaintiff.

The Supreme Court posed a question to itself as to whether it was permissible to controvert through amendment a suit merely for permanent prohibitory injunction into a suit for declaration of title and recovery of possession.

The Supreme Court found, in the facts of the case, that the basic structure of the suit was not altered by the proposed amendment.

What was sought to be changed was the nature of relief sought for by the plaintiff.

The Supreme Court was of the view that, when a fresh suit was permissible the same relief which could be prayed for in a new suit, could be permitted to be incorporated in the pending suit.

Further, the Supreme Court found that allowing the amendment would curtail multiplicity of legal proceedings.

In Rajesh Kumar Aggarwal (Supra) the Supreme Court was concerned with an application for amendment made by the plaintiffs.

The Supreme Court was of the view that the Courts would allow all amendments that were necessary for determining the real question in controversy between the parties provided it did not cause injustice or prejudice to the other side.

On facts the Supreme Court found that the cause of action arose during the pendency of the suit and as such the proposed amendment ought to be allowed

more so since the basic structure of the suit was not changed.

Again the Supreme Court found that when it was permissible to file an independent suit then the same relief which could be prayed for in the new suit could be permitted to be incorporated in the pending suit.

It held that the real controversy test was the basic and cardinal test.

It was the primary duty of the Court to decide whether the proposed amendment was necessary to adjudicate the real disputes between the parties.

If it was so, the amendment was required to be allowed; if not the amendment would be refused.

It held, that while considering an amendment application, the Court should not go into the correctness or falsity of the case in the amendment.

It was not required to record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of the amendment are not to be adjudged at the stage of prayer for amendment.

In State of Bihar v.

Ramgarh Farms (Supra) the Division Bench of Patna was concerned with an application for amendment made by the plaintiff.

The amendment was disallowed on the finding that the proposed amendment was a new assertion, a fresh cause of action and was entirely foreign to the scope of the suit.

Mr. Mitra for the Defendant No.1 laid stress on a passage of the judgment which questioned the legitimacy of allowing the prayer for amendment on the basis of a finding of a Court in a pending litigation.

With due respect to Mr. Mitra such passage was qualified with the finding by the Division Bench that the proposed amendment was entirely foreign to the scope of the suit.

The amendment was disallowed principally on the ground of the same being foreign to the scope of the suit.

With all due respect to Mr. Mitra the Division Bench judgment of the Patna High Court cannot be read to mean that a finding of a Court in a pending litigation could not be incorporated by way of amendment even if the same was relevant to the issue.

In *Kumaraswami Gounder (Supra)* the Full Bench of the Madras High Court was concerned with a reference on the question whether Section 8 of the Hindu Succession Act, 1956 was applicable to a case where a husband died intestate before the Act came into force and his widow inherited his property, but was not possessed the property and died subsequent to the commencement of the Act.

After the opinion of the Full Bench was delivered, two appeals were considered by the Madras High Court.

While considering one of such appeals the Madras High Court disallowed the proposed amendment on the ground that it sought to set up a totally different cause of action which *ex facie* could not stand on the same line with the original plaint.

The proposed amendment was disallowed by the Madras High Court on the finding that the amendment sought for was after thought and lacked bona fides.

In *Arundhati Mishra (Supra)* the Supreme Court was concerned with an application for amendment of a written statement.

The defendant in such proceedings initially filed written statement and took a stand that he was the real owner and remained in possession as the owner and that the plaintiff was only a benamidar.

By the proposed amendment the defendant sought to set up a plea of *adverse possession*.

The Supreme Court found that the plea of *adverse possession* was always available with the defendant in the suit.

The defendant did not explain such plea being raised belatedly.

Consequently, the Supreme Court did not allow the proposed amendment.

In *South Konkan Distilleries (Supra)* the Supreme Court was concerned with an amendment to the written statement and counter-claim.

The Supreme Court found that by way of the amendment the defendant was making out a new case contrary to the pleadings contained in the written statement and counter-claim.

It further found that the claim made by the defendant through the proposed amendment was barred and that no purpose would be achieved by allowing the amendment which was already barred by the laws of limitation.

The Supreme Court exercised its discretion not to allow the amendment.

In *Ashutosh Chaturvedi (Supra)* the Supreme Court was concerned with an application for amendment of plaint.

In the facts of that case the Supreme Court found that the proposed amendment was barred by the laws of limitation.

It was of the view that since the proposed amendment was barred by limitation, Court ought not to exercise its discretionary jurisdiction and allow the amendment of the plaint.

