

Nripendra Kumar Mitra Vs. Smt. Amiya Dasgupta and ors.

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Court : Kolkata

Decided On : Jun-25-1982

Reported in : AIR1983Cal47,86CWN996

Judge : Pradyot Kumar Banerjee, J.

Acts : [West Bengal Premises Tenancy Act, 1956](#) - Section 29B and 29B(4); ;West Bengal Premises Tenancy (Amendment) Act, 1976; ;West Bengal Premises Tenancy (Amendment) Act, 1978

Appeal No. : C.R. No. 1018 of 1981

Appellant : Nripendra Kumar Mitra

Respondent : Smt. Amiya Dasgupta and ors.

Advocate for Def. : Mahitosh Majumdar and ;A.K. Ganguly, Adv.

Advocate for Pet/Ap. : Tapan Kumar Dutta, Adv.

Judgement :

ORDER

Pradyot Kumar Banerjee, J.

1. In this rule the petitioner challenges an order passed under Section 29-B of the West Bengal Premises Tenancy Act. The case of the petitioner is that the

petitioner is a tenant in respect of the flat consisting of two rooms in the ground floor of holding No. 34, Subarban Park Road, Howrah at a rental of Rs. 175/- per month payable according to the English Calendar month. It is alleged that the petitioner was never served with a summon under Section 29-B of the West Bengal Premises Tenancy Act and as such he was in the dark. He appeared before the Rent Controller on 4th March, 1981 and prayed for time to file some documents which was allowed up to 18th March, 1981. On 18th March, 1981 it appears that the petitioner filed written statement but no prayer was made for leave to contest the application under Section 29-B (2) of the West Bengal Premises Tenancy Act. Thereupon the learned Rent Controller passed an order on 23rd March, 1981 allowing the petitioner's application under Section 29-B of the Act and the order was made on the petitioner to vacate the premises by 31st March, 1981. Being aggrieved by the said order, the petitioner moved this Court and obtained the present rule.

2. The petitioners before the Rent Controller herein are made opposite parties, namely, 1. Sm. Amiya Dasgupta, widow of Late Debendra Nath Dasgupta, 2. Shyamal Dasgupta and 3. Salil Dasgupta both sons of Late Debendra Dasgupta, 4. Sm. Pratima Dasgupta, widow of Late Sisir Kumar Dasgupta, 5. Debapriya Dasgupta, son and 6. Sm. Debarati Dasgupta is the daughter of Late Sisir Kumar Dasgupta.

3. Before I deal with the point raised, it is convenient for me to say that Sisir Kumar Dasgupta died on 28th Oct., 1979 leaving behind his wife, Smt. Pratima Dasgupta, Debapriya Dasgupta, son and Debarati Dasgupta -- daughter and his mother Sm. Amiya Dasgupta as his legal heirs. From the petition, it appears which was filed sometime in 10th Sept., 1980 that a notice was served on the petitioner for vacating the premises along with other co-sharers for the use and occupation of the opposite parties. The said notice was sent by registered post with A/D on 21st May, 1978 but the petitioner did not vacate the premises. In the meantime, on 27th Oct., 1979, Sisir Kumar Dasgupta met with an accident and succumbed to his injury on 28th Oct., 1979. Sisir Kumar Dasgupta at that point of time was a Group Captain in the Air Force and after the accident and accidental death of Sisir Kumar Dasgupta Sm. Pratima Dasgupta and her minor son and daughter were allowed to

continue to stay in the said accommodation of Delhi up to 30th April, 1981. The Brigadier Commandar, Calcutta, certified on 3rd Nov., 1980 that Pratima Dasgupta along with her minor son, Debapriya Dasgupta and daughter Kumari Debarati Dasgupta are co-owners landlords of the premises No. 34, Subarban Park Road and requires the premises for their own use and occupation. As I have already said that the application was filed on 10th Sept., 1980, the petitioner under Section 29-B of the West Bengal Premises Tenancy Act appeared on 17th Nov., 1980 but no certificate as required was produced on the date of filing of the said application. By order dated 10th Sept., 1980 the petitioner under Section 29-B was allowed to produce the same on 17th Nov., 1980. The petitioner opposite party filed the certificate under Section 29-B of the Act being dated 3rd Nov., 1980 along with other papers. After the certificate was filed, notice was sought to be served on the opposite party. Though notice could not be served, the petitioner applied for service on the opposite party afresh on the office address fixing 4th March. 1981. On that date the petitioner appeared before the Court but no application was made for leave to contest the proceeding as is incumbent under Section 29-B (4) of the Act. Thereupon an argument was advanced on 18th March. 1980 without praying for leave to contest the application about the maintainability of the petition. The learned Rent Controller held that as no leave has been obtained, he cannot be allowed to contest the proceeding. On 29th March, 1981 an order was made in favour of the opposite parties. Hence the present application under Article 227 of the Constitution of India.

