

CALCUTTA HIGH COURT

Atulyadhan Banerjee

Vs

Sudhansu Bhusan Dutta

(G Das and Lahiri, JJ.)

04.01.1951

JUDGMENT

Das, J.

1. This rule arises out of an appln. under Section 115, Civil P. C., and Article 227, Const. Ind.
2. The facts are as follows. The opposite party was a month to month tenant under the petnr. in respect of premises No. 110/2A/3 Amehrst Street, Calcutta at a rent of Rs. 16- per month, payable according to the Gregorian Calendar.
3. The opposite party failed to pay the rent for the months of February, March and April 1949.
4. Under Sub-section (3) of Section 12, West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, which was then in force, the interest of the opposite party in the said premises became ipso facto determined and the opposite party could no longer be deemed to be a tenant.
5. The petnr. gave the opposite party 7 days notice to vacate the premises, and on the failure of the latter to do so, initiated on 5-8-1949, proceedings under Section 41, Presidency Small Cause Courts Act, 1882, for recovery of possession of the said premises, on the ground that the interest of the opposite party had ipso facto determined as aforesaid. The proceedings were registered as Small Cause Ct. Suit No. 9240 of 1949 (Ejectment).
6. The opposite party filed a written statement denying the allegations made in the plaint. The suit was heard by the 2nd Bench of the Ct. of Small Causes & on 24-3-1950 an order under Section 43, Presidency Small Cause Courts Act, 1882, was made, possession being directed to be delivered on 25-4-1950.
7. On 31-3-1950, the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 (XVII [17] of 1950) came into force. This Act will hereinafter be designated as the 1950 Act for

the sake of convenience. The Act repealed the West Bengal Premises Rent Control (Temporary Provisions), Act, 1948 (XXXVIII [38] of 1948, hereinafter to be called the 1948 Act for the sake of convenience.)

8. On 2-5-1950, the opposite party filed an appln, under Section 18 of the 1950 Act, before the 2nd Bench of the Ct. of Small Causes, Calcutta. On 8-6-1950 the Ct. passed the following order:

"Pltf. absent Deft's. pleader Sri H. K. Sen present. Amount due is deposited in Ct. Decree, is set aside on full satisfaction. Money in Ct. to be withdrawn by the pltf."

9. The petnr. filed an appeal against the said order dated 8-6-1950. The appeal was registered as App. No. 1320 of 1950.

10. At the hearing of the appeal before the Special Bench a preliminary objection was taken on the ground that no appeal lay against the said order dated 8-6-1950. The Special Bench gave effect to the preliminary objection and by an order dated 28-8-1950, directed that "the appeal be rejected on contest as not maintainable before the Special Bench. No order is made as to costs."

11. The present rule was obtained by the petnr. against the order dated 8-6-1950 passed by the 2nd Bench in Suit No. 9240 of 1949 as also against the order dated 28-8-1950 of the Special Bench in App. No. 1320 of 1950.

12. Mr. Sanyal, learned advocate for the petnr., has not challenged the propriety of the order dated 28-8-1950, made by the Special Bench in App. No. 1320 of 1950. He has, however, contested the validity of the order dated 8-6-1950 passed by the Second Bench in Suit No. 9240 of 1949 on the ground that Section 18 of the 1950 Act has no application to an order for possession made under Section 43, Presidency Small Clause Courts Act, 1882, because such an order cannot appropriately be regarded as a decree for recovery of possession within the meaning of the expression in Sub-section (1) of Section 18 of the 1950 Act. The sub-section reads as follows :

"Where any decree for recovery of possession of any premises has been made on the ground of default in payment of arrears of rent under the provisions of the West Bengal Premises Bent Control (Temporary Provisions) Act, 1948, but the possession of such premises has not been recovered from the tenant, the tenant may apply to the trial Ct. within sixty days of the coming into force of this Act for vacating the decree for ejection against him."