The authorities cited before me required a Court considering an application for amendment to consider such prayer on the following parameters:- (i) The power to allow amendment was wide and could be exercised at any stage of the proceedings in the interest of justice on the basis of guidelines laid down by various High Courts and the Honble Supreme Court; (ii) The approach of the Court ought to be liberal in allowing amendments; (iii) Amendments were to be allowed in the pleadings to avoid uncalled for multiplicity of litigation; (iv) The rule of amendment was essentially a rule of justice, equity and good conscience and the power of amendment ought to be exercised in the larger interest of doing full and complete justice to the parties before the Court; (v) The Court would give leave to

amend the pleadings unless it was satisfied that the party applying was acting malafide; (vi) Courts ought to take notice of subsequent events in order to shorten the litigation to preserve and safeguard the rights of both the parties and to subserve the ends of justice; (vii) The real controversy test was the basic and cardinal test and it was the primary duty of the Court to decide whether to adjudicate upon the real disputes between the parties the proposed amendments were required.

If it was, the amendment would be allowed; if it was not, the amendment would be refused; (viii) Pre-trial amendments ought to be allowed more liberally than those which were sought to be made after commencement of trial or after conclusion thereof; (ix) There was no absolute Rule that in every case where a relief was barred because of limitation, amendment should not be allowed.

It was open to the Court to allow an amendment if it was of the view that allowing the amendment would subserve the ultimate cause of justice and avoid further litigation; (x) Amendments could be allowed when the plea that the proposed amendments were barred by limitation was disputed; (xi) Amendments to written statement could not be considered on the same principles as an amendment to the plaint; (xii) The Court was not required to pronounce on the merits of the amendment proposed to be incorporated when considering an application for amendment.

The plaintiff sought relief with regard to a Clause of the tenancy agreement which permitted the Defendant No.1 to revise rent on the increase of electricity tariff.

It was contended by the plaintiff that the Rent Controller and subsequently on appeal the learned City Civil Court at Calcutta fixed the fair rent payable by the tenants.

The formula laying down the fixation of fair rent by the two forai took into consideration the electricity tariff.

By way of the proposed amendment the plaintiffs sought that the fair rent fixed by the Rent Controller and affirmed on appeal was the rent which was payable by the

tenants to the Defendant No.1.

Other reliefs which were sought to be introduced by way of the proposed amendment centered around this theme.

Quantum of rent to be paid by the tenants of the air-conditioned market to the Defendant No.1 was an issue in the original plaint.

Such issue, in my view, was not altered by the proposed amendments.

The proposed amendments narrated events subsequent to the filing of the suit.

The plaintiffs sought relief with regard to events developing subsequent to the suit.

These developments were the determination of fair rent by the Rent Controller and the same being affirmed by the learned City Civil Court at Calcutta.

The fair rent, so determined by a forum having jurisdiction to make such determination, was binding on the parties.

Although revisional applications were pending, there was no stay of the orders of the Rent Controller or of the learned City Civil court at Calcutta.

In absence of such stay, the order passed by the Rent Controller affirmed on appeal by the learned City Civil Court at Calcutta was binding on the parties.

The plaintiffs justifiably could claim reliefs on the basis of such orders. Events happening subsequent to the institution of the suit which the plaintiff wanted to bring on record by way of the proposed amendments were necessary to adjudicate the real disputes between the parties.

In narrating such events orders passed by the two forums were relevant.

Such orders were also relevant for the purpose of determining the real dispute between the parties.

In a given case narration of events which included orders of a forum may be necessary to determine the real controversies between the parties.

The test, that the amendment sought for, were necessary to decide the real dispute between the parties being satisfied the proposed amendment ought to be allowed.

Having found that the amendment proposed was necessary to decide the real disputes between the parties it cannot be held that the proposed amendments were inconsistent or contradictory to the original stand of the plaintiff.

The plaintiffs sought to protect its interests as tenants in the suit premises.

The stand of the plaintiffs in the original plaint was, that the Defendant No.1 would not be entitled to revise rent upwardly on the basis of increase in the rate of electricity consumption charges.

Fair rent was since fixed by the Rent Controller and affirmed by the learned City Civil Court at Calcutta.

In computing fair rent the Rent Controller took into account electricity charges.

Such decision was binding between the parties and was relevant in the instant suit.

Consequently, the nature and character of the suit was not changed by way of the proposed amendments.

From such perspective the proposed amendments were not inconsistent or contrary to the existing pleadings.

According to the Defendant No.1 the reliefs sought for by way of the proposed amendments were barred by limitation.

It was contended that the Rent Controller decided the issue on January 14, 2002 and the appeal therefrom was disposed of on August 5, 2003 by the City Civil Court at Calcutta.