4. Mr. Tapan Kumar Dutta appearing for the petitioner argued and raised the following contentions. Firstly that the heirs of the late Group Captain of the Indian Air Force being co-owners of the premises, Section 29-B of the West Bengal Premises Tenancy Act has no application and if at all she will have to proceed in the matter along with other co-owners under the general provision of law and the special provision of Section 29-B of the Act is not applicable. Secondly it is argued that as no certificate was filed along with the application, the application itself is not maintainable in law. It is further argued that no notice under Section 13 (6) of the [West Bengal Premises Tenancy Act, 1956](#) has been served and the order of eviction cannot be made by the Rent Controller.

5. Mr. Majumdar on the other hand contended that as no leave was granted under Section 29-B (4) of the Act, the petitioner cannot raise this question at all. Mr. Majumdar, however, argued that even before the death of Mr. Sisir Kumar Dasgupta he along with other co-owners gave a notice for eviction. Mr. Majumdar further argued that the petitioner's application is not maintainable and is not tenable in law. The petition was admittedly filed on 10th Sept., 1980 and the petitioner, Sm. Pratima Dasgupta, obtained the certificate from the authority only on 3rd Nov., 1980 and immediately was filed. At that stage the opposite party did not appear. After the certificate was filed, the petitioner was asked to deposit the fee for service of the notice. Therefore, in my opinion, there is no merit in the contention that the application is not maintainable in the absence of the certificate being filed along with the application under Section 29-B of the Act. The notice was issued only after the certificate was obtained from the Army Authority.

6. It is argued by Mr. Dutta that the petitioner was not served with the petition upon which an order of eviction was made along with the notice of summon which was sent by registered post at his office address. It appears from the record that the notice was sent to him by the registered post for eviction in form as contained in Second Schedule. In that view of the fact, it cannot be denied that the petitioner was served with the copy of the application along with the notice of summons in the case.

7. Mr. Dutta next contended that the co-owner has no right to maintain the application. There is no doubt that the wife, son, daughter and mother of late Sisir Kumar Dasgupta under the Hindu Law are the legal heirs. Sisir Kumar Dasgupta is a co-owner of the premises along with others after the death of Debendranath Dasgupta, the original owner of the premises. The question is whether the application of the co-owner is maintainable under Section 29-B of the Act. In a case reported in : AIR1981 Cal329 (Asoke Gopal Dutta v. Nirmal Kumar Mitra), it has been held by the Single Bench of this Court that a co-owner cannot maintain such an application. Section 29-B of the Act does not extend the special remedy to anyone else other than the allottee landlord. In a case reported in : [1977]1SCR395 (Sri Ram Pasricha v. Jagannath) it has been held by the Supreme Court that a co-owner landlord is an owner and the suit by such landlord on the

ground of reasonable requirement of the members of the family is maintainable. In para 30 of the said judgment, their Lordships held that a co-owner is as much an owner of the entire property as any sole owner of a property is. The Hon'ble Single Judge, however, distinguished the case holding, inter alia, that the said case only applies to other provisions of law and (sic) the two co-owners along with the other owners, who are not allottee-landlords under Section 29-B, have no application. In my opinion, with due respect to the Hon'ble Single Judge, this is a wrong reading of the decision of the Supreme Court and the owner includes the co-owners also. If a co-owner is an Air Force Officer and is entitled to the provision of Section 29-B of the West Bengal Premises Tenancy Act, it is no answer to say that the other co-owners are not entitled to the benefit. In my opinion a co-owner is a co-owner in respect of the whole premises and the co-owner is entitled to the provision of Section 29-B of the Act for maintaining the proceeding. The reasonable requirement of a co-owner comes within the mischief of Section 13 (1) (ff) of the West Bengal Premises Tenancy Act.

8. Mr. Dutta contended that assuming Section 29-B applies, under Section 29-B (7) of the Act, the tenant is entitled to a notice of suit under Section 13 (6) of the Act. Section 29-B (7) of the Act reads as follows :-- 'The provisions of Sub-sections (2), (3), (4) and (6) of Section 13 shall, so far as may be, apply to a proceeding under this chapter but nothing contained in Sub-section (3A) of Section 13 shall apply to such a proceeding'. Section 13 (6) as is well known is a notice of suit or proceeding. It appears from the body of the petition that the co-owners gave a notice determining the tenancy of the tenant as far back as in 1978. Reading the averment in the petition regarding the notice along with Section 29-B (7) of the Act, it is clear that it can be read to be a notice of the proceeding.

