

CALCUTTA HIGH COURT

Sm. Amiya De

Vs.

Dhirendra Nath Mandal

Suit No. 1579 of 1969

(S.C. Ghose, J.)

22.09.1970

ORDER

S.C. Ghose, J.

1. This is an application made by the defendant, inter alia, for relief against forfeiture of the tenancy made by the decree passed by consent in the instant case. The defendant was a tenant under the plaintiff in respect of 35-B, Gopi Mohan Dutt Lane, Calcutta under an indenture of lease dated June 15, 1954. The defendant having committed defaults in performing the covenants which he was to perform under the lease, the said lease was determined and a suit for ejectment was filed in this Court on or about 28th May, 1969. The tenancy of the defendant in respect of the premises was determined by reason of his default in payment of rent for the months of January, February, March and April, 1969. The defendant after being served with the Writ of Summons in this suit duly entered appearance and filed the Written Statement Discoveries were made by the parties to the suit. The suit appeared in the peremptory list of A. N. Sen. J. on 22nd April, 1970. On or about 22nd April, 1970, a decree by consent in the said suit was passed to the following effect :

"By consent it is decreed that the defendant would deliver up to the plaintiff quiet vacant and peaceful possession of premises No. 35-B, Gopi Mohan Dutt Lane Calcutta being the suit premises and further pay the sum of Rs. 612/- as arrears of rent and mesne profits at the rate of Rs. 153/- per month from 1st May, 1969, until possession of the said premises is delivered to the plaintiff. It is further ordered and decreed that in the event of the defendant paying to the plaintiff a sum of Rs. 3,500/- on or before 30th May, 1970 the decree for possession, arrears of rent, mesne profits and costs as aforesaid should stand vacated and the defendant shall be entitled to relief against the said forfeiture."

The said decree was in fact an agreement arrived at by and between the parties which was

superadded with the sanction of the Court when the Court passed a decree in terms of the compromise arrived at by and between the parties. By and under the said decree it was provided that if the defendant paid to the plaintiff a sum of Rs. 3,500/- on or before 30th May, 1970, the decree for possession, arrears of rent, mesne profits and costs would stand vacated. The defendant failed to pay the said sum of Rs. 3,500/- within the time mentioned above. Hence the defendant has made this application.

2. In the instant case, the time to make the payment, that is 30th May, 1970, was not fixed by the Court but was agreed upon by and between the parties. The defendant is a contractor and works under Midnapore Water Supply Scheme at Midnapore. The defendant states that the defendant agreed to pay the said sum of Rs. 3,500/- within 30th May, 1970 inasmuch as the defendant expected that he would receive a considerable sum of money out of a sum of Rs. 40,000/- which was due and owing to him by the Government of West Bengal by that date to make the said payment. The defendant for reasons beyond his control could not secure monies in order to pay the said sum of Rs. 3,500/- within the time mentioned above. It is true that the said decree was passed on the basis of forfeiture of the lease under which the said property was held by the defendant. The said lease, it appears, was to expire on or about the 6th June, 1970. Be that as it may, it appears to me that in substance the present application is a claim for relief against forfeiture and therefore this Court, in my opinion, has power to enlarge or extend the time to make payment by way of granting relief against forfeiture. In the facts and circumstances of this case I am of the view that such relief against forfeiture should be granted to the defendant. For the aforesaid reasons I pass the following order.

3. The time to make payment of the sum of Rs. 3,500/- under the decree which is the subject-matter of this suit is extended until 1 P. M. day after tomorrow peremptorily. The applicant shall pay in any event the costs of this application assessed at Rs. 255/-. The time to make the said payment is extended until day after tomorrow 1 P. M, upon the applicant paying to the solicitor of the respondent the assessed costs of this application as mentioned above by 4 P. M. tomorrow.

4. In default of payment of the said sum of Rs. 255/- by 4 P. M. tomorrow as mentioned above this application will stand dismissed with costs. If the said sum of Rs. 255/- is paid by 4 P. M. tomorrow the execution of the decree shall remain stayed until in any event up to 1 P, M. day after tomorrow.

Order accordingly.