The present amendment application made in September, 2006 was beyond a period of three years from the date of the judgment and order of the learned City

Civil Court at Calcutta.

According to the plaintiffs prayer (a) of the original plaint which sought a decree of perpetual injunction restraining the Defendant No.2 for claiming upward revision of rent on the basis of increase rate in electricity consumption charges was yet to be decided.

Since such issue was pending adjudication before this Court, it was submitted that the money claim made by way of the proposed amendment was not barred by limitation.

According to the plaintiffs, its members paid in terms of orders passed by this Honble Court and also the rent fixed by the Rent Controller.

The payments made by the plaintiffs were under orders of Court.

Whether the plaintiffs complied with the orders in its entirety or not, was required to be determined also.

Until a final adjudication in all of these aspects was reached the money claims that the plaintiffs sought to be introduced by the proposed amendments, were not barred by limitation.

Trial of the suit was yet to commence.

The issue raised in prayer (a) in the original plaint was yet to be decided.

Consequently, none of the pleadings or the reliefs sought to be incorporated by way of the proposed amendments was barred by the laws of limitation.

In the result, there would be an order in terms of prayer (a) of the amendment application.

The department will carry out the amendments on the plaint within two weeks from the date of the order.

The plaintiffs will serve a copy of the amended plaint on the defendants forthwith thereafter.

The defendants would be at liberty to file additional written statements, limited to the amendments allowed, within a period of two weeks from the date of receipt of the copy of the amended plaint.

The parties would be at liberty to disclose additional documents, if any, within two weeks thereafter; inspection forthwith.

The plaintiff will prepare the Judges brief of documents within two weeks thereafter.

Liberty to the parties to mention the suit immediately upon the same being made ready for hearing.

In the event the original plaint is not available in the department, the plaintiffs will file a reconstructed copy of the plaint on which the amendments allowed will be carried out.

G.A.No.1746 of 2005 By this application the Defendant No.1 sought change of personnel of Receiver appointed by the Order dated January 29, 1990 as well as other reliefs.

The Defendant No.1 also sought a direction upon the Plaintiff No.3 to either pay or secure a sum of Rs.3,32,282.78.

Mr.Surajit Nath Mitra learned Senior Advocate for the Defendant No.1 contended that an Order dated January 29, 1990 was passed on the application of the plaintiff.

By such order the Defendant No.1 was permitted to prepare the bills for rent as also the air-conditioning charges in accordance with the agreement entered into between the parties.

However, the defendant was permitted to realize the amount by way of rent inclusive of air-conditioning charges which was last paid by the plaintiffs to the Defendant No.1.

Regarding the balance amount the plaintiffs were directed to deposit the same with the Receiver.

The Advocate on record for the plaintiff was appointed as the Receiver.

The Receiver was directed to hold such amount without security and without remuneration.

Such arrangement was directed to continue till fair rent was determined by the authority concerned under the West Bengal Premises Tenancy Act, 1956.

He submitted that the reliefs sought for in this application were applied for earlier.

Orders were passed on such applications which ultimately culminated in the Order dated September 3, 2003 passed by the Honble Supreme Court of India.

By such order the Honble Supreme Court permitted the Defendant No.1 to withdraw such applications with liberty to move such applications before this Court.

According to him pursuant to such liberty the present application was made.

He contended that an agreement between the parties was entered into on April 6, 1980.

Such agreement provided the mechanism for payment of rent.

The plaintiffs accepted such agreement and acted thereon.

Air- conditioned market comprised of a large area.

The occupants of air- conditioned market according to him, could be categorized into two, namely, tenants in the shopping area and tenants of the office spaces.

There were 215 tenants in the shopping area.

All the tenants of the shopping areas were not members of the Plaintiff No.3.

According to him 83 tenants went to the Rent Controller for the purpose of determination of fair rent.

None of the other tenants approached the Rent Controller or any other forum for such purpose.

The Plaintiff No.3 was comprised of 76 of the tenants in the shopping area.

Some of the members of the Plaintiff No.3 who were tenants at the time when the suit was instituted surrendered their tenancy and left the building.

He contended that the Defendant No.1 raised bills on the tenants of the shopping area in accordance with the Order dated January 29, 1990.

In terms of the Order dated January 29, 1990, the tenants were obliged to pay the amount which they last paid immediately prior to the date of the application in which the Order dated January 29, 1990 was passed, to the Defendant No.1 directly.

The balance amount was required to be paid by the plaintiffs to the Receiver appointed by such order.

