

Benu Roy Vs. Manindra Nath Chatterjee

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Court : Kolkata

Decided On : Jul-18-1968

Reported in : AIR1969Cal67,73CWN10

Judge : Bijayesh Mukherji, J.

Acts : West Bengal Premises Tenancy (Amendment) Act, 1968 - Sections 1(2) and 17B(1)

Appeal No. : Civil Revn. Case No. 1301 of 1968

Appellant : Benu Roy; Manindra Nath Chatterjee

Respondent : Manindra Nath Chatterjee; Benu Roy

Advocate for Pet/Ap. : Amiya Kumar Chatterjee and ;Pramatha Chandra Roy, Advs.

Judgement :

ORDER

Bijayesh Mukherji, J.

1. The question raised upon this rule under Section 115 of the Code of Civil Procedure at the instance of the tenant-defendant is: whether or no his application dated April 8, 1968, under Section 17B, Sub-section (1) of the West Bengal Premises Tenancy (Amendment) Act, 4 of 1968, (shortened hereafter into the Act)

is time-barred by virtue of the provisions in Section 17B, Sub-section (1), itself. The learned munsiff holds, it is.

2. As a matter of words, there appears to be no escape from the conclusion the learned munsif has come to. And what are the words? Other ingredients being there--they are very much there--the tenant may, within a period of sixty days of the commencement of the Act, make the requisite application. So, what is the date of such commencement? Section 1, Sub-section (2) of the Act answers it:

'It shall be deemed to have come into force on the 26th day of August 1967.'

Sixty days from that day expired on October 25, 1967. But the petitioner filed his application on April 8, 1968, It is thus much beyond sixty days from August 26, 1967. Will it, therefore, be barred? As a matter of words only, it looks like that.

3. Mr. Chatterjee, appearing in support of the rule, does not deny that the way I have proceeded does lead to the conclusion I have come to. But he contends, in that case there cannot be a single application under Section 17B, Sub-section (1), of the Act which was published for the first time in the Calcutta Gazette Extraordinary dated March 26, 1968, when a period of sixty days from August 26, 1967, had long passed by. I, for my part, shall not deny that what Mr. Chatterjee says is very true. What then is the way out?

4. Mr. Chatterjee says: reckon sixty days from March 26, 1968, the date when the Act, with the President's assent, was published for the first time in the Calcutta Gazette Extraordinary. But can I do so? That is the question. Here is a passage from Maxwell on the Interpretation of Statutes, 10th Edition, at page 409:

'* * * where a particular day is named for its commencement (that is the commencement of an Act), but the Royal assent is not given until a later day, the Act would come into operation only on the later day.'

This passage rests on footnote (p) which bears:

'(p) *Burn v. Carvalho*, (1834) 4 Nev. & M. 893. Section 9, Newspaper Libel Act, 1881 (c.60) required printers to make certain returns before July 31, 1881, yet it

was not passed till the following August 27.'

5. In the case just mentioned, the full title of which is (1834) 4 Nev & M 893, Assignees of Fortunato, a Bankrupt, (in Error), Fortunato committed the act of bankruptcy. Result: all the property, legal and equitable, which he had, became vested in the plaintiffs by the assignment. Having once passed to them, it could not be divested again to answer the event of a conditional assignment in favour of the defendants. The judgment entered for the plaintiffs was, therefore, affirmed.

6. The Master, upon the taxation of the costs of the plaintiffs, took this case to be within Section 30 of 3 and 4 Will. 4, Cap 42, the burden of which is that

'Interest shall be allowed by the Court of Error for such time as execution has been delayed by such Writ of Error, for the delaying thereof.' Accordingly, the Master allowed interest from June 3, 1833, on which day the writ of error was tested. As a matter of words, there appears to be little wrong in that. Because, Section 44 of that Act enacts that 'this Statute shall commence and take effect on the First Day of June' 1833. The statute, however, received the Royal assent on August 14, 1833. The Master's order, allowing interest from June 3, 1833, was set aside, on the ground that 'Section 30 is prospective only in its language and cannot, therefore, apply to this case'.

