

Karali Charan Vs. Smt. Probhasini Devi

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Court : Kolkata

Decided On : Nov-21-1950

Reported in : AIR1952Cal129,55CWN645

Judge : Das Gupta and ; P.N. Mookerjee, JJ.

Acts : West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Sections 12 and 18(5)

Appeal No. : Civil Rule No. 784 of 1950

Appellant : Karali Charan

Respondent : Smt. Probhasini Devi

Advocate for Def. : Purushottam Chatterjee, Adv.

Advocate for Pet/Ap. : Khitindra Nath Mitter, Adv.

Judgement :

Das Gupta, J.

1. This Rule was directed against an order by the learned Munsif at Ali-pore rejecting an application of the present petitioner for recording evidence as regards his disadvantages in vacating the premises from which he was sought to be ejected in the suit brought by the opposite party. It appears that evidence has not

yet been adduced in the case, but the petitioner who was the defendant filed an application on the 12th of June, 1950, praying that it was necessary for the Court to investigate the advantages and disadvantages of both the landlord and the tenant under Section 12 (h) read with the Explanation as it appears in the present Rent Control Act of 1950, and praying accordingly that evidence may be allowed to be led on his behalf on this point. The learned Munsif was of opinion that these provisions of Section 12 of the Act of 1950 can have no operation to the present case and accordingly rejected the petition.

2. It was at first contended by Mr. Mitter in support of the Rule that Section 12 (h) of the Act does not vest any right in any party, that it really deals with procedure and consequently it should be held to have retrospective operation so that it will apply to all pending suits. There is a decision of this Court by P. B. Mukharji J., in the case of 'Ramesh Chandra v. Nagendra Nath', 85 Cal L J 324, where it was held that except with regard to cases which fall with the provisions of Section 18 (5) of the new Act, Section 12 of the Act has no retrospective operation. In our opinion this view is the only possible, view which can be taken, for there can be no, doubt in our opinion that Section 12 does deal with substantive right. It should be mentioned in fairness to Mr. Mitter that at a later stage of his, argument he conceded that there was not much to be said for the contention that Section 12 will have retrospective operation to all pending suits.

3. Mr. Mitter's next contention was that in any case as this suit was brought for ejectment not only on the ground of bona fide requirement by the landlord but also on the ground of default it cannot be said at this stage that Section 18(5) has no operation. The argument continues that if Section 18(5) has operation, then the Court has to take into consideration the provisions of Section 14 of the Act and consequently provisions of Section 12 also. We are prepared to agree that at this stage it cannot be said that the suit will not come within the operation of Section 18(5) of the Rent Control Act; but if it is such a suit that no decree for ejectment would be passed except on the ground of default in payment of arrears of rent under the provisions of West Bengal Premises Rent Control Act of 1948 and so is within the operation of Section 18(5) of the Act, it necessarily follows that the question of reasonable requirement by the landlord has not to be considered by

the Court. The consequence is that the provisions of Section 12 (h) of the New Act cannot by any means be attracted to the present suit. If it does not come within Section 18(5), then the provisions of Section 12 of the New Act can have no operation because it cannot be given retrospective operation except to the limited extent as allowed by Section 18(5). If, on the other hand, the suit is one under Section 18(5), the question of requirement which is dealt with by Section 12 (h) of the Act does not come into the picture at all.

4. I am therefore of opinion that the application was rightly rejected by the learned Munsif. The Rule is accordingly discharged. There will be no order as to costs.

P.N. MOOKERJEE, J.

5. I agree.

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