

# CALCUTTA HIGH COURT

Ramesh Chandra Dutta

Vs.

Surya Properties Ltd

A.F.A.D No. 525 of 1955

(Lahiri, J.)

07.12.1955

## JUDGMENT

**Lahiri, J.**

1. This is an appeal by the defendant against a decree for ejectment passed by the Special Bench of the Presidency Small Cause Court, Calcutta, affirming the decree made by the Fifth Bench of the Court of Small Causes, Calcutta.

2. The plaintiff came to Court with a case that he was entitled to a decree for ejectment against the defendant and the defendant was not entitled to protection of the West Bengal Premises Rent Control Act, because he "was a habitual defaulter" the payment of rent from February, 1952 and has not paid two months rent legally payable by the defenendant to the plaintiff on three occasions within a period of 18 months. This statement made in the original plaint was amended by an order dated 2nd May, 1953, and after the amendment the allegation in paragraph 5 of the plaint stands as follows :

"The defendant is a habitual defaulter in payment of rent and has not paid rent since August, 1952".

The second sentence in this paragraph is the same as in the original plaint. After the amendment was allowed the defendant filed an additional written statement in which he asserted that the plaintiff should not be allowed to adduce any evidence beyond the plaint. At the trial, however, the plaintiff adduced evidence to prove that the defendant was a defaulter from the month of August, 1951 up to the month of September, 1952 and the trial Court came to the conclusion that the defendant was a defaulter from the month of August 1951 till September, 1952 and passed a decree for ejectment against the defendant. In coming to this conclusion the trial Court relied upon a certain letter of tenancy (Ext. 4) in which the defendant is said to have agreed to pay the rent of each month on or before the 10th day of the following month. Being dissatisfied with the decree made by the trial Court the defendant filed an appeal which was heard by the Special Bench. This special Bench came to the conclusion that the letter of tenancy relied upon by the plaintiff was not admissible in evidence for absence of registration and proceeded to consider the

question whether the defendant was entitled to relief by relying upon the provisions of the West Bengal Premises Rent Control Act, 1930. According to the findings arrived at by the Special Bench, the defendant was a defaulter for the month of February, March, June, July, August and September, 1952. Though the conclusion arrived at by the Special Bench as to the period of default was different from that arrived at by the Court of first instance, the Special Bench affirmed the decision of the first Court because the period of default fell within the mischief of the proviso to section 14(3) read with section 12(1)(i) of the West Bengal Premises Rent Control Act. Against that decision of the Special Bench the tenant defendant has brought this Second appeal.

3. Mr. Chatterjee appearing in support of the appeal has raised three points before me. The first point raised by him is that upon the allegations made by the plaintiff in the plaint as it now stands, the plaintiff has no cause of action and the suit is liable to be dismissed on that ground alone. To appropriate this point I must refer once more to paragraph 5 of the plaint. In that paragraph as it originally stood the allegation was that the defendant was a habitual defaulter in payment of rent from February, 1952 and has not paid rent since August 1952. After the amendment the allegation is that the defendant is a habitual defaulter in payment of rent and has not paid rent since August, 1952. The plaint was filed in Court on the 4th December, 1952. Taking the allegation at its face value it appears that the defendant was a defaulter from August 1952 up to October, 1952 because the rent for November had not become due on the date on which the plaint was filed. The allegation, therefore, amounts to this that the defendant was a defaulter for the period of only three months which would certainly not entitle the plaintiff to get a decree in a suit for ejectment under the proviso to section 14(3) read with section 12(1)(i) of the West Bengal Premises Rent Control Act, 1950. To get rid of this position Mr. Sen Gupta appearing for the respondents strenuously argued before me that the true meaning of the first sentence occurring in paragraph 5 of the plaint is that the defendant was a habitual defaulter in payment of rent before August, 1952 by which it is meant that although he paid rent for that period, the payments were made beyond the time allowed by law, whereas the second half of that sentence where it is stated that the defendant has not paid rent since August, 1952, means that the defendant has totally stopped payment of rent. Upon the findings arrived at by the Courts below I am constrained to hold that this is a distinction without any difference because the Court below has found that the defendant paid rent even for the months of August and September, 1952 though the payments were made after the period allowed by the West Bengal Premises Rent Control Act. I cannot, therefore, accept the argument of Mr. Sen Gupta that the two parts of the sentence in paragraph 5 refer to two different state of facts. In my opinion, the plain meaning of the sentence is that the defendant is a defaulter since August 1952. If that be so, on the 4th December, 1952 on which date the plaint was filed, the defendant did not make default in payment of rent referred to in clause (i) of the proviso to sub-section (1) of section 12 on three occasions within the period of 18 months as contemplated by the proviso to sub-section (3) of section 14 of the West Bengal Premises Rent Control Act. Mr. Sen Gupta further argued that it is not necessary for the plaintiff to specify the period or periods for which the default has been made by the defendant in payment of rent and that it was enough for the plaintiff to allege that he was a defaulter in payment of rent referred to in Clause (i) of sub-section (1) of Section 12 on three occasions within a period of 18 months. I am afraid I cannot also accept this argument. In my opinion, it is not necessary for the plaintiff to recite the law which gives him the right. All that the plaintiff is required to do under the provisions of the Civil Procedure Code is to plead facts which would entitle him to get a decree and it is not necessary for him to recite the law.

