

18-12-2020

Ct. 12

FAT 292 of 2019
With
CAN 1 of 2019 (Old CAN 5932 of 2019)

Eastern Travels Pvt. Ltd.
Versus
Raj Kumar Agarwal

(Through Video Conference)

Mr. Aniruddha Mitra, Adv.
Mr. Anirban Ghosh, Adv.
...for the appellant

This appeal is preferred against a decree for eviction.

The defendant is a monthly tenant in respect of the suit premises at a monthly rent of Rs.11,000/- payable accordingly to English calendar month. This rent component takes the tenancy outside the purview of the West Bengal Premises Tenancy Act, 1997 and the relationship between the parties are governed by the provisions of the Transfer of Property Act. It cannot be doubted that the tenancy is capable of being determined by serving a notice under Section 106 of the Transfer of Property Act. The legality of the notice issued under Section 106 of the Transfer of Property Act is not in dispute. On expiry of the period mentioned in the said notice, the defendant did not vacate the premises in question.

Before the trial court, the eviction is resisted on the ground that prior to 1997 Act in a suit for eviction, a compromise was arrived at between the parties where it was agreed that the defendant would be a monthly tenant with effect from 1st April, 1996 in respect of the suit shop room and shall be governed by the West Bengal Premises

Tenancy Act, 1956 and the defendant shall pay a rent of Rs.10,000/- per month. In addition to the rent, the defendant shall also pay a sum of Rs.10,000/- as security deposit. At the time of filing of the suit, the defendant was paying rent of Rs.11,000/- per month.

It is immaterial that, at the relevant point of time, the parties had agreed that the tenancy be governed by the provisions of the West Bengal Premises Tenancy Act. Subsequent to the creation of the tenancy the new Act namely the West Bengal Premises Tenancy Act, 1997 came into force and as on the date of institution of the suit, the tenancy rights are required to be determined on the basis of the rent component as mentioned in the West Bengal Premises Tenancy Act, 1997.

It is argued from the bar that the plaintiff has accepted rent after the termination notice, which would go to show that the relationship between the parties continued as lessor and lessee. It is submitted that acceptance of rent, after the notice under Section 106 of the Transfer of Property Act was issued, is a clear acceptance to the continuation of the tenancy by the landlord and in view thereof, the plaintiff is not entitled to get a decree for eviction.

On the basis of such submission, we have invited the learned Counsel for the appellant to produce the written statement and to show necessary averments in that regard. The written statement was produced before us, wherefrom it appears that the landlord after issuance of the said notice refused to accept the rent and maintenance charge sent through postal authorities. It is elementary that no amount of evidence can be looked into unless foundational claim for the same

is made in the pleading. The defence of holding over was neither raised nor argued before the trial court.

On such consideration, we affirm the decree under appeal. The appeal is, accordingly, dismissed.

However, there shall be no order as to costs.

The copy of the written statement filed in Court today is kept with the record.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)