

CALCUTTA HIGH COURT

D.S. Jain

Vs.

Meghamala Roy

Civil Rule No. 3288 of 1960

(P.N. Mookerjee and D. Basu, JJ.)

28.02.1964

ORDER

P.N. Mookerjee, J.

1. This Rule raises a short question.

2. The Petitioner was a lessee of the disputed properties under the opposite party under a registered deed of lease, dated January 31, 1953. The lease was for 5 years from February 1, 1953, to January 31, 1958. The properties comprised, in short, a furnished and well-equipped cinema house, known as "Ajanta", the building and structures being described in schedule A and the furniture and the machines, machineries etc., in schedule B, the stipulated total rental being Rs. 2,400 per month, payable to opposite party No. 1 (owner of the building and structure) Rs. 1,000, to opposite party No. 2 (owner of the furniture) Rs. 800, and to opposite party No. 3 (owner of the machines, machineries, etc) Rs. 600, with a total rebate of Rs. 150 apportioned respectively as follows: Rs. 100, Rs. 25 and Rs. 25. Other provisions in the lease are not material for our present purpose.

3. In 1959, the opposite parties instituted the present suit (T.S. No. 72/1959 of the 7th Court of the subordinate Judge at Alipore) for inter alia ejectment of the Petitioner on the ground of expiry of his aforesaid lease with a further allegation that he was a defaulter in payment of rent, which dis-entitled him to any protection under the West Bengal Premises Tenancy Act, 1956, even if the same would have been otherwise available to him. The defense inter alia was a claim of protection under the above Act.

4. In course of the suit, the opposite parties applied for an order under Section 17(3) of the aforementioned West Bengal Premises Tenancy Act, striking out the Petitioner's written defense against ejectment or recovery of possession upon the ground of noncompliance, on his

(Petitioner's) part, with the mandatory provisions of Section 17(1) thereof. This application was allowed by the Court below by its order No. 58, dated August 2, 1960. Prior to that, the Petitioner's application for the hearing of Issue No. 2, which raised the question of stay of the instant suit until the hearing of the Petitioner's previously instituted suit for specific performance of an alleged contract of renewal of the lease had been virtually rejected by the Court below by its order No. 48, dated June 7, 1960, and his prayer for reconsideration of the same had also been rejected by its order No. 55, dated July 13, 1960.

5. Aggrieved by the aforesaid orders, the Petitioner filed his present application in this Court, but, at the time of hearing of this Rule, the only point urged in its support by the Petitioner's learned advocate Mr. Dutt, was in respect of the impugned order No. 58, dated August 2, 1960, and his only grievance was that the striking off of his client's written statement was without jurisdiction as the Act above-mentioned had no application to the instant case.

6. In the premises, the only point, which requires consideration is whether the instant case is governed by the above West Bengal Premises Tenancy Act, 1956, but we may also state that the learned trial Judge's postponement of consideration of Issue No. 2, till after the disposal of the opposite parties' application under Section 17(3) of the above Act, does not suffer from any error, not certainly, from any error of law, not to speak of error of jurisdiction and, as to the question of the Petitioner's non-compliance with Section 17(1) of the Act, having regard to the fact that the Petitioner after service of summons on November 25, 1959, deposited the rents for November and December, 1959, and January, 1960, with the Rent Controller, and not in Court, and the rent for February, 1960, in Court but only on the 27th of that month, and the further fact that the Petitioner's application under Section 17(2) had already been rejected, nothing can be validly urged against the learned trial Judge's finding against the Petitioner in view, particularly, of the recent special Bench decision of this Court [*Siddheswar Paul v. Prakash Chandra Dutta*¹], and, even apart from it and, accordingly, Mr. Dutt was right in confining his submission to the only point, urged by him in support of this Rule, as stated hereinbefore.

7. On the limited controversy, now before us, the relevant matters appear as follows:

The lease here is of a furnished and well-equipped cinema house, comprising a building with furniture, machines and machineries etc. necessary for a cinema show house. The building belongs to opposite party No. 1, the furniture to opposite party No. 2, and the machine and machineries etc. to opposite party No. 3. The rental payable is Rs. 2,400 per month (reducible to Rs. 2,250 on punctual payment, by way of rebate), to opposite party No. 1 Rs. 1,000, to opposite party No. 2 Rs. 800 and to opposite party No. 3 Rs. 600 (with rebates of Rs. 100, Rs. 25 and Rs. 25 in the respective cases upon punctual payment).

8. The question is whether this lease will come under the West Bengal Premises Tenancy Act,

1956.

