

# CALCUTTA HIGH COURT

Hare Krishna Das

Vs

Hahnemann Publishing Co Ltd

(P.N. Mookerjee, J.)

27.11.1964

## JUDGEMENT

**P.N. Mookerjee, J.**

( 1. ) THIS appeal is by the defendant and it arises out of a suit for ejectment in respect of Room No.8, ground floor, of Premises No. 129/1, Bowbazar Street. The contractual rent was Rs. 61.87 nP. per month, payable according to the English calendar month. (Para 1)

( 2. ) THE defendant's above tenancy was purported to be terminated by a notice, dated July 26, 1957, expiring with the expiry of the month of August, 1959. THE notice was attempted to be served by registered post but it came back with an endorsement "left". It was also attempted to be served in the disputed premises and, according to the return of the person, who attempted this service, it appears to have been offered to an alleged officer of the defendant and he not having agreed to sign the receipt, it was served by affixation or hanging in the above premises. This was done on July 27, 1959, and the present suit was brought on September 19, 1959, the allegation in the plaint being that the defendant, having been a defaulter in the payment of rent for much more than the requisite four months, was not entitled to any protection under the relevant rent control law (the West Bengal Premises Tenancy Act, 1956). THE default alleged was, in particular, with respect to the period since 1957. The present suit was preceded by another suit for ejectment against the same tenant on the ground of reasonable requirement. That suit was decreed initially by the learned trial Judge on December 23, 1957, but, eventually, on appeal, it was dismissed on May 20, 1959, and, thereafter, as it appears, the above steps were taken for terminating the defendant's tenancy and institution of the present suit on the ground of default, as alleged therein. In the present suit, on February 11, 1960, after service of summons and within a month thereafter, the defendant deposited the defaulted rents in question, namely, from September, 1957, to April, 1959, by a challan, filed on that day. The suit, thereafter, proceeded and it has eventually, been decreed by the learned trial Judge, who has held in favor of the plaintiff on the above question of default, on the question of validity and sufficiency of the notice of ejectment and also on the question of its service. It is against this decree that the present appeal has been filed by the defendant appellant.

( 3. ) BEFORE us, various points were taken, in support of the appeal, to challenge the decree of

the learned trial Judge. It was contended first that there was no relationship of landlord and tenant between the parties and, as such, the suit was not established by the evidence in the case that the present plaintiff had acquired the landlord's interest in the disputed premises and the defendant has, under the law, become a tenant in respect of the same under the plaintiff. The defence objection in this respect was, in our opinion, rightly overruled by the learned trial Judge on the materials on record. It was further contended that, in any event, the defendant was not a defaulter for the requisite period to disentitle him to the protection of the above rent control law, namely, the West Bengal Premises Tenancy Act, 1956. The admitted possession, however, is that the rents for the period September, 1957, to April, 1959, were deposited in Court in the present suit only on February 11, 1960, and the same cannot at all be taken to be a valid deposit under the law. It was, however, pressed before us that, as, during the said period, the previous ejectment suit was pending, there was no relationship of landlord and tenant between the parties and the defendant was under no obligation to pay or deposit rent. This contention has only to be stated to be rejected. If a "tenant" wants to avail himself of the protection of the above Act, he is under an obligation to continue payment or deposit of rent so long as he remains in possession or wants to remain in possession. Once he makes a default in this respect and the default extends to the requisite period under the above Act, namely, four months, he becomes absolutely disentitled to the protection under the Act. The Act obviously seeks to protect ex-tenants, who would discharge their obligations under the Act, and, indeed, the protection cannot be (extended?) except to ex-tenants, as persons, whose tenancies have not terminated do not require any protection under the above Act. The argument, therefore, that because the contractual tenancy had ended and the previous suit was pending at the time, the defendant had no obligation to deposit rent for availing himself of the protection of the above Act, cannot be accepted. If he did not deposit the rent but made the requisite default, he did so at his own risk and his own omission in this respect, intentional or otherwise, now recoils upon him. ;