

Subir Saha & Anr.

Vs.

East End Hardware(Private)Limited

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Mr. Sourav Sen
Ms. Disha Shukla
Ms. Chaya Debrath
Ms. Sayani Bhattacharya
... For the Appellant

This second appeal has arisen out of a decree of reversal passed by the learned appellate Court in a suit for eviction.

The appellant before the trial Court filed a suit for eviction on two fold grounds:

Firstly, on default in making payment of rent month by month and secondly on reasonable requirement.

The trial court decreed the suit on holding that there is a default in depositing the rent. However, the trial Court disallowed the claim of the plaintiffs on reasonable requirement.

The appellate Court reversed the judgment of the trial Court on the ground that time to make deposit of arrear rent by virtue of the order passed by the trial Court was complied with, which fact the trial Court has ignored.

It is clear from the order of the appellate court that the trial Court permitted the defendant by an order dated 20th April, 2013 to pay the arrear rent by 5th May, 2013.

The trial Court observed that the defendant had deposited the arrear rent amounting to Rs. 16,690/- on 6th May, 2013 and not on 5th May, 2013. However, the defendant had deposited the

said amount on 3rd May, 2013 but the Court challan was issued on 6th May, 2013, as 5th May, 2013 was holiday. This fact was overlooked by the trial Court.

Learned counsel for the appellant has argued before us that by reason of default in making payment of rent the defence of the defendant is required to be struck off inasmuch as the trial Court, in permitting the respondent to deposit the arrear rent, has observed that such deposit was without prejudice to the rights and contentions of the defendant. However, the judgment of the trial Court does not rest on the plea that there is a default by the defendant in depositing the rent and hence the defence is required to be struck off. On the contrary, the trial Court misread its earlier order by which the respondent was directed to deposit the arrear rent and on a factual mistake arrived at a wrong finding that the deposit was not made in terms of the order dated 20th April, 2013.

Mr. Sen, learned counsel for the appellant, submitted that Section 3 of the Limitation Act was not taken into consideration by the appellate Court. Section 3 of the Limitation Act is to be considered by the Court when a plea of limitation is raised. None of the parties had raised such issue either before the trial Court or before the first appellate Court. The order directing deposit of arrear rent was accepted. The matter proceeded on the basis that the respondent did not make the deposit in terms of the order passed by the trial Court granting leave to the respondent to deposit the arrear rent by 5th May, 2013.

We have pointed out earlier that it was a sheer mistake and overlooking of a relevant fact

that the trial Court proceeded to decree the suit, which has been corrected by the appellate Court.

The said finding was accepted by the appellant. The appellant also did not question the order of the trial Court. In view of such finding, we are unable to find out any substantial question of law is involved in this appeal.

The appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the C.P.C.

There will be no order as to costs.

(Aniruddha Roy,J.)

(Soumen Sen, J.)

