

Jugal Kishore Vs. Subh Karan

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Court : Kolkata

Decided On : Jul-30-1951

Reported in : AIR1952Cal571,56CWN170

Judge : Harries, C.J., ; G.N. Das and ; Banerjee, JJ.

Acts : West Bengal Premises Rent Control (Temporary Provisions) Act, 1948 - Sections 3(2) 12(1) and 12(3); ; West Bengal Premises Rent Control (Temporary Provisions) (Amendment) Act, 1950 - Section 18, 18(5) and 50

Appeal No. : Civil Rule No. 1590 of 1950

Appellant : Jugal Kishore

Respondent : Subh Karan

Advocate for Def. : Pramatha Nath Mitra and ; Samarendra Krishna Deb, Advs.

Advocate for Pet/Ap. : T.K. Ghose and ; Protap Chandra Chowdhury, Advs.; C.S. Sen and ; Jajneswar Majumdar, Advs.

Judgement :

G.N. Das, J.

1. This Rule was obtained by the landlord (plaintiff) against orders of the Special Bench of the Court of Small Causes, Calcutta dated 29-11-1949 and 28-12-1949.

2. The facts may be stated thus:

The opposite party was a tenant of a portion of premises No. 203, Chittaranjan Avenue, Calcutta at a rent of Rs. 127/- per month.

After service of notice to quit on the opposite party the petitioner instituted proceedings under Chapter VII of the Presidency Small Cause Courts Act for eviction of the opposite party on the allegation that the tenancy had ipso facto determined on account of the latter's failure to pay rent for 3 consecutive months viz., Mangsir 2005 Sambat year to Magh 2005 Sambat year (corresponding to 17-11-1948 to 13-2-1949).

The opposite party filed a written statement to the effect that rent was not due for 3 consecutive months and that notice to quit had not been served.

3. The suit was heard by Sri B. P. Buxi, learned Judge, 4th Bench. By his preliminary judgment dated 29-11-1949 the learned Judge held that the rent for Mangsir 2005 fell due in Pous 2005 i.e. after the commencement of the 1948 Act and as such the tenant was in default for a period of 3 consecutive months and the tenancy had accordingly ipso facto determined. By his final judgment dated 23.12.1949 the learned Judge held that the notice to quit was duly served. In the result the suit was decreed.

4. The opposite party filed an appeal, being Appeal No. 217 of 1949.

5. The Special Bench which heard the appeal was of opinion that the notice to quit was properly served but there was no default in payment of rent for 3 consecutive months, which had accrued due after the coming into operation of the 1948 Act and as such there was no ipso facto determination of the tenancy.

6. The order of the Special Bench dated 16-8-1950 runs as follows:

'The appeal be allowed on contest, the judgment of the learned trial Judge be set aside and the appeal be adjourned to 23-8-1950 for determination of the amount payable by the defendant in view of the provisions of section 18 (5) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950.'

7. On the adjournment date, the petitioner who was the respondent in the said appeal did not appear. , The case was taken up on 6-9-1950 by the Special Bench and on the same day an ex parte order was made accepting a deposit made by the opposite party as sufficient and directing that 'the appeal be allowed ex parte, the judgment of the trial court be set aside and the suit be dismissed on full satisfaction.'

8. It is the propriety of the said orders of the Special Bench passed on appeal which is challenged in this rule.

9. The question whether the Rent Control Acts are void of the Constitution and the question whether the expression 'decree for recovery of possession' in section 18 of the- 1950 Act includes an order for possession under Chapter VII of the Presidency Small Cause Courts Act, have been decided in 'ISWARI PRASAD v. N.R. SEN', Civil Revn. Nos. 1369 and 1370 of 1950 (Cal), the judgment wherein was just now delivered.

10. Mr. Ghose learned Counsel for the petitioner has first contended that the view of the Special Bench that there was no ipso facto determination of the tenancy is erroneous in law.

11. The proceedings for ejectment were initiated on 8-4-1949.

12. Admittedly there was no special agreement as to the date of payment of the monthly rent, as such the rent would be payable by the 15th of the month next following under Section 12 (1) (a) of the 1948 Act, i.e. W. B. Act 38 of 1948.

13. Rent for the month of Mangsir 2005 would thus be payable by the 15th of Pous 2005 i.e. by 1-1-1950, similarly rent for Pous 2005 would be payable by the 15th of Magh 2005 and the rent for Magh 2005 would be payable by the 15th of Falgoon 2005 i.e. 28-2-1949.

14. On the above facts the courts below have differed on the question whether the tenancy had ipso facto determined in terms of section 12(3) of the 1948 Act.

15. The section is in these terms:

'Notwithstanding anything contained in this Act or in any other law for the time being in force, if a tenant fails for three consecutive months to pay or deposit in accordance with the provisions of this Act any rent payable by him in respect of any premises which has accrued due after the commencement of this Act, the interest of the tenant in such premises shall on such failure be ipso facto determined and he shall no longer be deemed to be a tenant.'

