

03-02-2022

Ct. 8

SA 25 of 2021
CAN 1 of 2019 (old CAN 9540 of 2019)
(Already disposed of on 19.2.2021)
CAN 2 of 2019 (old CAN 9541 of 2019)

Ranjit Das Gupta
Versus
Shanti Shaw @ Devi & Ors.

(Through Video Conference)

Mr. Sauradipta Banerjee, Adv.
Ms. Fatima Bassan, Adv.
Ms. Damayanti Kundu, Adv.
...for the appellant

Mr. Sayantan Bose, Adv.
Ms. Anyapurba Banerjee, Adv.
Ms. Madhurima Das, Adv.
...for the respondents

This second appeal has come up for admission against a decree of affirmation passed by the learned Judge, 9th Bench, City Civil Court at Calcutta in Title Appeal No. 41 of 2017 affirming the judgment and decree dated 28th February, 2017 passed by the learned Judge, 4th Bench, Presidency Small Causes Court at Calcutta in connection with Ejectment Suit No. 80 of 2011.

This matter was heard earlier and attempts were made to settle the dispute through mediation. However, the mediation failed.

The second appeal can be admitted only on a substantial question of law. We need to find out the relevant grounds of appeal from the judgment whether any substantial question of law has been raised for admitting the second appeal.

The learned Counsel appearing on behalf of the appellant submits that the appeal is required to be admitted on the ground that

the ejectment notice dated 23rd November, 2010 was invalid in law and both the Courts below have clearly erred in holding that the said notice is valid. The learned Counsel has also argued before us that the learned Appellate Court has not considered the possibility of partial eviction. During the pendency of the appeal, the appellant had surrendered seven rooms leaving two rooms for their present occupation. The said arrangement was purely temporary.

While dealing with the first issue, the learned Trial Judge has taken into consideration the following relevant facts. The notice dated 23rd November, 2010 was marked as Exhibit-13. In the said notice the plaintiff had determined the tenancy of the defendants with the expiry of December 2010, or at the end of the month which would expire next after one month from the service of the notice. The A/D card was marked as Exhibit 13/2 which would show that Ranjit Dasgupta received the A/D card on 29th November, 2010. The envelope addressed to other defendant had returned after serving intimation on 25th November, 2010 and 26th November, 2010. Curiously, Amit Dasgupta did not prefer any appeal against the decree passed by the learned Trial Court.

The defendant before the learned Trial Court has raised an issue that the date of the receipt by Ranjit Dasgupta is alleged to be 29th November, 2010 but the same is forged and manipulated. The defendant argued before the learned Trial Court that the notice was received on or after 6th December, 2010 (wrongly mentioned as 6th December, 2016) and as such, the notice did not give clear one calendar month to the defendants/tenants.

The learned Trial Court refused to accept the said submission

for a very cogent reason with which we are completely agree. The reasons are stated below:

The purpose of notice is to give adequate opportunity to the defendant to comply with the same. The question of prejudice for want of sufficient notice is an important question but the date of filing of the suit and the termination of the tenancy is also relevant consideration during deciding on the validity of the notice. In all the given circumstances, the dates of termination of tenancy and the filing of suit are more relevant than the dates of termination of tenancy standing in comparison with the date of case of action as pleaded. Moreover, cause of action is a bundle of facts. The situation would have been different if the suit was filed before the expiry of the notice period. As the notice period has already been over, before filing of the suit, the contention of the inadequacy of the notice period is not tenable.

The ejectment notice (Ext.13) clearly gives one month time stating that the tenancy will be treated as expired, after one month of receipts of the letter or on the expiry of December, 2010. This suit has been filed on 17/02/11. Even if the notice was received on 06.12.2010, the tenancy was definitely terminated lawfully before 17/02/2011.

The allegation of tampering with the date in the AD card is now dealt with. As per the signature on the AD card, the notice was received on 29.11.2010 on one of the defendants.

The AD card has been received back by the plaintiffs. There is no denial of service of the notice. Rule of prudence leads this Court to conclude that the AD card shall not come back without the signature or mark of the recipient. There is no overwriting or apparent tampering in the date of the AD card. The date 8th of December is the postal department's date and there is no rule that the postal department will affix its seal on the AD card on the date on which the addressee receives the same. Since there is no denial of the signature by the defendant

at any stage of the suit, or nothing in this respect is pleaded in the Written Statement, I am of the view that the notice was received on 29.11.2010, and the suit has been filed well after expiry of the notice period. It also appears that there is a valid cause of action pleaded in the suit.”

It is important to mention here that the defence of the defendants were struck off as they failed to comply with the order passed under Section 7(2) of the West Bengal Premises Tenancy Act, 1997. Before the learned Appellate Court an application was filed by the defendants for consideration of partial eviction. The learned Appellate Court having arrived at a finding that the defence would struck off and admittedly the appellant/defendant is defaulter, dismissed the appeal without considering the other issues.

The only defence that was available to the appellant was the notice for eviction. The said notice for eviction, in our view, has been conclusively and correctly dealt with by the learned Trial Court as well as the learned Appellate Court. The findings with regard to the adequacy of the notice to quit and its service have been properly arrived at by both the Courts below.

We do not find any substantial question of law to admit the second appeal. The second appeal, accordingly, dismissed.

In view of the dismissal of the second appeal, the connected application being CAN 2 of 2019 (old CAN 9541 of 2019) is also dismissed. There shall be no order as to costs.

Interim order, if any, shall stand vacated.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)