

**Prafull Kumar Saha Vs. Ranjit Kumar Saha**

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**Court :** Kolkata

**Decided On :** Sep-05-1997

**Reported in :** (1998)1CALLT9(HC)

**Judge :** Satyabrata Sinha and ;Bhaskar Bhattacharya, JJ.

**Acts :** [West Bengal Premises Tenancy Act, 1956](#) - Sections 2, 7(1), 13, 17(2) and 17(2A);; [Evidence Act, 1872](#) - Section 116;; [Constitution of India](#) - Article 136

**Appeal No. :** Civil Appellate Jurisdiction F.A.T. No. 258 of 1995

**Appellant :** Prafull Kumar Saha

**Respondent :** Ranjit Kumar Saha

**Advocate for Def. :** Mr. Subhra Kamal Mukherjee and ;Mr. Debasish Roy, Advs.

**Advocate for Pet/Ap. :** Mr. Saptansu Basu and ;Mr. Sandip Kumar Rao, Advs.

**Judgement :**

**S.B. Sinha, J.**

1. The defendant has filed this appeal against the Judgment and decree dated 4.1.96 passed by Sri Gopat Banerjee, learned Judge. 8th Bench, City Civil Court at Calcutta in Ejectment Suit No. 211 of 1982.

2. The plaintiff, who is the respondent in this appeal had filed the aforementioned suit on the ground that the defendant had defaulted in payment of rent from Baisak 1384 B.S. as also on the ground of subletting to one Mantu Kundu. Before the learned trial Judge, the defendant, while purporting to deny the relationship of landlord and tenant stated thus:

'In reply to para 1 it is denied that the Defendant is a tenant under the plaintiff. This defendant was inducted as a tenant by one Manindra Mohan Saha and the death of the said Manindra Mohan Saha his wife Thakurdasi Saha became the landlady who was taking rents from the defendant. After the death of said Thakurdasi Saha the plaintiff had been recovering rents as rent collector on behalf of the landlords. The plaintiff is not the owner of the suit premises.

That the defendant was paying rents, by money order and the plaintiff was receiving the same. On 27.6.81 the defendant as usual tendered the monthly rent for Baisakh 1388 (B.S) by postal money order, but the plaintiff refused to accept the same. Thereafter the petitioner again tendered rent by postal money order on 11.8.81. This time also the plaintiff refused to accept the same. Hence, it is denied that the defendant failed and neglected to pay rents. This is in reply to para 2 of the plaint.

On the basis of the aforementioned pleadings, the following issues were framed:

- '1. Is there any relationship of landlord and tenant between the parties?
2. Is the defendant defaulter ?
3. Has the defendant sublet the suit premises ?
4. Is the defendant guilty of causing act to waste and damage in the suit premises?
5. Has any valid notice to quit served upon the defendant ?
6. Is the plaintiff entitled to relief as claimed in the suit ?
7. To what relief or reliefs if any, is the plaintiff entitled ?'

3. The learned trial Judge on the basis of the materials on records held that the plaintiff has been able to prove his case on both counts.

4. Mr. Saptansu Basu, learned counsel appearing on behalf of the appellant has raised 2 contentions in support of this appeal. Learned counsel firstly submits that keeping in view the admitted fact that the plaintiff is also one of the tenants in the suit premises he has failed to prove that he was legally entitled to receive rent and thus was a landlord within the meaning of section 2(d) of the West Bengal Premises Tenancy Act (hereinafter referred to as the said Act). Upon taking us through the written statement as also through the judgment, learned counsel submits that from a perusal of the judgment passed by the learned trial judge himself it would appear that except for one rent receipt, the plaintiff had not been able to prove other rent receipts. According to the learned counsel, this fact alone would be sufficient to show that the plaintiff was not the landlord. As regards the finding of the learned trial Judge to the effect that the appellant has not filed any application under section 17(2) of the Act, but had merely filed an application under section 17(2A)(b) of the Act. Learned counsel submits that such a conduct on the part of the defendant does not debar him from questioning the right of the plaintiff to maintain a suit for ejection. In support of his aforementioned contention, strong reliance has been placed in the case of *Sm. Parul Banerjee v. Anand Kumar Agarwalla* reported in 1979(2) CLJ 297.