Otherwise the plaintiff could get a decree in a case like this if he only reproduced the language of the proviso to sub-section (3) of Section 14 of the West Bengal Premises Rent Control Act. The period or periods for which the tenant defendant has made default is a matter which is within the special knowledge of the plaintiff and the plaintiff can certainly plead those facts in his plaint and if he fails to do that, it seems to me that he cannot get a decree for ejectment by making vague allegations in the plaint and then fishing out for evidence when the suit is brought to trial. On the first point raised by the appellant I agree that the plaint as it stands after the amendment completely destroys the foundation of the plaintiff's case and the plaintiff should not have been allowed to adduce any evidence of any default made by the tenant defendant for a period prior to August, 1952. It is not for me to say whether the plaintiff could have got a decree on the plaint as it stood before amendment, but it seems to me that after the amendment the plaint discloses no cause of action whatsoever and the appellant is entitled to succeed on this ground alone.

4. The second point raised by Mr. Chatterjee relates to the period for which the tenant defendant has been found to be a defaulter by the Court of appeal below. I have already stated that the Court of appeal below held that the tenant defendant was a defaulter for the months of February, March, June, July, August and September, 1952. Mr. Chatterjee admits that the findings of the Courts of appeal below with regard to the months of February, March, June, August and September, 1952 are correct, but he challenges the finding with regard to the month of July. According to him the rent for the month of July was deposited in the office of the Rent Controller on the 16th August, 1952 because 15th August, 1952 was a public holiday. Mr. Sen Gupta appearing for the respondent, on the other hand, contended that the rent for the month of July 1952 was deposited on the 20th September, 1952. On this point the trial Court came to the finding that the rent for July, 1952 was paid by a cheque dated 20th September, 1952. Ex. 1 (j) is that cheque and the corresponding counterfoil is Ex. B (4). In the counterfoil filed (Ex. B (4)) the month to which it related was mentioned as July, 1952, but subsequently it was altered into August, 1952. The trial Court came to the conclusion that this was an interpolation at the instance of the tenant defendant and he held that the counterfoil related to rent for July, 1952. The appellate Court, however, does not come to any specific finding on this controversial point but records some general findings to the effect that from the oral and documentary evidence adduced by the plaintiff it was clear that the defendant did not pay rents for February, March, June, July, August and September, 1952 in time. The lower appellate Court then proceeds to hold that even upon the defense case that the rent was deposited on the 16th August, 1952, the defendant must be held to be a defaulter because it was not paid on the 15th August and the appellate Court further holds that the fact that the 15th August, 1952 was a Sunday did not entitle the defendant to pay the rent on the following day. It is not necessary for me to record my views on the question as to whether the payment which was due to be made on the 15th August, 1952 but was actually made on the 16th on account of the 15th August being a public holiday is a valid payment. Mr. Chatterjee has invited my attention to Section 12 of the Bengal General Clauses Act, 1899 which provides that if anything is required to be done in any Court or in any office on a date which is a public holiday, it can be done on the next following day. I am not however, recording my final decision on this point because it is not necessary for me to decide this question. If the appellant had confined his argument to the second point only I would have been constrained to send the appeal back to the lower appellate Court for rehearing, but in view of my decision on the first point raised by the appellant I have reached the conclusion that that is neither just nor desirable.

5. The third point raised by Mr. Chatterjee is that the tenancy of the defendant was partly for manufacturing and partly for residential purposes and as such he was entitled to six months' notice under the first half of Section 106 of the Transfer of Property Act and since the plaintiff had given only 15 days' notice, the notice served by the plaintiff was not sufficient in law to determine the tenancy. This point was raised in the Courts below and both the Courts have held that in order to attract the operation of the first part of Section 106 of the Transfer of Property Act it must be proved that the tenancy was exclusively for manufacturing or agricultural purposes. If the tenancy was for a multiple purpose it comes within the expression "any other purpose" occurring in the second half of Section 106. In support of this proposition the Court of appeal below relied upon the decision of this Court in the case of *Sati Prasanna v. Md. Fazel*<sup>1</sup>, and Mr. Sen Gupta has relied upon another decision of this Court in the case of *L. A. Saunders v. Land Corporation of Bengal Ltd.*<sup>2</sup>. Upon a consideration of the principles laid down in those cases and also upon a plain construction of Section 106 of the Transfer of Property Act, it seems to me that the view taken by the Court of appeal below on this point is right and unless the tenant proves that his tenancy is exclusively for agricultural or manufacturing purpose he is not entitled to the benefit of six months' notice as contemplated by the first half of Section 106 of the Transfer of Property Act.

6. In the result although I cannot agree with the third point raised by Mr. Chatterjee and I accept the second point only in part, my decision on the first point is sufficient to allow this appeal and to dismiss the plaintiff's suit for ejection.

7. I, accordingly, order that this appeal should be allowed and the plaintiff's suit dismissed.

8. There will be no order for costs in this appeal.

9. Leave under Clause 15 of the Letters Patent is asked for and it is refused.

Appeal allowed.

<sup>1</sup>86 Cal LJ 12 : AIR 1952 Cal 320

<sup>2</sup>93 Cal LJ 354 : AIR 1955 Cal 169