16. The crucial point is when does rent accrue due. The contention of the tenant-opposite party is that as rent accrues from day to day and the default contemplated by the section is in respect of rent accruing due after the commencement of the Act, i.e. 1-12-1948, it must follow that the default envisaged by the sub-section would be default in payment of rent since the month of December 1948 onwards. As such, before the tenancy can be held to have ipso facto determined, there must be default in payment of rent for December 1948, January 1949- and February 1949 that as the rent for February 1949 was payable by the 15th March 1949, and the demand for possession was prior thereto, the suit was premature.

17. On the other hand Mr. Ghose, learned Counsel for the landlord-petitioner has contended that rent does not accrue due from day to day for the purposes of section 12 (3) of the 1948 Act and the material date is when rent became payable, as such there was default in payment of rent for 3 consecutive months before the demand for possession.

18. Mr. Mitra, learned counsel for the opposite party has referred us to section 3 (2) of the 1948 Act and has urged that this concludes the matter in favour of the tenant-opposite party.

19. We have to decide which contention is correct.

20. I shall first discuss the question whether the Act of 1948 contains any general rule to the effect that rent accrues from day to day.

21. Section 3(2) of the 1948 Act on which Mr. Mitra placed great reliance, does not support his contention, it rather supports the contrary view.

22. Section 3(2) reads as follows:

'For the purposes of sub-section (1) the rent shall be deemed to have accrued from day to day.'

23. This sub-section therefore, negatives by implication the view that rent will accrue from day to day for other purposes contemplated by the Act.

24. There is no other provision of the Act to which our attention was drawn in support of Mr. Mitra's contention.

25. On the other hand, rent in case of monthly tenancies, is payable under section 12 (l)(a) of the 1948 Act in one instalment either in terms of any agreement or failing this by the 15th of the following month. Section 19 (1) of the 1948 Act which deals with deposit of rent also proceeds on the above view.

26. Section 36 of the Transfer of Property Act 1882 lays down that rent is deemed to accrue from day to day only in case of transfer inter vivos and in case of apportionment of liabilities only.

27. The Indian law does not lay down a general rule that rent accrues from day to day. Accordingly the question has to be decided according to justice, equity and good conscience which connotes the application of English Law.

28. In England the common law rule recognised apportionment only in case of interest and not in other cases. As regards rent, the agreement to pay rent for a month was treated as distinct and entire-'EX PARTE SMYTH', (1818) 1 Swans 337. The law has been altered by the Apportionment Act 1870 (33 and 34 Vict Cap 35) which has laid down a general rule of apportionment of liabilities as well as of rights.

29. As already stated the Transfer of Property Act 1882 did not adopt the rule enacted in England in 1870 but preferred to embody a more limited rule.

30. The above view is in consonance with that of the Privy Council in 'PHIROZSHAW BOMANJEE PETIT v. BAI GOOLBAI', 50 Ind App 276 where the position was accepted by the parties that in the absence of any rule in India the

English Common Law rule of no apportionment in case of discontinuous payments applied.

31. In the Bench decision of 'SATYENDRA NATH THAKUR v. NILKANTHA SINGHA', 21 Cal 383 Banerji J. observed that

'but the whole of the instalment in question fell due after that date and rent should, in our opinion, ordinarily be regarded not as accruing from day to day, but as falling due only at stated times according to the contract of tenancy, or the general law, in the absence of such contract as laid down by section 53 of the Bengal Tenancy Act (1885).'

32. The above view was also adopted by the Patna High Court in the Bench decision of 'CHHATAR SINGH v. QASIM GHANI, 19 Pat 824.

33. The above discussion clearly indicates that the expression 'any rent which has accrued due after the commencement of the Act' refers to such rent, the payment of which has fallen due, either by agreement of parties or under section 12 (1) (a) of the 1948 Act, after the commencement of the Act.

34. In the facts of the present case, rent for 3 consecutive months had fallen due since the commencement of the 1948 Act and before the demand for possession. The tenancy of the opposite party had therefore ipso facto determined under section 12 (3) of the 1948 Act. The Special Bench was in error in taking a contrary view. The view taken by the trial Judge was correct.

35. But the above finding does not carry the petitioner far.

36. On the petitioner's application, the propriety of the order for ejectment is now subjudice and this Court is now called upon to pass a final order in the ejectment suit.

37. Section 18 (5) of the 1950 Act (West Bengal Act XVII of 1950) was amended by W. B. Act LXII of 1950. The effect of the amendment is to require the court to give relief as provided in section 18 (5) where the tenancy has ipso facto determined under section 12 (3) of the 1948 Act.

38. Under section 18 (5) of the 1950 Act a duty is cast upon the court to give relief as contemplated in the sub-section.

39. The final order of the Special Bench was passed ex parte. It does not appear from the order what sums were deposited by the opposite party.

40. In these circumstances, I am of opinion that the case should be remitted to the trial Judge for giving relief to the tenant-opposite party as provided in section 18 (5) of the 1950 Act, as amended. The amount deposited by the opposite party should be taken into account for this purpose.

41. The Rule is accordingly disposed of parties will bear their own costs in this Court.

Harries, C.J.

42. I agree.

Banerjee, J.

43. I agree.