

Appellant Vs. Respondent

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SooperKanoon Citation : sooperkanoon.com/1161008

Court : Kolkata

Decided On : Aug-11-2014

Judge : Bench

Appellant : Appellant

Respondent : Respondent

Judgement :

APO51OF2014C.S.219 OF 2006 IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction Original Side ABL INTERNATIONAL LTD.Appellant Versus PARAMANAND AGARWAL & ORS.Respondents BEFORE: The Hon'ble CHIEF JUSTICE MRS.MANJULA CHELLUR The Hon'ble JUSTICE ASHIM KUMAR BANERJEE Date : 11th August, 2014.

For the Appellants : Mr.S.N.Mitra, Sr.Advocate with Mr.Arindam Mukherjee, Ms.Sananda Mukherjee and Mr.U.S.Menon, Advocates For the Respondents : Mr.Joydip Kar, Sr.Advocate with Mr.Bilwadal Bhattacharyya Mr.S.Ghosh and Mr.S.Sengupta, Advocates THE COURT : This appeal is filed against the order passed in G.A.3049 of 2006 filed in C.S.No.601 of 1989.

The suit was filed by the tenants of the premises in question and the amendment was sought by the plaintiffs-tenants.

According to the appellants, the amendment 2 application ought not to have been entertained by the learned Judge as it was filed 17 years after the institution of the

suit and it referred to the monetary claim.

Therefore, the question of limitation would come as the amendment once allowed would go back to the date of institution of the suit.

The appellant herein was the landlord defendant before the learned Judge in the original suit and the respondents herein were the tenants.

It is not in dispute that at the time of filing of the suit, some of the tenants had gone before the Rent Controller for fixation of fair rent and during the pendency of the suit, other sets of tenants had also gone before the Rent Controller.

It is also not in dispute that the order of the Rent Controller fixing the fair rent is the subject matter of the revision pending before the very same Judge, who disposed of the above application for amendment.

According to the appellants, the controversy by virtue of amendment now raised pertains to refund of alleged excess payment in respect of air conditioning charges as it was considered part of the rent payable by the tenants.

No doubt, the claim for refund of the alleged excess rent said to have been paid by the tenants is the subject of revision pending.

Ultimately the order in the revision petition would decide whether the tenants are entitled to such refund or not.

The learned Judge has taken into consideration such fact and has allowed the amendment application.

If the tenants are entitled for refund, then the question of payment by the landlord would arise.

If revision petition 3 goes against the tenant, then the claim by way of amendment would not survive.

In the light of the above observations, we are of the opinion, all the contentions including the contention of limitation is kept open which shall be decided on merits

at the time of disposal of the suit.

Accordingly, the appeal is disposed of.

(MANJULA CHELLUR, C.J.) (BANERJEE, J.) dg AR(CR)

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