

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Biswajit Basu.

SAT No. 298 of 2016

SRI DASU DUTTA
VS.
SMT. USHA RANI NANDI

For the appellant:

Mr. Chirantan Sarkar,
Mr. Niroj Kumar Singh.

For the respondent:

Mr. Gopal Chandra Ghosh,
Mr. Jayanta Das,
Ms. Soumita Ghosh.

Heard on : 25.02.2022, 25.03.2022, 06.04.2022 & 15.06.2022.

Judgment on : 30.06.2022.

Biswajit Basu, J.

1. The plaintiff, the respondent herein, initiated the ejectment action under Section 6 of the West Bengal Premises Tenancy Act, 1997(hereinafter referred to as 'the said Act of 1997' in short) before the Additional Controller at Sealdah for eviction of the defendant from the suit shop room, the said proceeding was subsequently transferred to the Court of learned Additional Civil Judge (Junior Division) at Sealdah, District-24 Parganas(South) being

Ejectment Suit No. 607 of 2004. The instant second appeal is arising out of the said suit, at the instance of the defendant.

2. Default in payment of rent, the suit shop-room requires thorough repair which cannot be carried out without evicting the defendant, the plaintiff reasonably requires the suit shop-room for her own use and occupation and the defendant has violated the clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act, 1882 are the grounds on which the plaintiff sought eviction of the defendant.

3. The defendant although in his written statement denied the plaint case but did not challenge the maintainability of the said suit on any specific ground, nonetheless the learned Trial Judge framed a general issue regarding maintainability of the said suit and the defendant, while addressing the said issue questioned the maintainability of it on the ground that Section 21 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001(hereinafter referred to as 'the said Act of 2001' in short) is a bar to the jurisdiction of the Civil Court to decide the said suit.

4. The learned Trial Judge decided the aforesaid issue in favour of the plaintiff holding that since the cause of action of the said suit arose prior to the commencement of the said Act of 2001, Section 21 thereof is no fetter to the jurisdiction of the learned Trial Judge in entertaining and deciding the said suit and decreed it vide the judgment and decree dated March 26, 2013 holding that the jural relationship of landlord-tenant was there between the plaintiff and the defendant, the defendant was a post suit defaulter in payment of rent and the plaintiff reasonably required the suit premises for

her own use and occupation. The judgment and decree of the learned Trial Judge have been affirmed in appeal by the impugned judgment and decree dated February 25, 2016. The Appeal Court below has held that the cause of action of the said suit arose on determination of defendant's tenancy by the notice to quit dated September 28, 2000, and such cause of action since arose prior to the commencement of the said Act of 2001, Section 21 thereof did not affect the jurisdiction of the learned Trial Judge.

5. The instant second appeal was admitted under Order XLI Rule 11 of the Code of Civil Procedure to answer the following substantial question of law:-

Whether both the Courts below were justified in holding that the suit for eviction of a Bharatia by the thika tenant is maintainable before the Civil Court without considering the provision contained in Section 8(3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 read with Section 13(2) of the West Bengal Thika Tenancy (Acquisition and Regulation) Rules, 2004 or not?

6. The following additional substantial question of law was framed in course of hearing of the appeal when from the record it appeared that the notice determining the tenancy of the defendant was under Section 13(6) of The West Bengal Premises Tenancy Act, 1956 (hereinafter referred to 'the said Act of 1956' in short), whereas the suit was under Section 6 of the said Act of 1997:-

Whether the eviction suit under Section 6 of the West Bengal Premises Tenancy Act, 1997 is maintainable on the basis of a notice under Section 13(6) of the West Bengal Premises Tenancy Act, 1956?