5. Mr. Mukherjee, learned counsel appearing on behalf of the respondent on the other hand submits that the appellant having accepted the respondent as his landlord is estopped and precluded from raising the said issue in view of section 116 of the Evidence Act. As regards sub-tenancy, learned counsel submits that the said point was raised by filing an application for amendment of plaint which was allowed, wherein the subtenant, namely, Mantu Kundu was named. It was pointed out that an additional written statement was filed by Mantu Kundu and not by the appellant himself. It was further pointed out that before the learned trial Judge the defendant did not examine himself. Learned counsel, in this connection, has relied upon a decision of the Supreme Court of India reported in : AIR 1981 SC1172 .

6. In view of the respective submission of the learned counsel, following questions arise for this court's consideration.

1. Whether in view of the materials on record, learned court below was justified in holding that the plaintiff was entitled to maintain the suit as landlord of the defendant ?

2. Whether the plaintiff has been able to prove subletting of the premises in favour of Mantu Kundu ?

Re: Question 1.

Section 2(d) of the said Act reads thus :

'2(d) 'landlord' includes any person who, for the time being, is entitled to receive or but for a special contract, would be entitled to receive, the rent of any premises, whether or not on his own account.'

7. There cannot be any doubt that the definition of section 2(d) being an inclusive one, the same would be held to be an extended definition. it may be true as has been urged by Mr. Basu that the word 'entitled' in its usual sense should be held to be a right or a legal right to receive rent. However, in our opinion, the said question does not arise in the instant case. A bare perusal of the statements made in paragraphs 4 and 5 of the written statement would categorically demonstrate that the appellant in no uncertain terms has admitted the plaintiff to be his landlord. The very fact that the defendant has admitted that the plaintiff had been receiving rent, and furthermore, he had been sending such rent to him by postal money order and this in our opinion, he is estopped and precluded from questioning the right of the plaintiff to maintain a suit as landlord in respect of the premises in question. In view of the aforementioned pleadings of the parties, the court is entitled to raise a presumption that the defendant admits the plaintiff as being entitled to receive rent on behalf of owner of the property. Once such a fact is presumed, and no evidence in rebuttal thereof has been adduced, it was not even necessary for the learned trial judge to frame an issue in this regard. Furthermore, although an application under section 17(2A)(b) of the said Act is filed at an

interlocutory stage but the very fact that in the aforementioned application, the appellant did not question the relationship of landlord and tenant, and merely filed an application for quantification of arrears of rent and payment thereof in instalments, goes to show that the defendant by his conduct also had accepted the plaintiff as his landlord. The provision of section 116 of the Evidence Act and/or principles analogous thereto, bars the defendant from raising the said question. In the case of *Sm. Parul Banerjee (supra)*, upon which strong reliance has been placed by Mr. Basu, the fact situation was absolutely different. A Division Bench of this court merely held that where an issue as to the existence of relationship of landlord and tenant is raised, it is the duty of the court to decide the same before the tenant is asked to deposit rent on his application under section 17(2) of the Act. In this case, such a question was not raised, and in fact by filing an application under section 17(2A)(b) of the said Act, by necessary implication, the relationship was accepted.

8. The question as to whether a receiver of rent who is duly authorised, would be a landlord is no longer *res integra*. Reference in this connection may be made to the decisions reported in 1978(2) RCJ 243. 1974 RCJ 112 and 90 CWN 796. Mr. Basu, however, has placed strong reliance upon a Division Bench judgment of this court in *Mrs. Juthika Basu & Ors. v. Lt. Col. A. N. Sharma*, reported in 1992(1) CLJ 174. In that case, a third party without authority was held to be not entitled to receive rent. In the instant case, as noticed hereinbefore, such an authority on the part of the plaintiff/ respondent to collect rent would be presumed. In *B. Haldar v. P.M. Chakravorty*, reported in 71 CWN 152, a Division Bench of this court was considering the provision of section 7(1) of West Bengal Premises Tenancy Act. In that case, wife was the landlady whose husband was a doctor, The Rent Controller found the Doctor petitioner to be the landlord of the opposite party. Firstly, because he generally talked with the tenants at the time of the inception of the tenancies and looked after the affairs of his wife, who was admittedly the owner of the disputed premises; and secondly because, there was an understanding between the petitioner and his wife that whatever the Doctor did, would be his wife's ratification. In that case, therefore, a ratification was necessary. Furthermore, in that case, the tenant filed an application against the husband Doctor in terms of section 7(1) of the Act.

