

## CALCUTTA HIGH COURT

Anil Kumar Mukherjee

Vs

Malin Kumar Mazumdar

(S.K. Sen, J.)

18.07.1960

### JUDGEMENT

**S.K. Sen, J.**

- ( 1. ) THIS Rule under Article 227 of the Constitution of India came up before Mr. Justice S. K. Sen sitting singly and His Lordship by an order dated 14th January, 1960 referred the case to Division Bench for disposal as he felt that it was desirable that the point involved should be set at rest by a decision of Division Bench in view of two conflicting decisions of two learned Judges of this Court sitting singly, one by Mr. Justice Bachawat reported in (1) 1959 C. L. J. page 117 and the other unreported decision (2) of my learned brother Mr. Justice Banerjee.

( 2. ) THE point is about interpretation of the words 'final order' occurring in section 39 of the West Bengal Premises Tenancy Act, 1956 in the background of sub-section (3) of section 16 of that Act for deciding the maintainability of an appeal. In the present case the point arises in this way: The disputed premises is a ground-floor shop-room in premises No. 139/3, Russa Road, Calcutta, since named Shamaprosad Mukherjee Road. It belonged to a partnership firm named Estate Amulya Dhan Mullick and Krishna Dhan Mullick, and under that firm Dr. Anil Kumar Mukherjee is a tenant in respect of that room. It is common ground of both the parties that in respect of front portion of the said room, Malin Kumar Mazumdar was in occupation. Malin Kumar Mazumdar's own case is that at first the front portion was sub-let to him at a monthly rent of Rs. 30/- and later on the whole room was sub-let to him at a monthly rent of Rs. 75/- and he claimed to be the sub-tenant under Dr. Anil Kumar Mukherjee and gave notice to his sub-tenancy to the landlord under section 16 (2) of the West Bengal Premises Act. Present application under section 16 (3) of the Act has been made by Malin Kumar Mazumdar before the Rent Controller, Calcutta, within two months of the date of issue of notice by him and he has made both the landlord and the tenant parties. The landlord appeared before the Rent Controller and denied that there was consent by him to the sub-letting either in writing or orally. The tenant Dr. Anil Kumar Mukherjee contended before the Rent Controller that he had not sub-let any portion of the room to Malin Kumar Mazumdar. His case was that Malin Kumar Mazumdar was a licensee in respect

of the front portion of the room at first at the rent of Rs. 30/- and later on, at the rate of Rs. 75/- per month. The Rent Controller by an order dated 8th March, 1957 after deciding several contentions raised on behalf of the tenant held that Malin Kumar Mazumder was entitled to reliefs provided by section 16, sub-section (3) of the Act in respect of the front portion of the room and in the same order held that for the purpose of fixation of rent an inspection by the Inspector as prayed for was necessary and directed the Inspector to do so as mentioned in the order and to complete the inspection and submit report with full details on or before 8th of April, 1957.

( 3. ) AGAINST this order dated 8th March, 1957 an appeal was preferred by the tenant Dr. Anil Kumar Mukherjee. At the hearing of the appeal a preliminary objection was taken by the respondent that the appeal was incompetent as the order appealed against was not the "final order" as contemplated by section 29 of the Act. The learned Subordinate Judge who heard the appeal gave effect to the preliminary objection and held that the order appealed from was not a "final order" within the meaning of section 29 and he accordingly dismissed the appeal as incompetent. Against this order dismissing the appeal, the present Rule has been obtained and the only point for decision in the Rule is whether the learned Subordinate Judge's order is correct or not. Mr. Ashutosh Ganguly, appearing in support of the Rule, has contended before us that the order of the Rent Controller having decided a cardinal matter in the case it must be considered to be a "final order" and he relied on a decision reported in (1) 1959 C. L. J. 117 in which this very point arose before Mr. Justice Bachawat sitting singly and His Lordship held in favour of the proposition that Mr. Ganguly has urged before us. This decision was pronounced on 11th of September, 1958. As I have already mentioned, on the same point there is another decision (2) of my learned brother Banerjee, J. , holding that the order of the nature we are concerned with, is not a "final order" and no appeal lies against it under section 29 of the Act. This decision of Banerjee, J. was in Civil Revision Case No 560 of 1957 and was given on 17th of July, 1957. but has not been so far as I am aware, reported anywhere. Nor was it cited before Bachawat, J. and his Lordship therefore, had no occasion to consider this earlier decision. However that may be, the two decisions are directly in conflict and it is necessary for us to examine both with care. ;