

## **CIVIL REVISION**

Present: **The Hon'ble Mr. Justice Tarun Kumar Gupta**

Judgment on: August 23, 2010

**C. O. No.4397 of 2005**

**Ashok Kumar Singh**

**Versus**

**Dilip Kumar Shaw**

Point:

**Abatement of Rent**-Finding regarding relationship of landlord and tenant and adjudication of the abatement of rent in proceeding under section 17(2) of the West Bengal Premises Tenancy Act whether tentative and can be reopened and decided in the trial of the suit- Scope of revision - Constitution of India-Art. 227-West Bengal Premises Tenancy Act, 1956 S.17(2)

Fact:

Petitioner and his brother filed an application under Section 17(2) (2A) (B) for determining as to whether plaintiff was the landlord or not. It was also averred in the said petition that though the rate of rent was Rs.44/- per month but plaintiff claimed the rent to be Rs.30/- per month and there was also forcible eviction from a portion of tenancy in September, 1996 and hence there should have been abatement of rent for such dispossession from some portion of tenancy and determination of the same by the Court. Defendant alleged that if there is any default that should be for the period from January 1992 to June 1993. Trial Court disposed of the petition under Section 17 (2) (2A) (B) of W.B.P.T. Act by adjudicating that defendant was a tenant under O.P. /Plaintiff, and that rate of monthly rent was Rs.30/- per month, and that defendant was defaulter in payment of rents from January, 1992 to June, 2005.

Held:

The decision of the Court under Section 17 (2) on the question of relationship as referred by the tenant is tentative one as it is done in an interlocutory proceeding. The same was only prima facie finding only for the purpose of said proceeding leaving it open to the Court for a final decision at the time of hearing of the suit on framing appropriate issue.

Para 6

Whether the portion which was taken out from the tenancy of the defendant /tenant was as per voluntary act of the parties or forceful can only be decided at the time of trial when evidence will be adduced on this point. As there was shrinking of tenanted portion, for whatever reason, learned Trial Court has held the rate of rent as Rs.30/- per month. In view of the averments of the plaintiff Court find nothing wrong in the same.

Para 7

Alleged wrong calculation of total arrear amount of rent to be paid by the defendant/tenant is a question of fact, and even if there was any error that should not be interfered by this Court exercising power under Article 227 of the Constitution of India. The said power under Article 227 of the Constitution of India should be exercised most sparingly in cases where grave injustice would be done but for interference by High Court.

Para 7

For the petitioner: Mr. Sabyasachi Bhattacharyya

Mr. Deb Dutta Basu

For the respondent: Mr. Suchit Kumar Banerjee

Mr. Sujata Adhikary

Mr. Indranil Banerjee

**Tarun Kumar Gupta, J.:-**

This is an application under Article 227 of the Constitution of India filed by the petitioner / tenant challenging order No.87 dated 10.08.2005 passed by Civil Judge (Junior Division), 4th Court at Alipore in Title Suit No.23 of 1995. By the impugned order learned Trial Court disposed of the petition under Section 17 (2) (2A) (B) of W.B.P.T. Act by adjudicating that defendant was a tenant under O.P. /Plaintiff, and that rate of monthly rent was Rs.30/- per month, and that defendant was defaulter in payment of rents from January, 1992 to June, 2005 and was required to deposit said total arrear rent together with interest in five installments.

2. Being aggrieved with said order the instant revisional application was filed alleging inter alia that the predecessor in interest of the petitioner /defendant namely Brahmadeb Singh was the original tenant under Jatindra Nath Bhaduri in respect of the said premises at a rental of Rs.35/- per month and that after death of Jatindra Nath Bhaduri his heir and legal representatives Sri Kalyan Kumar Bhaduri used to realize rent and that after demise of original tenant Brahmadeb Singh on 31.07.1990 his heirs and legal representatives including present petitioner became tenants in common and that on or about 20.12.1991 Kalyan Kumar Bhaduri issued a letter of attornment to the petitioner requesting him to attorn his tenancy under one Smt. Kamala Das with a direction to pay rent to her and that thereafter the tenants received one letter from one Mrs. Krishna Saha directing them to pay rent to plaintiff/ respondent Dilip Kumar Shaw. That on 01.02.1992 the plaintiff claimed to have purchased a part of the building and that in view of dispute of ownership the petitioner tenant could not decide whom to pay rent and that later on O.P. / Plaintiff has filed the suit for ejectment being Title Suit No.23 of 1995 and that present petitioner and his brother appeared in the said suit, filed written statement and also filed an application under

