

# CALCUTTA HIGH COURT

Jethmull Sethia

Vs.

Aloke Ganguly

Civil Revn. No. 1059 of 1950

(Roxburgh, J.)

23.02.1951

## ORDER

### **Roxburgh, J.**

1. This is a Rule against an order of the Judge of Calcutta Court of Small Causes, passed under Section 18 (1) of the West Bengal Premises Rent Control Act (XVII of 1950). The proceeding in question was started when the Calcutta Rent Ordinance, 1946, was in force. The order was eventually passed on November 1, 1949. On October 31 the learned Judge passed an order, and considering the question whether the defendant was a defaulter, has remarked :

"With regard to the default point, the defendant ought to have cleared off all arrears of rent by the 31st of December, 1948. He having failed to do that I find that the defendant is a defaulter."

2. The first point argued before me is that the provisions of Section 18 (1) of the West Bengal Premises Rent Control Act are only applicable where decree for recovery of possession of a premises has been made under the provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948. It is contended that the order here was not passed under that Act but under the Rent Control Ordinance and authority for this is sought in the case of *'Monmohon Moitra v. Gobinda das'*, The question considered there is not the question here under consideration. The question here under consideration is the interpretation to be given to the words used in Section 18 of the Act of 1950. From what I have quoted above it will be seen that the order of ejection was directly based on consideration that the tenant had not complied with the terms of Section 12 (1) (b) of the Act of 1948, which provided the tenant with the opportunity to make the deposit referred to in the said quotation the deposit to be made within one month of the 1948 Act coming into force on December 1, 1948. In the circumstances it seems to me clear that the present order is one which comes within the terms of the phrase used in Section 18 of the Act of 1950.

3. The next point raised is that because the words used in Section 18 are "decree for recovery of

possession" and because an order under Chap. VII of the Calcutta Small

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Cause Courts Act is not a decree within the definition of decree under Section 2 (2) of the Code as made applicable to that Court by this Court, therefore Section 18 will not apply to cases in the Calcutta Court of Small Causes. This question has recently been decided by Das and Lahiri, JJ., in '*Atulya Dhan Banerjee v. Sudhansu Bhusan*<sup>2</sup>', pointing out that in the explanation to Section 12, specific provision is made that the word "suit" used in Section 12 does not include the proceeding under Chap. VII in that particular proviso. It is therefore concluded that the same limitation does not apply in Section 18 of the same Act. Therefore it has been held that Section 18 does apply to such proceedings.

4. No other point is pressed in this matter. The Rule is accordingly discharged. There will be no order as to costs.

Rule discharged.

<sup>2</sup> Civil Revn. Case No. 1358 of 1950