7. Such then is the ratio. But what language Section 17B, Sub-section (1), speaks -- prospective or retrospective? The key words, for the present purpose, are:

' * * * the tenant may within a period of 60 days of such commencement make an application.'

Thus, it is plain to be seen that the language is prospective only. Once that is so, and the President's assent is regarded as equivalent to the Royal assent --as, indeed, it must be -- the Act, for the purposes of Section 17B, Sub-section (1), must be taken to have come into operation on March 26, 1968, when the Act --the President's Act with the President's assent -- was published in the Calcutta Gazette Extraordinary of that very date and necessarily made available or known to the public that day (March 26, 1968) for the first time,

8. So, this ancient case of (1834) 4 Nev & M 893 contributes to the solution of the problem before me; not Section 6 of the Bengal General Clauses Act, 1 of 1899, Sub-section (1) of which opens with the words: 'where any * * * West Bengal Act is not expressed to come into operation on a particular day'. Here, by Section 1, Sub-section (2), the Act 'shall be deemed to have come into force on the 26th day of August 1967.' So, the latter part of Section 6, Sub-section (1), of the Bengal General Clauses Act, providing by Clause (b), that an Act, in such circumstances, that is, when it is not expressed to come into operation on a particular day, shall come into operation on the day on which the assent thereto of the President is first published in the Official Gazette, cannot receive effect.

9. Radhey Lal v. Mt. Lareti : AIR1954 All150 , deals with the U. P. (Temporary) Control of Rent and Eviction Act, 3 of 1947, which received the Governor's assent on February 28, 1947, and was published in the Official Gazette on March 1, 1947, but Section 1, Sub-section (3), of which contained the 'deeming' provision;

'It shall be deemed to have come into force on the 1st day of October 1946.'

More, by Section 14, it was enacted:

'No decree for the eviction of a tenant * * * passed before the commencement of this Act, shall * * * be executed against him as long as this Act remains in force * * *.'

The decree in ejectment was recorded on January 2, 1947. It was held that the date of commencement of the Act was, as laid down in Section 1, Sub-section (3), October 1, 1946, thereby making the decree dated January 2, 1947, a decree passed after the commencement of the Act on October 1, 1946, and thus beyond the reach of Section 14. The ratio of this decision favours the view that in the present case also the date of commencement of the Act must be taken to be August 26, 1967. But the principle of the English case I have gone by was not taken into consideration in the Allahabad decision. That apart, the language of Section 14 is such that it may well be regarded as retrospective only, stalling, as it does, the execution of the decrees passed before the commencement of the Act. No action for the future, as the making of an application in Section 17B, Sub-

section (1), of our Act, is provided for in Section 14 of the U. P. Act. What is provided for is stalling of action. So, the Allahabad decision would, perhaps, remain as it is, in spite of the principle of the English case.

10. *Satya Dev Cheema v. Addl. Deputy Custodian, Evacuee Property*, appears to be a case of another sort. There, Section 10 of the Administration of Evacuee Property (Amendment) Act, 42 of 1954, makes Section 4 *ibid*, retrospective from May 7, 1954. That does not, however, change the date of commencement of the Amendment Act on October 8, 1954, on which date it received the President's assent. This only illustrates the familiar ease of different parts of an Act coming into force on different dates, and has little to do with Section 1, Sub-section (2), of our Act, by which it shall be deemed that the whole of the Act has come into force on August 26, 1967.

11. To sum up, Section 17B, Sub-section (1), of the Act is prospective only, in so far as the making of the requisite application by the tenant is concerned, and, therefore, when there is a conflict between the named day of the Act's commencement (August 26, 1967) and the day when the President's assent was received (March 26, 1968), the Act came into operation, for the purposes of Section 17B, Sub-section (1), on March 26, 1968. I am, therefore, prepared to accept Mr. Chatterjee's contention: reckon 60 days from March 26, 1968. By parity of reasoning, I am unable to accept Mr. Roy's contention that in no event can there be relaxation from the date, namely, August 26, 1967, specified in Section 1, Sub-section (2), of the Act.

12. In the result, the rule succeeds and be made absolute. Upon all I see here, I make no order as to costs.