

Gopiram Agarwal

Vs

Sitaram Churiwala and Others

Civil Appeal No. 2600 of 1980

(D. A. Desai, A. Varadarajan, O. Chinnappa Reddy JJ)

15.09.1983

ORDER

1. We heard Mr. S. C. Majumdar, learned counsel for the appellant and Mr. Shankar Ghosh, learned counsel for respondents.

2. On November 3, 1980 after hearing the parties this Court by its order remitted the case to the trial court to record a fresh finding on issue No. 1 after giving further opportunity to the parties to lead evidence and address arguments. Pursuant to this direction, the case was remitted to the trial court where the parties were heard afresh. The trial court has certified the finding and the finding is against the tenant-appellant. The contention raised by the appellant-tenant was that there was implied surrender of the tenancy and a fresh lease had come into existence and therefore, the tenant-appellant will be entitled to the protection of the West Bengal Premises Tenancy Act. The trial court records a finding that there was neither implied surrender nor any fresh lease has come into existence between the parties. Mr. Majumdar, learned counsel for the appellant had filed some objections to the finding certified by the trial court. Having heard Mr. Majumdar, learned counsel we are satisfied that there is no substance in the objection raised by him. There was no other point left open for consideration in view of the earlier direction. Therefore, the appeal fails and must be dismissed with no order as to costs.

3. Mr. Majumdar submitted that in order to make some other alternative arrangement the tenant-appellant may be given some time to obey the decree of eviction. The suit was for recovery of possession of a godowns. Appellant we are told is a mill-owner and respondent is a landlord, whose business is to lease out godowns. In this background, We are of the opinion that the request of the tenant-appellant must be acceded to and some time may be given to him to make alternative arrangement. The tenant-appellant is given time up to and inclusive up to September 30, 1985 to vacate and hand over vacant and peaceful possession of the leased premises to respondents on condition that the appellant files the usual under-taking in this Court within eight weeks from today to the following effect :

(1) That the appellant will hand over vacant and peaceful possession of the suit premises to respondent on or before September 30, 1985.

(2) That the appellant will pay to respondent arrears of use and occupation charges at the same rate at which was paid rent within one months from today.

(3) That the appellant will pay to respondent future compensation for use and occupation of the premises month by month.

(4) That the appellant will not induct any other person in the suit premises.

4. The appeal is disposed of accordingly.

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