Ram Bagas Taparia vs Ram Chandra Pal on 3 November, 1988

Equivalent citations: AIR1989SC426, JT1988(4)SC436, 1988(2)SCALE1550, (1989)1SCC257, 1989(1)UJ252(SC), AIR 1989 SUPREME COURT 426, 1989 (1) SCC 257, (1988) 4 JT 436 (SC), 1989 RAJLR 25, (1988) 2 RENCR 596, (1989) 1 RENTLR 90

Author: S. Natarajan

Bench: R.S. Pathak, S. Natarajan

JUDGMENT

S. Natarajan, J.

1. This appeal by special leave arises out of a judgment of the High Court of Calcutta in a Letters Patent Appeal confirming the decree for ejectment passed against the appellant by the Civil Courts and upheld by a Learned Single Judge of the High Court in the second appeal preferred by the appellant.

2. The respondent had granted a lease of premises bearing No 149 Mohalla Bara Bazar, Midnapore to the appellant on a monthly rent of Rs. 70/-. After terminating the tenancy by means of a valid notice the respondent filed a suit for the eviction of the appellant on two grounds viz. (1) default in payment of rent from January 1966 onwards and (2) reasonable requirement of the leased premises for the residential needs of the landlord and also for starting a business in a portion of the building. The Trial Court granted a decree for the eviction of the appellant on the first ground and rejected the prayer for eviction on the second ground. The Appellate Court, while confirming the decree for eviction passed by the Trial Court sustained the case for eviction on the second ground also. In the second appeal preferred by, the appellant, a learned single judge of the High Court concurred, with the findings of the courts below on the appellant being liable to eviction on the ground of default in payment of rent In so far as the finding of the first appellate court on the second ground of eviction is concerned, the learned single judge took notice of the change brought about in the Act by insertion of Clause (ff) of Subsection (1) of Section 13 of the West Bengal Premises Tenancy Act 1956 (hereinafter the Act) and certain adverse features in the evidence regarding the requirement of the premises by the landlord for his own occupation and held that the finding of the Appellate Court on ground No. 2 cannot be sustained. The learned single judge's finding on this aspect of the matter is in the following terms :

> Mr. Ghose, learned Advocate appearing on behalf of the plaintiff respondent did not very seriously attempt to justify the findings of the lower appellate court in the context of the provisions of Clause (ff). The evidence adduced by the plaintiff did not

make any case for eviction of the defendant under Clause (ff). The plaintiff did not apply before me for taking notice of any subsequent event and no prayer was also made for giving him an opportunity to adduce further evidence in the light of Clause (ff) which came into force after the decision of the lower appellate court. In the above view I hold that the plaintiff's case under Clause (ff) of Sub-section (1) of Section 13 cannot succeed.

3. On the appellant preferring a Letters Patent Appeal, a Division Bench concurred with the view taken by the learned single judge and dismissed the Letters Patent Appeal. It is against the uniform findings of all the courts on the first ground on which eviction was sought -for, the appellant has come forward with this appeal by special leave.

4. Before we consider the contentions of the appellant to assail the decree for eviction on the ground of default in payment of rent we may deal with the submission of Mr. Mukherjee learned Counsel for the respondent that the High Court ought not to have interfered with the finding of the Appellate Court that the respondent was entitled to a decree for eviction on the second ground also viz. reasonable requirement of the premises for his own occupation. He further stated that the respondent's counsel Mr. Ghose could not have really failed to press for the acceptance of the Appellate Court's findings on the second ground on which also the appellant's eviction was sought for Mr. Mukherjee sought to substantiate his contention by pointing out that the respondent was living in a small rented premises and was therefore genuinely in need of the leased premises for his own occupation. This contention was opposed by Mr. Sanghi, learned Counsel for the appellant and it was urged by him that the adverse finding of the learned single judge on ground No. 2 had not even been canvassed before the Division Bench in the Letters Patent Appeal and, as such Mr. Mukherjee is not entitled to contend that the respondent can sup- port the decree for eviction on the second ground of requirement also under Clause (ff) of Sub-section (1) of Section 13 of the Act. We find no difficulty in accepting the objection raised by Mr. Sanghi to the plea of Mr. Mukherjee. The argument of Mr. Mukherjee overlooks the fact that the Act had undergone a change after the first appellate court had rendered judgment in the appeal by reason of the insertion Section (ff) to Sub-section (1) of Section 13 of the Act. The judgment of the single judge clearly sets out that by reason of the amendment to the Act the respondent had no case whatever for seeking the eviction of the appellant under Clause (ff) to Sub-section (1) of Section 13 of the Act and realising this position Mr. Ghose the counsel for the plaintiff respondent did not seriously attempt to justify the finding of the first appellate court in the context of the provisions of Clause (ff). Consequently, it follows that the debate in the appeal must stand confined only to the legality of the decree for eviction passed on the ground of default in payment of rent.

