

Miss. E. Scott Vs. Residence Ltd.

Miss. E. Scott Vs. Residence Ltd.

SooperKanoon Citation : sooperkanoon.com/870715

Court : Kolkata

Decided On : May-27-1955

Reported in : AIR1956Cal606,60CWN746

Judge : K.C. Das Gupta and ;Guha, JJ.

Acts : West Bengal Premises Rent Control Act, 1950 - Sections 2(8) and 14(4);
;West Bengal Premises Rent Control Rules - Rule 4; ;[Evidence Act, 1872](#) - Section 41

Appeal No. : Civil Rule No. 3809 of 1954

Appellant : Miss. E. Scott

Respondent : Residence Ltd.

Advocate for Def. : Nirmalendu Dutt Majumdar, Adv. for ;A.K. Sen, Adv. and
;Bijoy Bhose, Adv.

Judgement :

K.C. Das Gupta, J.

1. This Rule is directed against an order of the learned Subordinate Judge, 24-Parganas, made under Section 14 (4), West Bengal Premises Rent Control Act.

2. The suit was in respect of a room in 209, Lower Circular Road in Calcutta. The plaintiff's case was that rent was payable at the rate of Rs. 180/- per month. The defendant contended that, though that was the rate originally agreed upon the rent payable at the time of the suit as also at the time of the application under Section 14 (4), West Bengal Premises Rent Control Act was Rs. 64-13-0, that being, according to her, the standard rent fixed for the premises. The present suit was instituted on 25-9-1953. It appears that on 16-1-1950, the petitioner applied to the Rent Controller for standardisation of rent and that on the 11th of April of that year the rent was standardised at Rs. 55-3-3 pies per month. This, however, was set aside by the appellate Court on 7-9-1950, and the application was remanded to the Rent Controller for re-hearing. After fresh hearing the Rent Controller again fixed the rent at Rs. 55-14-3 pies per month. There was another appeal. This appeal also was allowed, the order of the Rent Controller set aside and the case remanded for rehearing. On 2-12-1953, the case was dismissed for default. The petitioner filed an appeal against the order of dismissal. The order of dismissal was set aside and the case was restored by an order of the appellate Court on 27-5-1954. On 31-8-1954, however, this application was again dismissed. On 12-4-1954, one N. N. Das made an application before the Rent Controller claiming to be a sub-tenant under the present petitioner for the same premises, for fixation of standard rent therefor and the Rent Controller fixed on his application. Rs. 64-13 annas to be the standard rent, per month. The main question before us is whether the petitioner's contention that this amount of Rs. 64-13 annas which has been fixed by the Rent Controller on the sub-tenant's application as the standard rent for the premises is the rent that is payable for the premises for the purpose of calculating the arrears payable to the plaintiff under Section 14 (4) of the West Bengal Premises Rent Control Act, is correct.

3. The contention that the rent fixed as the standard rent on the application of N. N. Das is the rent payable also by the petitioner to her superior landlord, the opposite party, proceeds on the assumption that for one premises there can be only one standard rent which is payable by all different grades of tenants. Where the owner of a house, say A, lets out the entire house at a rent of Rs. 50/- per month to B, B lets out that entire house at a monthly rent of Rs. 60/- to C, C lets out the same to D at a monthly rent of Rs. 70/- and D to E at a monthly rent of Rs. 80/-

, there are clearly different rents for the same premises for the different tenancies. It is said, however, that if on the application of any one of them some amount is fixed as the standard rent for the 'premises', that rent will be the standard rent for all these different tenancies. Thus, on the above illustration, if on E's application Rs. 40/- is fixed as the standard rent, Rs. 40/-, it is contended, becomes, in law, the standard rent which is payable not only by E to D, but also by D to C, by C to B and B to A. This contention, to my mind is unsound. When the Statute speaks of standard rent for premises, it has, to my mind, reference to a particular relationship of tenancy. In the above illustration the tenancy of B under A, the tenancy of C under B, the tenancy of D under C and the tenancy of E under D are all different relationships of tenancy. 'Premises' has been defined in Section 2 (8) as meaning 'any building or part of a building or any hut or part of a hut let separately'. That, in my opinion, does not justify the view that as one premises has been let out to all these different persons, a rent having once been fixed for the premises governs all the different tenancies. The different relationships of tenancy are not wiped out by the fact that the same building or part of a building is being let out. The standard rent fixed for a premises clearly means rent fixed for a tenancy of the premises. Therefore, if there are different tenancies for the same premises, as in the illustration above, there may be as many different standard rents as there are tenancies. That the Legislature was fully conscious of this position is clear from the provisions of Rule 4 of Sch. A. This rule is in these words:

'Where any premises have been sub-let the standard rent of the sub-tenants shall not exceed by six and a quarter per centum the standard rent or a proportionate part thereof which may be taken as reasonably payable by the tenant who sub-lets the premises according as the premises are sub-let in whole or in part and where because of the proviso to Section 3 the tenant has no standard rent under this Act the excess mentioned above shall be with reference to the rent payable by the tenant.'

If the law were that once standard rent is fixed for a tenant, that is necessarily the standard, rent for the sub-tenant, these provisions of Rule 4 will become meaningless. In my judgment, it is wrong to consider fixation of rent for 'premises', except in relation to a particular tenancy. Consequently, when rent is fixed for

premises on the application, say, of E of the above illustration, it is the standard rent only for E's tenancy under D and not absolute standard rent attaching itself to the premises for all the different tenancies.

4. It is argued, however, that the judgment of the Rent Controller fixing the rent on the subtenant's application was a 'judgment in rem' and so, is binding against the whole world including the superior landlord. Let me assume for a moment that it is a 'judgment in rem'. Then, what it decides will be binding against all the world. But what does it decide? It decides what the rent is for the tenancy of N. N. Das under Miss Scott. The landlord cannot, on the assumption that it is a judgment in rem, challenge the correctness of that decision. But it does not follow, even if the judgment fixing the sub-tenant's rent at Rs. 64/137- be not open to challenge, that this also is the standard rent payable by Miss Scott to the plaintiff. The judgment decided nothing about the rent payable for Miss Scott's tenancy and even if it be binding against the plaintiff, it cannot produce the miraculous result claimed for it -- that this is also the rent payable to the plaintiff by Miss Scott.

5. I think it right, however, to express my own view that the judgment is not a judgment in rem. The ordinary rule of law is that only the parties to a suit and their successor-in-interest are bound by the decision in the suit; persons who are not parties or successors-in-interest of parties to the suit are not bound. An exception is made in the case of some judgments for reasons of convenience and these are made binding against all the world. These are known as 'judgments in rem'. Judgments granting probate, judgments in matrimonial matters granting divorce or nullity, decrees and judgments against ships are the outstanding examples of judgments in rem. Section 41, Evidence Act mentions several of these judgments in these words:

'A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof-

that any legal character which it confers, accrued at the time when such judgment, order or decree came into operation.

that any legal character, to which it declares any such person to be entitled accrued to that person at the time when such judgment (order or decree) declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, (order or decree) declared that it had ceased or should' cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, (order or decree) declares that it had been or should be his property.'

The judgment of the Rent Controller fixing rent for any particular tenancy does not fall within the class set out in Section 41, Evidence Act. It is dangerous for Courts to extend the definition of 'judgments in rem' to any judgments which do not fall within the well recognised class of judgments in rem; or which the Legislature, in express words or by necessary implication, makes binding against all the world. I can find no provision in the West Bengal Rent Control Act which even remotely suggests any intention of the Legislature that judgments fixing a standard rent on the application of any particular individual should be binding against 'all the world'. The provision in Section 30 of the Act that before exercising any other powers of the Act, the Rent Controller shall cause a copy of a notice of his intention to do so to be affixed in a conspicuous place at his office and shall duly consider any application from any person having interest in the premises does not, in my opinion, indicate any such intention.