7. Mr. Chirantan Sarkar, learned advocate for the appellant argues that admittedly the defendant is a bharatia under a thika tenant, as such the Thika Controller by virtue of sub-section (3) of Section 8 of the said Act of 2001 has the exclusive jurisdiction to decide the said suit for ejectment in the manner prescribed under Rule 13(2) of the West Bengal Thika Tenancy (Acquisition and Regulation) Rules, 2004, the jurisdiction of the Civil Court to decide such suit stands excluded by virtue of Section 21 of the said Act of 2001, in support of his such submission he refers the Division Bench decision of this Court in the case of **KRISHNA SHAW & ORS. vs. NETAI PANDIT** reported in **(2016) 4 WBLR (Cal) 72** and the decision of the learned Single Judge of this Court in the case of **SATISH CHANDRA NAG & SONS vs. SMT. NARVEDA DEVI GUPTA (DECEASED) & ORS** reported in **(2017) 5 WBLR (Cal) 262**. On the additional substantial question of law, Mr. Sarkar argues that to maintain an ejectment suit under Section 6 of the said Act of 1997, the tenancy of the tenant is required to be determined by a valid notice under sub-section (4) thereof but in the present case, the said determination was made by a notice under Section 13(6) of the said Act of 1956, the suit therefore is not maintainable on the basis of the said notice and is liable to be dismissed on the said ground alone.

8. In response, Mr. Gopal Chandra Ghosh, learned counsel for the respondent submits that due to typographical error the date of accrual of the cause of action of the said suit has been erroneously mentioned in the plaint as November 01, 2004 instead of November 01, 2000 and such cause of action accrued to the plaintiff on determination of the tenancy of the

defendant by one month's notice expiring with the month of tenancy i.e. October, 2000. The said notice dated September 28, 2000 was served upon the defendant on September 29, 2000. The said cause of action arose to the plaintiff when the Calcutta Thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981(hereinafter referred to as 'the said Act of 1981' in short) was the statute governing the incidents of tenancies of the Bharatias under the Thika tenants. The right to sue being accrued to the plaintiff under the said Act of 1981 and the said right is saved under Section 27(2)(b) of the repealing Act i.e. the said Act of 2001 and under Section 8(c) of the Bengal General Clauses Act, 1899 also, Section 21 of the said Act of 2001 cannot put a bar to the jurisdiction of the learned Trial Judge. Mr. Ghosh in support of his aforesaid submission places reliance on the decision of the Hon'ble Supreme Court in the case of **M.S. SHIVANANDA vs. KARNATAKA STATE ROAD TRANSPORT CORPORATION AND OTHERS** reported in **(1980) 1 SCC 149** and the decision of the learned Single Judge of this Court in the case of **SRI RANJIT SARKAR vs. SMT. MALATI GHOSH** reported in **(2009) 2 Cal LJ 596**.

9. On the additional substantial question of law, Mr. Ghosh relying on the decision of the Special Bench of this Court in the case of **SURYA PROPERTIES PRIVATE LTD., AND OTHERS vs. BIMALENDU NATH SARKAR AND OTHERS**. reported in **AIR 1964 CALCUTTA 1** and the decision of the learned Single Judge of this Court in the case of **MAHANANDA DAS KARMAKAR vs. BISWANATH DEY AND OTHERS** reported in **AIR 1976 CALCUTTA 185** contends that threat of suit is

sufficient to meet the requirements of the notice determining the tenancy of the defendant, the caption of the notice has no relevance and in the present case, the tenancy of the defendant was determined by one month's notice expiring with a month of the tenancy, the caption of the said notice cannot affect the validity of it.

10. Let me now proceed to deal with the formulated substantial questions of law on the basis of the materials-on-record and taking into consideration the aforesaid submissions of the learned counsel for the parties. Prior to commencement of the said Act of 2001, the said Act of 1981 used to govern the incidents of tenancies of Bharatias in structures. The said Act of 2001 came into force on March 01, 2003, and by the provision of Section 27(1) of the said Act of 2001, the said Act of 1981 was repealed, however by sub-section 2(b) thereof, any right, privilege, obligation or liability acquired, accrued or incurred under the said Act of 1981 were saved. The said provision of Section 27(1) and (2)(b) are reproduced below for ready reference:-

S. 27. Repeal and savings.

(1) With effect from the date of commencement of this Act, the Calcutta *Thika* and other Tenancies and Lands (Acquisition and Regulation) Act, 1981 (West Ben. Act XXXVII of 1981), shall stand repealed.