5. As regards ground No. 1 on which the appellant's eviction was sought for viz default in payment of rent, the respondent's case was that the appellant had failed to pay or tender the rent for the period commencing from 1-1-1966 and, therefore, the appellant was liable for eviction. The appellant's defence was to the following effect. During the first week of February 1966, the respondent came to collect the rent for the months of December 1965 and January 1966. He tendered a sum of Rs 140/- towards the rent for the two months. The respondent received the rent for the month of December 1965 but refused to receive the rent for January 1966 stating that the appellant should pay rent at

the enhanced rate of Rs. 90/- per month from 1-1-1966. Thereupon the appellant sent the rent for January 1966 as well as February 1966 by money order on 26-2-1966 but the respondent refused the money order on 12-3-1966. Therefore, he deposited the rent for three months viz. January, February and March 1966 on 19-3-1966 in the office of Rent Controller. Again on 13-5-1966, he deposited the rent for the months of April and May 1966. On 11th July 1966, he deposited the rent for June and July 1966. For the subsequent months of August, September and October 1966 he deposited the rent on 15 9-1966 after adjusting the municipal taxes he had to pay on behalf . of the respondent under pressure exerted by the municipality. There was therefore no default in payment of rent and the entire rent had been deposited in the office of Rent Controller on account of the refusal of the respondent to receive the rent for January 1966 when it was personally tendered to him in the first week of February 1966 and later when it was sent by money order on 26-2-1966 along with advance rent for February 1966.

6. On a consideration of the evidence adduced by the parties, the Trial Court as well as the first appellate court held that the appellant had failed to prove his tender of rent for January 1966 in the first week of February and the refusal of the same by the respondent. The two courts further held that the remittance of rent by money order on 26-2-1966 was not a valid remittance in so far as the rent for January 1966 is concerned because the remittance was not in accordance with Section 4(2) of the Act which stipulates that the rent should be paid by the 15th day of the succeeding month in the absence of any contract between the parties. Inasmuch as the remittance through money order had not been made on or before 15-2-1966, the remittance of rent for January 1966 by money order on 26-2-1966 was not a valid remittance. The courts also held that inasmuch as the deposit of rent for Tanuarv 1966 in the office of the Rent Controller was not in accordance with Section 4(2) of the Act, the deposit of rent for the subsequent months would also not constitute valid deposits under the Act. Consequently the first two courts rejected the plea of the appellant and held that he was liable to be evicted for default in payment of rent.

7. The learned single judge who heard the second appeal examined the matter from two angles vi?. (1) whether the appellant had made a valid tender of rent for January 1966 and if not, whether the deposit of rent for that month as well as the subsequent months in the office of the Rent Controller would absolve the appellant of his liability for eviction on the ground of default in payment of rent and (2) whether the appellant had complied with Section 17 (1) of the Act in order to claim benefit under Section 17(4) of the Act under the amended provisions of the Act. On the first question, the learned single judge held that the appellant had failed to prove the tender of rent for January 1966 before 15-2-1966 as per Section 4 (2) of the Act and that the respondent had refused to receive the payment. The single judge therefore held that the subsequent remittance by money order of the rent for January 1966 along with rent for February 1966 on 26-2-1966 was not a valid remittance for purposes of the Act. Consequently, the learned judge held that the deposit of rent for the subsequent months in the office of the Rent Controller would not cure the initial default committed by the appellant. In so far as the second question is concerned, the learned judge held that in order to claim the benefit of Section 17(4) of the Act, the appellant must have complied with the terms of Section 17(1) and followed the procedure laid down therein. Since the appellant had not deposited the entire arrears of rent, as per Section 17 (1), within one month of the service of the writ of summons on him or from the date of his appearance in the suit in the court or with the controller, the appellant was

not entitled to claim any benefit under Section 17(4). The learned judge further observed that if indeed the appellant had wanted to claim benefit under Section 17(4), he should have withdrawn the invalid deposits made in the office of the Rent Controller and deposited the amount afresh in terms of Section 17(1) of the Act.

8. In the Letters Patent Appeal it was contended on behalf of the appellant that the view taken by the learned single judge was hyper-technical and that it would be only a "fetish of technicality" if the appellant is made to suffer for his failure to have withdrawn the deposits from the office of the Rent Controller and make a fresh deposit of the amount in compliance with the requirements of Section 17(1) of the Act. The Division Bench declined to accept the argument holding that before the Act was amended, the only recognised mode of payment was by deposit in the court or payment to the landlord and it was only after the Act was amended, a deposit made to the Rent Controller within the time limit prescribed by Section 17(1) would also constitute a valid deposit. The Division Bench therefore found no merit in the contentions of the appellant and dismissed the letters patent appeal.