13. Section 4, West Bengal Premises Rent Control (Temporary Provisions) (Amendment) Act, 1950 (LXII [62] of 1950) enacts that "in Section 18 of the said Act - (i) in Sub-section (1) for the words 'on the ground of default in payment of arrears of rent under the provisions' the following

shall be substituted, namely :

'on the ground that the interest of the tenant in such premises has been ipso facto determined under the provisions of Sub-section (3) of Section 12'."

14. Section 5 of the Amending Act (LXII [62] of 1950) expressly makes the amendment retrospective & applicable to pending proceedings. The opposite party can, therefore, get relief under the sub-section if the expression 'decree for recovery of possession' includes an order for recovery of possession under Chapter VII, Presidency Small Cause Courts Act, 1882.

15. The word "decree" is not defined in the 1950 Act or the Amending Act (LXII [62] of 1950).

16. The term is not defined in the Bengal General Clauses Act. It is defined in the C. P. C. This definition, with some modifications, has been made applicable to cases under the Presidency Small Cause Courts Act, 1882, by virtue of Section 8, C. P. C. & Notifn. No. 7980G, dated 3-7-1949 issued thereunder by the H. C.

17. Mr. Sanyal referred us to the decision in *Bai Maherbai v. Pherozshah Sorabji*¹, where it was held that the proceedings under chap. VII, Presidency Small Cause Courts Act, 1882, are not suits within Section 22 of that Act. Mr. Sanyal accordingly argued that the adjudication in such proceedings could not be regarded as 'decrees' within Section 18 of the 1950 Act.

18. In the present case, we are not directly concerned with the effect of proceedings under chap. VII or of an order under Section 43, Presidency Small Cause Courts Act, 1882 for purposes of that Act or other Acts.

19. We have to construe the meaning of the word 'decree' as used in Section 18 of the 1950 Act.

Cases Referred.

20. Ordinarily, a decree may be defined to mean the formal expression of an adjudication made in a suit which conclusively determines the rights of the parties, so far as the Ct. expressing it is concerned.

21. The word suit primarily means an action started on a plaint. But it is also used in a wider sense. In *Hurrochunder Roy Chowdhury v. Shoorodhonnee Debia*², Sir Barnes Peacock C. J. at p. 406 observed that :

"The word suit does not necessarily mean an action . . . Any proceeding in Ct. of Justice to enforce a demand is a suit. . . ."

In the case of *Bhoopendra, Narain v. Barodaprosad*, 18 Cal. 500. at p. 504, the word suit was held to embrace "all contentious proceedings of a civil kind, whether they arise in a suit or a

miscellaneous proceeding."

22. The explanation appended to Sub-section (1) of Section 12 of the 1950 Act states that:

"in the proviso to Sub-section (1) the term suit, does not include proceedings under Chap. VII, Presidency Small Cause Courts Act, 1882."

This implies that in other parts of the 1950 Act, the term 'suit' may include 'proceedings, under chap. VII, Presidency Small Cause Courts Act, 1882'. The marginal note to Section 18 of the 1950 Act speaks of the powers of the Ct. to rescind or vary decrees & orders.

23. In the above view, it is not possible to say that the word 'decree' unequivocally refers to "an adjudication in a suit only" & excludes an adjudication in a proceeding under chap. VII, Presidency Small Cause Courts Act, 1882

24. The question has to be decided on well-known principle of construction of statutes. I propose, therefore, to state the relevant rules of construction of statutes.

25. The fundamental rule of interpretation of a statute, to which all other rules are subordinate, is that a statute which expresses the will of the Legislature, is to be expounded according to the intent of the legislature that made it.

26. Again the rule is well settled that the words of the statute themselves best declare that intention. Where the words are precise & unambiguous, the meaning of the words must receive their full effect, however unjust, arbitrary or inconvenient the result may be.