9. Mr. Dutt argues that the above Act will not apply, as the lease here is not of a 'premises' under the said Act. That indeed, is the only point, urged in support of this Rule, and that alone will require consideration.

10. It cannot be disputed that the above Act applies only to 'premises' as denned in Section 2(f) thereof. Such premises, however, may well include furnished houses. This is clear from the above definition itself [vide 2(f)(ii) in particular] and is confirmed by other

¹68 C.W.N. 30

parts of the statute [vide e.g., Section 8(3)]. Nevertheless, says Mr. Dutt, a cinema show house, furnished and well-equipped, that is, fitted with furniture and equipments in the shape of machines and machineries etc. would not come within the above definition, particularly when the building, furniture and machines and machineries etc. belong to different owners, even though they may join or combine in granting the lease. Here underlies a tow-fold contention. The first is that a cinema show house, furnished and well-equipped as above, is not a 'premises' under the above Act and, secondly, even if it is otherwise so, it would not be a 'premises' where the building, the furniture and the machines and machineries etc. belong to different owners, no matter that they have combined to grant a lease of the entire thing -the building, the furniture and the machines and machineries, etc.

11. The first of the above two contentions is opposed to the decision of this Court, reported in *Kali Prosad v. Jagdish Pada*², which, though a decision under the earlier 1950 Act, would apply and may well be applied, as the material part of the definition of 'premises', so far as this point is concerned, is the same in the two Acts, and Mr. Dutt could show us nothing, which would incline us to take a different view of the matter. This contention would, accordingly, fail.

12. The second contention raises a question of first impression. Mr. Dutt argues that, whatever might be the position, when the building, the furniture and the machines and machineries etc, belong to the same person who can effectively let out the same and does so, the situation is wholly different when they belong to different persons. In such a case, the letting out, though made jointly, must be regarded as separate letting out of the three different items-the building, the furniture and the machine and machineries etc, and, as the latter two would not be 'premises' under the above Act, they or their letting out would not attract the same. So far as the instant case is concerned, an immediate answer is furnished to the above argument by the lease itself. Under it, the demised property consists of a single unit, within which are comprised the building, the furniture and the machines and machineries etc. Each is an integral part of that unit. The letting is of a furnished and well-equipped cinema show house and the building, the furniture and the machines and machineries etc., are all its essential and integral parts or components. They cannot be regarded separately or as distinct or different units. They are linked up together by the lease itself. Thus, the entire lease, that is, the lease in respect of all of them, is liable to forfeiture or

determination by reason of breach of the contractual obligations in respect of any of them. Rent is shown at the total figure of Rs. 2,400 and, though payable separately to the three opposite parties, namely, Rs. 1,000 to opposite party No. 1, Rs. 800 to opposite party No. 2, and Rs. 600 to opposite party No. 3, its default is preferable to the entire rent and such default will occur when the entire rent is not paid in time, no matter that some of its above three components might have been so paid. The security amount is one consolidated sum (Rs. 6,750) for the entire lease. The renewal and surrender will "be of the entire lease and the several lessors have, in addition to their individual rights, joint rights under the lease, which cannot be severed or separated.

13. In view of the above, it is impossible to split up the lease in question into three different leases of its several components or to regard the entire demised property except as a single unit or to regard the lessors except as joint lessors of the said single unit. This

² A.I.R. 1953 Cal. 149

single unit, comprising the building, the furniture and the machines and machineries etc., constitute, in our opinion, a 'premises' under the above Act (Vide the definition of 'premises' in Section 2(f) in the light of the decision in *Kali Prosad v. Jagadish Pada*, A.I.R. 1953 Cal. 149 (Supra), howsoever much the said several items may belong to different persons, provided, of course, as is the case here, they said persons join in granting the lease as joint lessors and the lease in question cannot be split up, so far as they are concerned.

14. In the above view, we hold that the demised property under the lease in question constitutes a 'premises' under the West Bengal Premises Tenancy Act, 1956, and the mere fact that its different parts or components belong to different persons, who grant the lease as joint lessors, as aforesaid, would not affect the said position under the law. Mr. Dutt's contention on this point too is, accordingly, overruled.

15. On what we have said above, this Rule would fail on the merits but we may also add that, even otherwise, in view of the Petitioner's conduct, as appearing from the records before us, we would have been disinclined to interfere with the impugned order or orders under our revisional powers in the exercise of our discretion, and, in that view, too, this Rule would have failed.

16. The Rule, accordingly, fails and it is discharged with costs, hearing fee being assessed at five gold mohurs.

D. Basu, J. - I agree.

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