Section 17(2) (2A) (B) for determining as to whether plaintiff was the landlord or not. It was also averred in the said petition that though the rate of rent was Rs.44/- per month but plaintiff claimed the rent to be Rs.30/- per month and there was also forcible eviction from a portion of tenancy in September, 1996 and hence there should have been abatement of rent for such dispossession from some portion of tenancy and determination of the same by the Court and also for installments for payment of arrear rents, if any.

3. During hearing learned Advocate Mr. Sabyasachi Bhattacharyya for the petitioner /defendant has submitted that learned Trial Court referred to some stray lines of the petitioner /defendant /tenant in his deposition and decided O.P. / plaintiff as his landlord on admission and that rate of rent was decided to be Rs.30/- per month without any justification and that all rents, deposited by defendant / tenant in the Rent Control and / or in Court at the rate of Rs.44/- per month, were declared invalid on account of non-payment of rent from January, 1992 to June, 1993 and asked defendant / tenant to pay entire rent from January, 1992 to June, 2005 together with interest in five equal monthly installments.

4. Learned Advocate for the petitioner/defendant/tenant has submitted that the impugned order of learned Trial Court was not sustainable in law as he did not spell out the reasons for holding monthly rent at the rate of Rs.30/- per month and also for holding defendant/tenant defaulter since January, 1992 though the period of default, if any, was only from January, 1992 to June, 1993.

5. Learned Advocate Mr. Suchit Kumar Banerjee for the respondent/O.P. /Landlord, on the other hand, has submitted that the order under Section 17 (2) was interlocutory in nature and was passed on the basis

of evidence on record and that this Court should not interfere with the same merely on the alleged ground of not being a proper order. According to him there was specific admission of the defendant/tenant in his evidence that O.P. plaintiff was his landlord and paid rent to him. According to him, there was voluntary surrender of a portion of tenanted premises and that there was no forcible eviction and that the rent was fixed at the rate of Rs.30/- per month and it did not cause prejudice to anybody.

6. I have carefully considered submissions made by learned Advocates of both sides and perused the materials on record. The decision of the Court under Section 17 (2) on the question of relationship as referred by the tenant is tentative one as it is done in an interlocutory proceeding. The same was only prima facie finding only for the purpose of said proceeding leaving it open to the Court for a final decision at the time of hearing of the suit on framing appropriate issue. Apart from that it is not the case of the petitioner / tenant that O.P. / plaintiff was not his landlord or that any other person was his landlord.

7. Whether the portion which was taken out from the tenancy of the defendant /tenant was as per voluntary act of the parties or forceful can only be decided at the time of trial when evidence will be adduced on this point. As there was shrinking of tenanted portion, for whatever reason, learned Trial Court has held the rate of rent as Rs.30/- per month. In view of the averments of the plaint I find nothing wrong in the same. Alleged wrong calculation of total arrear amount of rent to be paid by the defendant/tenant is a question of fact, and even if there was any error that should not be interfered by this Court exercising power under Article 227 of the Constitution of India. The said power under Article 227 of the Constitution of India should be exercised most sparingly in cases where grave injustice

would be done but for interference by High Court. In view of the above discussion I am of the opinion that the impugned order does not call for any interference under Article 227 of the Constitution of India.

8. As a result, this revisional application stands dismissed. However, I pass no order as to costs. Before I part with the record, I like to add that defendant/tenant will be at liberty to press the question regarding landlord and tenant relationship as well as abatement of rent, if any, on the alleged ground of forcible eviction from a part of tenancy, at the time of trial and learned Trial Court shall decide those issues on the basis of materials on record without being influenced by the instant order of this Court.

9. Let a copy of the order be forwarded to learned Trial Court for information and necessary action.

10. Urgent xerox certified copy of this judgment be supplied to the learned Counsels of the party / parties, if applied for.

**(Tarun Kumar Gupta, J.)**