9. Under Section 29-B (5) it is provided that the tenant must appear within the specified time if the summons is served and unless he filed the affidavit stating the ground of contesting the application for eviction as hereinbefore provided, then the statement made by the landlord for eviction shall be deemed to have been admitted by the tenant and the applicant shall be entitled to the order for eviction on the ground aforesaid. In the present case, as I have already said, that notice was served on the tenant but unfortunately, though he appeared, he did not apply

for leave to contest the application for eviction and no such leave was obtained under Section 29-B (5) of the [West Bengal Premises Tenancy Act, 1956](#). Therefore all the statements made in the said application shall be deemed to be admitted by the tenant and the petitioner before the Rent Controller shall be entitled to eviction on that ground alone.

10. In the Supreme Court case reported in AIR 1982 SC 25 (Anupama Sen Gupta v. Deb Kumar Sen Sarma) the Supreme Court considered the provision of Section 29-B of the present Act. In para 7 the question was raised whether the co-owner is entitled to file a petition under Section 29-B of the Act. Their Lordships of the Supreme Court considered this matter and came to a finding that the notice already given for eviction is tenable to the benefit of the co-owners if the owner died in the meantime. The Supreme Court held relying upon the case reported in : [1977]3SCR412 (Kanta Goel v. B, P. Pathak) as follows :-- 'Even though the first respondent was a co-owner, he was as such an owner of the entire property as any sole owner of the property and owned every part of the composite property along with others and he could file the petitions'. Again relying on the decision reported in : [1977]1SCR395 (Sri Ram Pasricha v. Jagannath the Supreme Court held that 'the first respondent as an heir could avail of the benefit of the notices issued in the name of his wife under Section 13 (6) of the Act which she was entitled to issue the object of which was only to give previous intimation to the tenants that eviction petitions would be filed against them. There was no need to issue fresh notices after her death. Having regard to the peculiar features of the case, we do not consider that there is any infirmity in the petition filed for the eviction of the appellants. Any other view would defeat the very object of Chap. VIA of the Act'. It must be remembered that Chap. VIA was inserted by amendment for the purpose of summary proceeding for the landlords mentioned in Section 29-B. Section 29-A makes it clear that by non obstante clause this remedy is only available to certain type of landlords only.

11. Mr. Dutta argued on the basis that the landlord is in possession for the use by them even without the eviction of the tenant. It is further argued that one of the tenants during the pendency of the suit vacated but still the applicant did not occupy the same and let it out again. As I have already said in view of Section 29-

B (4) as no leave was taken from the Court after the notice was served on the tenant the fact stated in the petition made under Section 29-B (4) of the Act shall be deemed to be admitted by the tenant and therefore Mr. Dutta cannot now argue without taking any leave from the Controller to contest the application that the applicant is in possession of the reasonably suitable accommodation.

12. We must remember the observation of the Supreme Court in the decision hereinbefore stated, that is, AIR 1982 SC 25 (Anupama Sen Gupta v. Deb Kumar Sarma). In para 9 the Supreme Court held that 'it is unfortunate that the so-called summary remedy provided by the statute has taken, nearly four years'. It is quite clear that before the death of Sisir Kumar Dasgupta, the Air-Force Officer, notice was given by his brother and mother and the application was filed unfortunately after the death of Sisir Kumar Dasgupta.

13. It is further clear that under Section 29-B (4), leave must be obtained by the opposite party if he wants to contest the application for eviction from the premises by filing an affidavit stating the ground on Which he contests the application. In default of such leave prayed for and granted the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to the order of eviction on the ground aforesaid. It appears that the averment made in the petition goes uncontroverted that is, the averment regarding the notice and reasonable requirement of the premises which is the subject matter of the proceeding and the application must be deemed to have been admitted by the tenant under Section 29-B (4) of the Act. This must be so, inasmuch as, the legislature enacted the provision in order that the particular type of landlord may get possession of the premises in a summary proceeding,

14. In the circumstances, therefore, in my opinion, the application filed by the applicant for eviction of the petitioner must succeed and the order passed by the Rent Controller is affirmed.

15. There will be no order as to costs.

16. Mr. Dutta on behalf of his client who is present in Court today prays for time to vacate the premises for six months. Mr. Majumdar on behalf of the opposite party

objected to six months being a long time and in view of summary proceedings it should not be granted. But in view of the fact that Mr. Mitra's daughter is reading in a school at Howrah and difficulties in the way of finding accommodation and that he undertakes to vacate by the 31st Dec., 1982 I grant him time till that date. An undertaking of the client in writing must be filed within a fortnight from today.

17. In default of filing the undertaking as directed the order of eviction will be immediately executable.

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