9. Furthermore, in this case, the defendant could raise the relationship of landlord and tenant, particularly in view of the clear and unequivocal assertions made in paragraphs 4 and 5 of the written statement. Admittedly, the defendant did not examine himself. It is now a well settled principle of law that the parties to the lis must examine themselves, failing which an adverse inference shall be drawn. Reference in this connection may be made to the decisions reported in AIR 1929 Privy Council 230, which has been followed by the Bombay High Court in AIR 1931 Bombay 37 and : AIR1984 Bom1 . In this view of the matter, we are of the opinion that keeping in view the fact that the defendant/appellant admittedly has defaulted in complying with the order passed by the learned trial Judge in terms of section 17(2A)(b) of the said Act, the decree for eviction on the ground of default cannot be assailed.

Re: Question 2.

10. In the instant case, as notice hereinbefore, the sub-tenant was named. The defendant did not examine himself to show that the aforementioned Mantu Kundu was not his sub-tenant. In fact, the statement made in the plaint had not been traversed. In as much as, no written statement was filed after the plaint was amended. Additional written statement was filed by the aforementioned Mantu Kundu, which, in our opinion, was rightly not taken into consideration by the learned trial Judge, in view of the fact that the aforementioned Mantu Kundu was not impleaded as a party defendant in the suit. It is also not disputed that the aforementioned Mantu Kundu was in exclusive possession of the property in question. The question as to whether the defendant had been accepting rent from the aforementioned Mantu Kundu, or not, can be stated by the defendant himself but he did not choose to examine himself. In such a situation, passing of consideration for allowing the aforementioned Mantu Kundu to occupy exclusively the tenanted premises, would be presumed. In *Bhagwati Prasad Gupta v Prakash Bhalotta* reported in (1991) 3 SCC 329 a Division Bench of the Supreme Court observed :

'It is thus indisputable that the appellant-tenant has not only vacated the suit premises but the premises are kept locked and are in disuse and he has shifted

his business to Main Bazaar now known as Maya Bazaar. The shop visited by the learned Judge had the signboard with the name-plate 'Gupta Refrigeration & Electrical Works (Sales and Service,'. Further the suit shop is in disuse and there is no board and the electric line of the premises is disconnected.

Here is a tenant who was vociferously haranguing to the court that he 19 in dire need of the suit premises and his business would be totally ruined and that he would suffer irreparable loss if he is evicted from the suit shop. This is entirely false and need not be re-stated. However, an ingenious affidavit has been filed by him in which he merely denies that he has shifted his business. This is too feeble an attempt to traverse what stares in our face and such prevarication must be rejected as unworthy of examination. The consequence, therefore, indicated in our order dated October 30, 1980 must ensue. It would be abuse of the process of this court under Article 136 to further examine the appeal of the appellant on merits. We accordingly dismiss the appeal with no order as to costs.'

11. The fact of the present case is in all fours with the aforementioned decision.

12. For the reasons aforementioned, we do not find any merit in this appeal, which is accordingly dismissed with costs. Advocate's fee quantified at 100 G.M.S.

13. After the Judgment was delivered, Mr. Basu prays on behalf of his client for some time to vacate the premises. In the peculiar facts and circumstances of the case, we grant 6 months time to the tenant to vacatethe premises subject to the condition that both the tenant and the subtenant would give an undertaking before this court within 2 weeks from date.

**R. Bhattacharya, J.**

14. I agree.

15. Appeal dismissed with cost