9. Before us it was argued by Mr. Sanghi, Senior Advocate appearing for the appellant, that the evidence clearly proved that the appellant had tendered the rent for January 1966 to the respondent in the first week of February 1966 and that the respondent had declined to receive the same since he wanted enhanced rent at the rate of Rs. 90/-per month and as such the appellant had time till the end of February 1966 to remit the amount through money order. It was further urged that in fact the appellant had remitted the rent through money order on 26-2-1966 and since the money order had been refused by the respondent on 12-3-1966, the appellant had deposited the rent in the office of the Rent Controller on 19-3-1966 and, by reason of it, there was no question whatever of the appellant having committed any default in the payment of rent for January 1966 or for the subsequent months. It was also argued that the rent for the subsequent period ending with 31-10-1966 had been deposited by the appellant with the Rent Controller without delay and, therefore, the courts below as well as the High Court were not justified in holding that the appellant was a defaulter and in passing a decree for eviction against him. Despite the strenuous arguments of Mr. Sanghi, we cannot sustain his contentions because it would involve re-appreciation of evidence and interference with concurrent findings of fact which have been approved by the High Court also. We may also point out that similar contentions had been raised before the learned single judge too in the second appeal and the learned judge has discountenanced them in the following manner :

> The evidence given by the defendant regarding personal tender of rent for the month of January 1966 was not very clear. The plaintiff who was examined as P.W. 1 had stated in course of his cross examination that he did not receive any sum of rent by money order and he could not say that the defendant sent him by money order the rent for the month of January 1966. He demanded Rs. 90/- as rent from the defendant for the suit premises. The defendant went on depositing rent with the Rent Controller. The defendant did not cross-examine the plaintiff regarding any personal tender of rent for the month of January 1966. There was no other evidence of any personal tender by the defendant in respect of the rent for the month of January 1966 within the time referred to in Section 4 of the West Bengal Premises Tenancy Act. Further, the judgment of the trial court and the lower appellate court did not show

> that the defendant had relied upon the personal tender of rent for the month of January 1966 either in the trial court or in the lower appellate court. In the above view, I am unable to hold that the defendant had satisfactorily proved personal tender of rent for January 1966. The tender by money order for the said month as already stated, was invalid and cannot support the relative deposit for the month of January 1966.

10. As far as the second aspect of the matter is concerned, the learned judge noticed the difference between the provisions of the Act before amendment and after amendment and held that the earlier deposits made by the appellant with the Rent Controller would not constitute valid deposits under Section 17(1) of the amended Act and summed up the position as follows :

> Therefore, I am of the view that the defendant-tenant under Section 17 (1) is required to deposit not only sums which are in arrears and remain outstanding, but also sums which may have been invalidly deposited. I am unable to accept the submission made on behalf of the appellant that the defendant is not required to deposit or pay under Section 17(1) sums which have been already deposited in the office of the Rent Controller although under Section 22(3) the same did not constitute payment of rent to his landlord.
>
> Section 17 (1) does not use the expressions 'sum in arrear' or the "sum not paid or deposited."
>
> ...
>
> "In the instant case, the plaintiff-landlord not having withdrawn the rent invalidly deposited in the office of the Rent Controller by the defendant-tenant there was no waiver of default by him the tenant continued to be in default at the date of the institution of the suit. Therefore, he was required to deposit or pay under Section 17 (1) also sums equivalent to rent for the period for which he had made default. I do not agree with Mr. Dasgupta the learned advocate for the appellant, that such payment or deposit under Section 17(1) would be an idle formality and that the legislature did not intend that a tenant in order to obtain relief under Sub-section (4) of Section 17 must deposit or pay sums equivalent to rent which was not actually outstanding. The expression 'may have made default' is very clear, and the same includes sums which the tenant fails to deposit according to law in the office of the Rent Controller."

The learned judge therefore held that the appellant was not entitled to claim relief under Section 17 (4) of the Act.

11. As we have already stated, the view taken by the learned single judge has been accepted and affirmed by the Division Bench.

12. From what has been stated above it may seen that the appellant's contention that he had personally tendered the rent for January 1966 in the first week of February 1966 to the respondent has not been accepted by the courts below or by the High Court. This finding being one of fact rendered on appreciation of evidence, its correctness cannot be re-agitated by the appellant in this appeal by special leave under Article 136 of Constitution. By reason of this position it follows that the remittance of the rent for January 1966 through money order on 26-2-1966 and the deposit made later on 19-3-1966 would not constitute valid payments of rent under the Act so as to absolve the appellant the charge of having committed default in payment of rent It has further been found that if the appellant had wanted to avail the benefit of Section 17(4) of the Act, he should have made a fresh deposit of the rent in accordance with the terms of Section 17(1) of the Act. Admittedly, the appellant had not made any such deposit It therefore follows that the appellant would not be entitled to claim benefit under Section 17(4) of the Act.

13. In such circumstances, the contentions of the appellant have to fail and consequently the appeal will stand dismissed. There will be no order as to costs. However, taking into consideration the fact that the appellant would require some time for securing another accommodation, he is granted time till 30th June 1989 to vacate the premises subject to the condition he file an undertaking in the usual terms within four weeks from today.