The Defendant No.1 from time to time raised bills on the tenants.

So, according to him, such tenants were obliged to pay the portion as directed by the Order dated January 29, 1990 to the Defendant No.1 and the balance was required to be deposited with the Receiver.

According to the Defendant No.1 a sum of Rs.3,32,282.78 lying with the Receiver.

The Defendant No.1 sought that such sum be made over to the Defendant No.1 by the Receiver.

The reliefs sought for in the application revolved around such entitlement of the Defendant No.1.

Mr.Jaydip Kar learned Advocate for the plaintiff contested the contentions of the Defendant No.1.

He submitted that the issue of entitlement of the Defendant No.1 was adjudicated upon and set at rest.

Such issue was according to him, decided by the Orders dated September 29, 2000 and September 3, 2003 passed by the Honble Supreme Court.

In any event, such issue was raised and decided by the order dated March 7, 2006 passed by the Division Bench.

The Order dated March 7, 2006 was subsequent to the present application.

In support of the contention that, the issue stood adjudicated and that such issue could not be raised in the proceedings and further that the principles of res judicata applied even at interlocutory stages he relied upon 2005 Volume 1 Supreme Court Cases page 787 (Bhanu Kumar Jain v.

Archana Kumar & Anr.) and 2008 Volume 2 Supreme Court Cases page 507 (Ajay Mohan & Ors.v.H.N.Rai & Ors.).He contended that similar issue was raised by the Defendant No.1 in an application made in August 1992.

On such application an Order dated August 8, 1995 was passed.

Such issue ultimately reached the Honble Supreme Court where the Defendant No.1 sought similar relief.

Such applications were disposed of by the Order dated September 3, 2003 passed by the Supreme Court.

He contended that fair rent was adjudicated upon by the Rent Controller by the Order dated January 14, 2002.

The order of the Rent Controller was challenged on appeal which was disposed of on August 5, 2003 by affirming the order of the Rent Controller.

Although revisional applications were pending there was no stay of the order of the Rent Controller or of the City Civil Court at Calcutta.

Therefore, taking into account the quantum of rent paid by the members of the Plaintiff No.3 to the Defendant No.1 in terms of the fair rent fixed by the Rent Controller, the Plaintiffs were entitled to refund from the Defendant No.1 rather than the Defendant No.1 being entitled to any sum from the plaintiffs.

He, therefore, submitted that no relief be granted to the Defendant No.1 on this application.

On the issue as to whether the relief sought for by the Defendant No.1 was barred by res judicata or not, Mr.Mitra for the Defendant No.1 submitted that the scope and ambit of the application before the Division Bench which resulted in the Order dated March 7, 2006 was limited to supply of electricity to shops as well as maintenance of the air-conditioning facility.

The quantum of rent to be received by the Defendant No.1 was not up for adjudication by the Division Bench.

Directions given by the Division Bench contained in the Order dated March 7, 2006 were to be read in such context.

The Division Bench did not alter the subsisting Order dated January 29, 1990 which obliged the tenants to pay rent in the manner directed by such order.

The Chartered Accountant appointed as special officer to make calculation by the Appeal Court did not give any notice to the Defendant No.1 as to filing of any report pursuant to the Order dated March 7, 2006.

Such report, if any, therefore, was not binding upon the Defendant No.1.

He contended that the issue as raised in this application was not decided by the Honble Supreme Court as was abundantly made clear in the Order dated September 3, 2003 of the Honble Supreme Court.

By such order liberty was granted to the Defendant No.1 to seek similar relief which the defendant No.1 was now seeking by way of the present application.

According to him the reliefs sought for in the application was not barred by the principles of res judicata.

I have considered respective submissions of the parties and the materials available on record.

The nature of disputes between the parties warranted a neutral person to be appointed as a Receiver.

A Receiver was appointed by the Order dated January 29, 1990.

Directions were given to the parties as well as to the Receiver by such order.

The directions contained in the Order dated January 29, 1990 were to continue till the disposal of the suit.

Final disposal of the suit was awaited.

The allegations leveled by the Defendant No.1 were directed against the tenants rather than the Receiver himself.

It was the contention of the Defendant No.2 that the members of the Plaintiff No.3 did not pay a portion of the bill raised by the Defendant No.1 upon them to the Receiver.

Therefore, even on the allegations of the Defendant No.1 the Receiver appointed by the Order dated January 29, 1990 was not at fault.

Therefore, no case was made out by the Defendant No.1 for the purpose of the replacing the Receiver appointed by the Order dated January 29, 1990.

