

Narendra Krishna Vs. Gour Chandra

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Court : Kolkata

Decided On : Mar-13-1951

Reported in : AIR1951Cal500

Judge : Sen and ;K.C. Chunder, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9 and 96; ;West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Section 32 and 32(1); ;
[Constitution of India](#) - Article 227

Appeal No. : Civil Rule No. 1052 of 1950

Appellant : Narendra Krishna

Respondent : Gour Chandra

Advocate for Def. : Sen Gupta and ;Smriti Kumar Roy Choudhury, Adv.

Advocate for Pet/Ap. : Bankim Chandra Dutta, ;Manindra Nath Ghosh and ;Anil Kumar Sett, Adv.

Judgement :

Sen, J.

1. This Rule has been obtained by the landlord. The tenant applied for fixation of standard rent before the Rent Controller. The Rent Controller fixed the rent and

the tenant appealed. The appeal of the tenant was successful and the landlord has now obtained this Rule against the order passed on appeal.

2. The proceedings for standardisation were under the provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, and the Rent Controller passed his order under that Act. When the appeal was filed, the new Act of 1950 came into force. The appeal was filed before the Chief Judge of the Presidency Court of Small Causes and he acting in accordance with the provisions of Section 32 (1) (a) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, transferred the case for hearing to another Judge at Calcutta, Court of Small Causes. The Judge decided the appeal.

3. It is argued on behalf of the landlord that the Court had no jurisdiction whatsoever to decide this appeal and the argument urged on his behalf may be put thus: Under the West Bengal Premises Rent Control (Temporary Provisions) Act of 1948, an appeal by a person aggrieved by any order of the Controller lay in respect of premises in the Presidency town of Calcutta to the Chief Judge of the Court of Small Causes, Calcutta. The Chief Judge could either hear the appeal as a Chief Judge or he could transfer it for hearing to such persons specially empowered to hear such appeals by the provisions of Section 32 (2). He had no right to transfer it to anybody else.

4. Under the Act of 1950 the Chief Judge to whom an appeal lay had the right to transfer it to any other Judge of the Calcutta Court of Small Causes. Learned Advocate for the petitioner argued that the learned Chief Judge was wrong in acting under the provisions of Section 32 of the 1950 Act and transferring the case to another Small Cause Court Judge as the appeal was filed under the Act of 1948.

5. Learned Advocate for the opposite party contended that there was no error. The power of transfer is merely a question of procedure. In questions of procedure retrospective effect is given to an Act and, therefore, the Chief Judge of the Court of Small Causes, Calcutta, before whom the appeal was filed had the power to act under the provisions of Section 32 of the Act of 1950 and transfer the case to another Judge of the Court of Small Causes, Calcutta. He further contended that

this was a purely technical matter and that we should not exercise our powers under Article 227 of the Constitution in a matter like this.

6. In our opinion the contention on behalf of the petitioner must prevail. The question involved is not a mere question of procedure at all. Under the Act of 1948 the forum which could hear an appeal was designated, that forum being the Chief Judge of the Court of Small Causes & he had the power to transfer the appeal to another forum, viz. the Court of the officer specially empowered under Section 32 (2) of the 1948 Act. Under the 1950 Act the appeal lies to an entirely different forum. It does not lie to the Chief Judge of Small Causes Court, as such, but it lies to the Chief Judge of the Small Causes Court acting as a Court of the District Judge under the Bengal, Agra and Assam Civil Courts Act. Now the forum of the District Judge acting under the Civil Courts Act is entirely a different forum from the forum of the Small Causes Court. The person may be the same but the capacity in which he acts is entirely different. Under the 1950 Act, he decides an appeal not as a Chief Judge but as a District Judge. Further under the 1950 Act, the Chief Judge acting as the District Judge is empowered to transfer the case to another Judge of the Court of Small Causes who shall act and try the appeal as a Subordinate Judge under the Bengal, Agra and Assam Civil Courts Act of 1887. Here again, the transferee Court is quite a different Court from the Court of any other Judge of the Court of Small Causes. The Presiding Officer of that Court may be a Judge of the Court of Small Causes but the Court functions as a Court of a Subordinate Judge under the Civil Courts Act.

7. Under the Act of 1948, the appeal was decided not by a District Judge or by a Subordinate Judge but by the Chief Judge of the Small Causes Court or under his order by a person specially empowered Under Section 32 (2) to hear such appeals. The forum in these two Acts are entirely different and it cannot be said that a question of procedure only is involved in this case. What is involved in this case is the jurisdiction of the forum to hear this appeal. If the present forum was not so entitled to hear the appeal then its decision must be set aside on the ground that it had no jurisdiction. This is not a mere question of technicality but it is one of the few questions, we think, which would justify us in interfering under the provisions of Article 227 of the Constitution.

8. We accordingly set aside the decision of the Court below and make this rule absolute with costs.

9. We send back the appeal for being heard by the proper Court.

K.C. Chunder, J.

10. I agree.

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