

Niren Samanta and anr. Vs. Rent Controller and ors.

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Court : Kolkata

Decided On : Feb-25-1988

Reported in : (1988)2CALLT317(HC),92CWN981

Judge : Susanta Chatterjee, J.

Acts : [West Bengal Premises Tenancy Act, 1956](#) - Section 36

Appeal No. : C.O. No. 3278 of 1987

Appellant : Niren Samanta and anr.

Respondent : Rent Controller and ors.

Advocate for Def. : R.N. Das, Adv.

Advocate for Pet/Ap. : Tarun Chatterjee, Adv.

Judgement :

Susanta Chatterjee, J.

1. The present revisional application under Article 227 of the Constitution of India has been filed by the landlord/petitioner challenging Order, dated 21.8.87 passed by the learned Rent Controller, Calcutta in R. C. Case No. 6 of 1986. By the impugned order the learned Rent Controller at the time of passing the final order in an application under Section 36 of the West Bengal Premises Tenancy Act found

that the proof of tenancy has not satisfactorily been placed by the applicant/tenant and he has given another opportunity to the applicant to prove his tenancy as a last chance by production of documents. Being aggrieved the landlord has come to this Court.

2. Having heard Mr. Chatterjee for the petitioner and Mr. Das for the opposite parties at length, it appears that an application under Section 36 of the West Bengal Premises Tenancy Act was filed and the landlord contested the same contending inter alia that the applicant is not a premises tenant as there is no premises at all. The applicant happens to be a tenant in respect of land and no provisions of West Bengal Premises Tenancy Act are attracted in the instant case. In the original application under Section 36 of the said Act filed by the tenant there is only mention of the land. However, the parties adduced evidence and in particular the tenant closed his case by exhausting all the evidence. Thereafter the argument was heard and at the time of delivery of judgment and/or final order, the learned Rent Controller found that the tenant has not been able to prove his case of premises tenancy and the objection raised by the opposite party/landlord cannot be overruled. Thereafter the Rent Controller has given another opportunity to the tenant to prove his tenancy. It is submitted by Mr. Chatterjee that this procedure is absolutely unwarranted and uncalled for. A party can ask for production of evidence, but after closure of the case the Court suo motu ought not to have given an opportunity to the party to adduce further evidence while it is found that the objection raised by the opposite party cannot be overruled. Mr. Das appearing for the opposite party drew the attention of this Court to Order 18 Rule 17A of the C.P.C. and according to him that at any stage of the proceeding and before the delivery for effective adjudication of the matter in dispute. In support of his contention he has relied upon a decision reported in (Om Prakash v. Sarupa and Ors.). It was found out therein that in view of Rules 17 & 17A of Order XVIII the party was entitled to examine the witness again on point of attestation of the will as inadvertently no questions were put to him on this point in his earlier examination. A party could not be allowed to suffer for any omission or lapse on the part of his counsel when it relates to advance the cause of justice. Moreover, the opposite party could be compensated by payment of costs. Mr. Das has also relied upon another judgment reported in 37 Cal. 259 (Indian High Court Reports)=6 I.C. 666

(Padmabati Dasi v. Rasik Lal Dhar). The Division Bench of this Court found that the court has inherent jurisdiction to rehear a matter before the order passed by the Court at a previous hearing has been perfected. It was found in the said decision that there has been a delay in excess of what can be reasonably accounted for and in respect of two periods of time. Having regard to that and to all the circumstances, no further time was extended. Thereupon the respondent gave the appellants notice of an application for the dismissal of the appeal for want of prosecution. The appellants, on the contrary, gave the respondent notice of an application for the rehearing of their application for further extension of time. The order of the 7th December, 1909 had not been drawn up. It was alleged by the appellants in their petition that the reason for the delay in obtaining the necessary stamps, which had not been explained to the Court of Appeal on the 6th December, had in fact been laid before Harington J. on the 15th November, and been accepted by him. On the background of such facts time was extended.

3. I have anxiously considered the submission made by the learned Advocates of the respective parties and I have also considered the reported decisions cited from the Bar. Regard being had to the materials on record, it appears that the parties fully, adduced evidence and concluded the case. The case was heard on merit and neither the applicant nor the opposite party prayed for any opportunity. At the time of delivery of judgment the Court has found that the objections of the opposite party cannot be overruled and it was strongly contended by the opposite party that the petitioner is not a premises tenant and there is no proof of tenancy as claimed by the applicant. Under these circumstances the Court has to deliver the final order and/or judgment on the basis of the materials On record. It is not the case of either party that additional evidence is required to enable the Court concerned to pronounce an effective adjudication. The stage as contemplated under Order 18 Rule 17A and Order 41 Rule 27 before the appeal Court to admit additional evidence is quite distinguishable in view of the facts of the present case. There is nothing on record to satisfy the Court why such an opportunity should be given to the applicant/tenant when the Court finds that there is no evidence on record and the objection of the opposite party/landlord cannot be overruled. For the aforesaid reasons this Court finds that there is irregular exercise of jurisdiction on the part of the learned Rent Controller in giving another opportunity to the tenant/applicant to

bring further evidence. The impugned order is as such set aside and the learned Rent Controller is directed to pass the final order on the basis of the materials on record. The revisional application is allowed and the matter is sent back to the Rent Controller for passing the final judgment within four weeks from the date of communication of this order.

4. There will be no order as to costs.

5. Let a copy of this order be sent to the learned Rent Controller as early as possible.

6. The learned Advocates are permitted to take short note of this order for communication.

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