

Nalinakhya Bysack and anr. Vs. Shyam Sundar Halder and ors.

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Court : Kolkata

Decided On : Apr-09-1951

Reported in : AIR1952Cal199,55CWN621

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

Acts : West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Section 18 (1)

Appeal No. : Civil Rule Nos. 1038 and 1164 of 1950

Appellant : Nalinakhya Bysack and anr.

Respondent : Shyam Sundar Halder and ors.

Advocate for Def. : S.K. Dutt and ; Satya Priya Ghose, Advs. (in No. 1038), ; Nikhil Chandra Talukdar, Adv. (in No. 1164)

Advocate for Pet/Ap. : Atul Chandra Gupta, Amicus Curiae ; Hirendra Chandra Ghose, Adv. (in No. 1038), ; Jitendra Kumar Sen Gupta and ; Anil Kumar 'Sett', Advs. (in No. 1164) ; Purnendu Narayan Nath, Adv. (in No. 1038)

Judgement :

K.C. Chunder, J.

1. This Rule was obtained by a landlord against an order of a Judge of the Court of Small Causes, Calcutta, granting relief to the opposite party tenant against ejectment under Section 18 (1) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950.

2. The question which arises in this case is whether Section 18 (1) of the Act of 1950 applies to orders passed under Section 43 of the Presidency Small Cause Courts Act in a proceeding under Section 41 of the said Act. This point was considered at length by a Divisional Bench of this Court in 'Atulya Dhan Banerjee v. Sudnangsu Bhusan', Civil Revn. C. No. 1358 of 1950 reported In 55 Cal W N 343', by Mr. Justice G. N. Das and Mr. Justice Lahiri in which the judgment was delivered by Mr. Justice Das and agreed to by Mr. Justice Lahiri. The question has been examined at great length there and almost everything that was urged before us is covered by that judgment. Mr. Justice Das has very rightly pointed out that the Act is very badly drafted and there is some force in the contention of the petitioner in a case of this nature that because of the omission of the word 'order' in Section 18 (1) of the Act a change was intended. Obviously under the Act of 1948 it was clearly mentioned that relief was to be given against 'decrees and orders.' The words 'or order' have been omitted in the Act of 1950. Mr. Justice Das also was well aware of the fact as shown in that judgment that proceedings under Section 41 of the, Presidency Small Cause Courts Act are not suits and technically no decrees are passed in them either under the definition of decree in the Civil Procedure Code or the definition of decree as given in Rule 6 of the Small Cause Court Rules framed by the High Court under authority given to it by the Act. We are quite aware that an omission of a word in a legislation may show a change in the intention of the legislature, but such an omission may also be, as has been said by Lord Blackburn, for the sake of brevity at the cost of some obscurity, or words are often omitted because they are considered redundant. Mr. Justice Das has also rightly pointed out that the word 'decree' has not been defined in the Rent Control Act of 1950 or in the Bengal or Indian General Clauses Act. The meaning of the word has to be ascertained as far as Section 18 (1) is concerned from Section 18 itself. It was urged before us, though it does not seem to have been urged at that length before Mr. Justice Das, that a Divisional Bench of this Court in the case of 'Amulya Ratan v. Meghmala', 53 Cal W N 474 decided by the learned

Chief Justice and Mr. Justice Section B. Sinha held that the word 'suit' or 'decree' does not apply to proceedings or orders under Section 16 of the Act of 1948. It may be pointed out that Mr. Justice Das had considered this case and did not rightly give such weight to that decision in the present controversy. The reason is very simple. Section 16 of the Act of 1948 definitely mentioned the Court of Small Causes and therefore definitely drew by pointed reference the definition of suits and decrees as applicable to proceedings before the Court of Small Causes, Calcutta. There is no such reference in anything in this Section to the Court of Small Causes. It was further pointed out by Mr. Atul Chandra Gupta who was heard *amicus curiae* in this Court as playing a very prominent part in the enactment of this section that Section 8(5) showed that perhaps the Legislature from the very beginning intended that proceedings under Section 41 of the Presidency Small Cause Courts Act would come within the provisions of Section 18 (1) unless we are to say that between the enactment of Section 18 (1) and the enactment of the amended Section 18 (5) there was a complete change in the intention of the Legislature which is not apparent anywhere in the Amending Act. The Legislature had in our opinion omitted the word 'order' in Section 18 (1) either for the sake of brevity or because it had considered it to be redundant and not because a change from the Act in 1948 was intended in this Act. We see nothing will be gained by re-iterating the important considerations pointed out by Mr. Justice Das as to why the word 'decree' in this section and for the purpose of this section alone namely 18 (1) be given an extended meaning so as to have the meaning of an enforceable judgment effective between the parties but not connoting any such finality as distinguishes a decree from an order in the Code of Civil Procedure.

3. We are in full agreement with the main reasons given by Mr. Justice Das and we agree that to make some sense out of a badly drafted Act and to make it workable decree must be taken to include Orders under Section 41 of the S. C. G. Act. having paid the fullest consideration to the very exhaustive and learned argument of Mr. Hirendra Chandra Ghose on the Subject, that we should accept the decision of the Divisional Bench in Civil Revision Case No. 1358 of 1950 and hold that it was correctly decided and no reference to a Full Bench is necessary.

4. Under the circumstances as no other point of any importance arises, the Rule discharged. Each party Will pay his own costs.

5. 'Civil Revision Case No. 1164': The point which arises in this Rule is covered by our decision in Civil Revision Case No. 1038 of 1950 and we find no good ground for making a reference to a Full Bench. We accept the decision of the Divisional Bench in Civil Revision Case No. 1358 of 1950 reported in 'Amulya Dhan Banerjee v. Sudhangsu Bhusan', 55 Cal W N 343 and in view of it the Rule must be discharged. Each party will pay his own costs.

Sen, J.

6. I agree.

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