The Defendant No.1 sought a direction upon the Receiver to deposit the sum of Rs.3,32,282.78 with this Honble Court.

Such sum according to the Defendant No.1 represents the portion which the members of the Plaintiff No.3 was obliged to keep in deposit with the Receiver in terms of the Order dated January 29, 1990.

In the alternative the Defendant No.1 sought that such sum been paid by the members of the plaintiff to the credit of the instant suit.

The Receiver was, therefore, on the submissions of the Defendant No.1 not put in funds to the extent of Rs.3,32,282.78 by the members of the plaintiff, who according to the Defendant No.1, was obliged to do so in terms of the Order dated January 29, 1990.

The Receiver appointed by the Order dated January 29, 1990 not being put into funds by the members of the Plaintiff No.3 the question of the Receiver being directed to put in such amount with this Honble Court did not arise.

The Defendant No.1 is not entitled to such relief at this stage.

The next question that arose was whether the members of the plaintiff No.3 or the Plaintiff No.3 should be directed to put in such sum to the credit of the suit or not.

This issue could be conveniently adjudicated upon at the hearing of the suit.

The liability of the members of the Plaintiff No.3 to deposit the sum was strongly disputed.

Such disputes according to the Defendant No.1 were subsequent to the order of the Rent Controller.

According to the plaintiffs on the basis of the fair rent determined it was the obligation of the defendant No.1 to refund excess payment received by the Defendant No.1 on account of rent rather than the members of the Plaintiff No.3 being liable to pay any sum to the Defendant No.1.

According to the plaintiff, the Defendant No.1 in terms of the Order dated January 29, 1990 realized rents at rates higher than fair rent fixed by the Rent Controller.

The Rent Controller fixed fair rent on January 14, 2002.

Such fair rent included the period for which the members of the Plaintiff No.3 paid the Defendant No.1 in terms of the Order dated January 29, 1990.

The determination of fair rent attained finality on August 5, 2003.

Although revisional applications were pending the judgment and order of the learned City Civil Court at Calcutta dated August 5, 2003 was operative since there was no stay order passed in such revisional applications.

Therefore, till such time such judgment and order subsisted the same was binding upon the parties.

In such perspective fair rent stood determined.

At this stage I am not inclined to grant the relief of directing any of the members of the Plaintiff No.3 or the Plaintiff No.3 to make any payment to the Defendant No.1 without the suit being finally heard.

The reliefs sought for in this suit would entail a question as to the quantum of rent payable.

Only upon such issue being decided could the liability of the parties inter se be arrived at.

Therefore, it would not be proper to give any direction upon any party to pay any sum to the other party prior to determination of such issue.

The parties were protected by the existing mechanism of payment put into place by orders of this Court.

G.A.No.1746 of 2005 would, therefore, be heard along with the suit.

G.A.No.2699 of 2012 This was an application Defendant No.1 seeking directions upon the plaintiff including the members of the Plaintiff No.3 to comply with the Order dated March 7, 2006 read with the Rent Controllers Order dated January 4, 2002 and for other reliefs.

Since the liability inter se between the parties required adjudication by way of trial G.A.No.2699 of 2012 would be taken up along with the suit.

G.A.No.298 of 2009 This was an application by the Defendant No.1 seeking appointment of an auditor to audit the accounts of the Receiver.

An interim order was passed on February 20, 2009.

The parties submitted that no steps were taken pursuant to the Order dated February 20, 2009.

Mr.Surajit Nath Mitra learned Senior Counsel for the Defendant No.1 submitted that his client was withdrawing this application.

In such view G.A.No.298 of 2009 be dismissed as withdrawn without any order as to costs.

The interim order dated February 20, 2009 would, therefore, stand vacated.

G.A.No.2778 of 2002 There was controversy as to whether G.A.No.2778 of 2002 stood dismissed for default or not.

However, by consent of the parties the order of dismissal for default of G.A.No.2778 of 2002, if any, was recalled.

This was an application by the Defendant No.1 seeking relief with regard to rent.

Again since the liability inter se between the parties was required to be adjudicated on trial, G.A.No.2778 of 2002 would be considered along with the suit.

Conclusion:- G.A.No.3049 of 2006 is allowed on the terms stated.

G.A.No.1746 of 2005, G.A.No.2699 of 2012 and G.A.No.2778 of 2002 would be considered along with the hearing of the suit.

G.A.No.298 of 2009 is dismissed as withdrawn without any order as to costs.

Interim order passed therein stands vacated.

Certified website copies of this order, if applied for, be urgently supplied to the parties subject to compliance with all requisite formalities.

[DEBANGSU BASAK, J.].

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