27. But language is seldom free from ambiguity as to be incapable of bearing more than one sense. In such a case, to adhere rigidly to the literal and primary meaning of a word in all cases, would be to miss the real meaning. It was accordingly ruled in *Salmon v. Duncombe*³, that where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of law, except in the case of necessity or the absolute intractability of the language used. Thus where the meaning of a statute in its ordinary meaning & grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity or hardship or injustice not intended a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence, *Attorney General v. Lockwood*⁴;

28. As to the broad and apparent intention of the framers of the 1950 Act it is not possible to entertain any doubt that they intended to give protection, with retrospective effect, to all tenants against eviction consequent on default in payment of arrears of rent, under certain condition & that no distinction was sought to be made between tenants against whom suits for recovery of

possession were filed in the moffusil Cts. or in the Original Side of this Ct. & tenants against whom the summary procedure for eviction under chap. 7, Presidency Small Cause Courts Act, 1882, was resorted to. Such a discrimination would be based neither on logic nor on reason and would be unjust and unfair to a large body of tenants.

29. In my opinion, the expression "decree for recovery of possession" should be widely construed so as to include orders for recovery of possession made under Section 43, Presidency Small Cause Courts Act, 1882.

30. It was pointed out that Sections 12 (1) & 34 of the 1950 Act and Section 6 of the Amending Act, LXII [62] of 1950, make a distinction between orders for recovery of possession and decrees for recovery of possession. But the use of both the words order and decree in these sections may have been made *ex abundanti cautela* so as to embrace all possible cases of eviction e. g., orders for restoration of possession in restitution proceedings or miscellaneous proceedings under Order 21, Rule 100, C. P. C., etc.

31. Mr. Sanyal also referred us to the following observations of the learned Chief Justice in *Amulyaratan Bhattacharya v. Meghmala Dutt*⁵,

"It will be seen, therefore, that the order which is obtained in the Small Cause Ct. is very different from the decree for possession in this Ct., and the Small Cause Ct. cannot make a decree for possession which is final and conclusive between the parties subject only to appeal,"

32. The observations were made for an entirely different purpose viz. in construing the effect of Section 16 of the 1948 Act, & cannot help us in determining the meaning of the words 'decree for recovery of possession' in Section 18 of the 1950 Act.

33. I am not unmindful of the decision of this Ct. in *Nandalal v. Suresh Chandra*⁶, where the expression "any order or decree for recovery of possession of any house" occurring in Para. 10C, Bengal House Rent Control Order, 1942 fell to be construed. In that case this Ct. was of opinion that the word 'order' meant "an original order for recovery of possession--an order in the nature of a decree passed in a suit for ejection" i. e. an order under Section 43, Presidency Small Cause Courts Act, 1882. It is not necessary to consider whether the word order for possession refers only to an original order for possession because, in my opinion, the construction of the words used in para. 10C, Bengal House Rent Control Order, 1942, does not justify us in giving a restricted meaning to the words "decree for recovery of possession" in the 1950 Act so as to exclude orders for recovery of possession under Section 43, Presidency Small Cause Courts Act, 1882, which, according to *Nandalal Boy's case*, (50 C.W.N. 171 : A.I.R. (33) 1946 Cal. 113) itself, partake of the nature of decrees for recovery of possession.

34. My conclusion, therefore, is that the expression 'decree for recovery of possession' in Section 18 of the 1950 Act should be broadly construed so as to include an order for recovery of possession under chap. 7, Presidency Small Cause Courts Act, 1882.

35. The sole contention raised on behalf of the petnr. must, therefore, be overruled.

36. The result is that this Rule must be discharged but in the facts of this case, parties will bear their costs in this rule.

Lahiri, J.

37. I agree.

Cases Referred.

1151 Bom. 885 : (A. I. R. (14) 1927 Bom. 556)
29 W. R. 402 : (Beng. L. R. Sup. Vol. 985 F. B.)
3(1886) 11 A.C. 627 : (55 L. J. P. C. 69)
4(1842) 9 M & W 378 at p. 398
553 C. W. N. 474
650 C. W. N. 171 : (A. I. R. (33) 1946 Cal. 113)