(2) Notwithstanding the repeal of the said Act, such repeal shall not—

.....

(b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the said Act; or

.....

11. The Ejectment suit was filed after commencement of the said Act of 2001, on December 02, 2004 but on a cause of action accrued to the plaintiff on determination of defendant's tenancy on and from November 01, 2000, since at the said point of time, the said Act of 1981 was the relevant statute governing the incidents of tenancies of Bharatias in structures under the Thika tenants and in the said Act, there was no provision vesting jurisdiction exclusively with the Thika Controller to decide the suit for eviction of Bharatia like Section 8(3) of the said Act of 2001, therefore, the plaintiff's right to approach Civil Court for eviction of the defendant accrued under the said Act of 1981 was not affected by virtue of Section 27(2)(b) of the said Act of 2001 and it is also saved under Section 8(c) of the Bengal General Clauses Act, 1899.

The observations of the Hon'ble Supreme Court that "*what is unaffected by the repeal of a statute is a right acquired or accrued under it*" in the case reported in **(1980) 1 SCC 149(supra)** is relevant to the present context.

12. The defendant defaulted in payment of rent since April 1999, such default had made the defendant liable to be evicted from the suit shop-room, thereby vesting a right to the plaintiff to file a suit for eviction of the defendant and the said right since accrued to the plaintiff under the said Act of 1981 which was the relevant statute governing the tenancy of the defendant at the said point of time was not affected by virtue of the Section 27(2)(b) of the said Act of 2001. This is another reason for which the jurisdiction of the learned Trial Judge is not affected by Section 21 of the

said Act Of 2001. This view gets support of the decision of the learned Single Judge reported in **(2009) 2 Cal LJ 596(supra)**.

13. In the present case, the issue under consideration is whether a suit for eviction of a Bharatia based on a cause of action accrued to the Thika tenant before the commencement of the said Act of 2001 is maintainable before a Civil Court which was not the issue under consideration before the Hon'ble Division Bench in the case reported in **(2016) 4 WBLR (Cal) 72(supra)** cited by Mr. Sarkar, as such the said decision is distinguishable in facts. The decision of the Single Judge of this Court reported in **(2017) 5 WBLR (Cal) 262(supra)**, for the similar reason, is also not applicable in the present case.

14. The said Act of 1997 came into operation with effect from July 10, 2001 and by virtue of Section 45 thereof, the said Act of 1956 was repealed, in view thereof, notwithstanding erroneous mentioning of the said Act of 1956 in Section 8(1) of the said Act of 2001, at the time of filing of the said suit, the said Act of 1997 was the relevant rent control legislation governing the incidents of tenancy of the defendant. The answer to the additional substantial question of law lies in the investigation as to whether there is any difference between the provisions of Section 6(4) of the said Act of 1997 and Section 13(6) of the said Act of 1956. On a cursory look, it would appear that those provisions are *pari materia*. The demand of the notice under both the provisions is determination of the tenancy by one month's notice expiring with a month of the tenancy. In the present case, the said demand is fulfilled, therefore the caption of the said notice alone cannot

render it invalid. The decisions of the Special Bench in the case reported in **AIR 1964 CALCUTTA 1(supra)** and of the learned Single Judge in the case reported in **AIR 1976 CALCUTTA 185(supra)** cited by Mr. Ghosh, however, are no pointer to the issue under consideration.

Summing up the discussions made above, this Court is of the opinion that no such substantial questions of law as formulated under Order XLI Rule 11 of the Code are involved in the present second appeal, as a consequence, SAT 298 of 2016 is dismissed, the appellate decree dated February 25, 2016 passed by the learned Additional District Judge, Fast Tract Court II at Sealdah, District- 24 Parganas(South) in Ejectment Appeal No. 14 of 2013 is hereby affirmed. There shall be no order as to costs.

The Department is directed to send down the Lower Court Records to the Court below immediately.

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

(BISWAJIT BASU, J.)