6. I am aware that this view that the judgment by which standard rent is fixed on the application of a sub-tenant is not a judgment in rem is directly opposed to the decision of this Court in the case of -- 'Ahamuddin v. Banku Behary Dutt : AIR1927 Cal305 . In that case Suhrawardy and Graham JJ. held following an English

decision in the case of --'Kind v. York', (1918) WN 28 (B), and the decision of the Bombay High Court in the case of --'Chapsey Umersey v. Keshavji Damji', 45 Bom 744 : (AIR 1921 Bom 224) (C), that the order of the Rent Controller fixing the standard rent on the application of a sub-tenant was a judgment in rem and consequently there could not be another fixation of rent. Except saying that 'it has been held that a decision fixing the standard rent attaches to the premises and not to the person or parties to the suit and therefore such a decision is a judgment in rem & not in personam', their Lordships gave no reason for their 'view that it is a, judgment in rem. For the reasons mentioned above, I am of opinion, with great respect to the learned Judges that the view taken in the case of : AIR1927 Cal305 , is not correct. I would have felt bound, however, to send the case to a Full Bench for decision of this question, were it not for the fact that the decision in 'Ahamuddin's case (A)', was as regards fixation of rent under the Rent Act of 1920 while the fixation of rent in the present case was under a different Act, namely, West Bengal Premises Rent Control Act of 1950. As I have pointed out, Rule 4 in Sch. A of this Act contains a clear indication of the Legislature's mind that ordinarily there would be different standard rents for a tenant and for a subtenant. In view of this it is, in my opinion, unnecessary to make any reference to a Full Bench, for, even assuming that the decision In the case of : AIR1927 Cal305 ', was right on the law as it then stood, it is no authority for cases involving fixation of rents under the present law.

7. I am therefore unable to accept the defence contention that the rent fixed on N. N. Das's application as the standard rent for his tenancy under Miss Scott is also the rent payable for Miss Scott's tenancy under the opposite party. The arrears must therefore be calculated at the rate of Rs. 180/-, the contract rent.

8. There is therefore no ground for interference with the order passed as regards the rate of calculation of the arrears. It is pointed out, however, that though at the date of the application the amount due for September, 1950, was barred, the learned Judge has calculated the amount on the basis that the full amount of Rs. 180/-should be deducted from the sub of Rs. 217-3-9 pies deposited with the Rent Controller for September, 1950, up to February, 1951. In this he was clearly wrong. As the claim for rent for September, 1950 was already barred, no

deduction should be made on account of rent for September, 1950, out of what was paid for the months of October, 1950, to February, 1951.

9. Another mistake which the learned Judge has made is that while under Section 14 (4) an order for deposit of rent month by month being made, the defence against ejectment shall be ordered to be struck out on failure of the tenant to deposit such rent of any month by the 15th of the next following month, the learned Judge directed that monthly rent from December, 1950, was to be paid by the 3rd day of every current month. Even though under the contract rent may have been payable by the third day of the current month, the learned Judge has no jurisdiction to order payment by the date agreed upon in that contract, when he is passing an order for deposit under Section 14 (4).

10. It is clear therefore that the order passed by the learned Judge is defective. It is proper that a new order should be passed in its place. But for the fact that a decree had been passed for part of the period for which arrears are said to be due, the arrears would have to be calculated from the month of October, 1950 to April, 1955. It will be absurd however to pass an order under Section 14 (4) for payment of arrears said to be due for a period for which the plaintiff has already obtained a decree. This period has therefore to be excluded. In modification of the order passed by the learned Court below I would therefore order that the tenant defendant should deposit the sum of Rs. 1,920/- (giving her credit for Rs. 1,500/- already deposited in pursuance of our order) within 15 days from this date. For the month of May, 1955 and subsequent months she must pay at the rate of Rs. 55/14/9, that being the rate at which rent was last paid by her when that was the valid standard rent fixed, these rents by the 15th of the month succeeding the month for which the rent is due.

11. I would accordingly make this Rule absolute, set aside the order passed by the learned Subordinate Judge and pass instead the order indicated above. As the defence of the petitioner against ejectment has been struck out under the terms of Section 14 (4) for non-payment of the amount as directed by the learned Subordinate Judge and the order of the learned Subordinate Judge is itself being set aside, I would also set aside the order of the learned Judge striking out the

defence against ejectment and the decree for ejectment that followed. The plaintiff landlord will be at liberty to withdraw the sum of Rs. 1500/- already deposited.

12. There will be no order as to costs.

Guha, J.

13. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com