

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

FA 53 of 2023
FAT 511 of 2019

The Estate Officer, South Eastern Railway,
Kharagpore & Ors.
versus
Sri Dipankar Chakraborty

For the Appellants : *Mr. Atarup Banerjee*

For the Respondent : *Mr. Nilendra Narayan Ray.*

Hearing is concluded on : *3rd April, 2023.*

Judgment On : **11th May, 2023.**

Partha Sarathi Chatterjee, J.

1. Legality and propriety of the judgment and decree dated 17th November, 2017 passed by the learned Civil Judge, Senior Division, 8th Court, Alipore, South 24 Parganas in Money suit no. 232 of 2009 have been called in question in the present appeal.

2. By the judgment and decree impugned, the learned Court below decreed the suit declaring the plaintiff/respondent (in short, respondent) to be entitled to get Rs.3,10,912/- along with interest @ 8% p.a. accrued thereon from the date of the suit till date of realization thereof from the defendants/appellants (in short, the appellants).

3. Shorn of unnecessary details, facts spelt out in the plaint are as follows :

- i) Respondent, joined as Junior Assistant Accounts in the office of the Senior Divisional Accounts Officer of South Eastern Railway on 2.5.1988, who was subsequently transferred to the post of Section Officer (Accounts) of Accounts Department (Settlement Section) at the Headquarter at Garden Reach, Kolkata;
- ii) One Pabitra Kumar Halder (in short, Pabitra), Assistant Efficiency Officer of South Eastern Railway (in short, S.E. Rly.) was allotted one flat being no. 13B of Unit no. 1 at Garden Reach (hereinafter referred to as the said quarter) in 1981 and Pabitra became seriously ill and remained under prolong treatment and respondent upon sympathetic grounds had to stay occasionally in the said quarter along with Pabitra particularly to look after him;
- iii) From a letter dated 28.3.1996, respondent came to know that the railway authority by passing an order dated 20.8.1995 declared the respondent to be an unauthorised occupant of the said quarter and proceeded to recover monthly damages @

Rs.34/- per sq. meter of plinth area of the said quarter admeasuring about 120 sq. mts. w.e.f. September, 1994;

- iv) Estate Officer, South Eastern Rly., Kharagpore, appellant no. 1 herein initiated a proceeding vide. Case no. E/16/2002/GRC and by an order *vide.* no. 1 dated 6.8.2002 directed the respondent to pay a sum of Rs.3,10,912/- as damages and appellant no. 1 further directed that aforesaid sum of money would be recovered from monthly salary of the respondent in 60(sixty) equal monthly instalments;
- v) Respondent assailed the said order dated 6.8.2002 in one P.P. Appeal *vide.* no. 01 of 2002 being an appeal under Section 9 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in short, Act of 1971) before the learned District Judge, Alipore and during pendency of that appeal, appellants started deducting the aforesaid amount, as assessed as damage, from the salary of the respondent @ Rs.5000/- per month;
- vi) By an order dated 6.8.2005, learned District Judge stayed the operation of order dated 6.8.2002 and order dated 6.8.2005 was duly communicated to the appellants but they did not stop deducting the aforesaid amount being Rs.5000/- from the monthly salary of the respondent till December, 2017. The said appeal was transferred to the Court of learned Additional District Judge, 1st Court, Alipore for disposal;

- vii) By an order dated 25.4.2006 passed by learned Additional District Judge, 1st Court, Alipore, order passed by the Estate Officer dated 6.8.2002 in case no. E/16/2002/ ERC was set aside;
- viii) Order dated 25.4.2006 was communicated to the appellants and by a letter dated 19.5.2006, respondent requested the appellants to refund the amount being Rs.3,10,912/-, which was deducted from the salary of the respondent from November 2002 to till December, 2007, with interest @ 18% p.a. but no amount was refunded and hence, by giving one notice u/s. 80 CPC on 20.3.2009, respondent instituted the suit.

4. Record reveals that defendant no. 2 contested the suit and used written statement. Crux of the defendant's case, as would be explicit from the written statement and the documents annexed thereto, was as follows:

- i) Pabitra made a complaint on 29.3.1995 to Sr. DGM/S.E.Rly./GRC contending therein that he was subjected to mental agony and torture by the respondent while staying in his quarter and said complaint was referred to P.T. Jehmson, one Sub-inspector, RPF to hold enquiry, who upon enquiry found substance in such allegation and reported that respondent was forcibly and unauthorisedly occupying the quarter. Consequently, one eviction case *vide*. E/8/95/GRC was initiated against the respondent and order of eviction was

passed on 18.4.1996 and vacant possession of the quarter was recovered from the respondent on 25.4.1999;

- ii) Respondent illegally occupied the flat allotted to Pabitra from September, 1994 to 24.8.1999. As per the service rule governing the respondent, no non-gazetted staff like the respondent (other than relative) can occupy the quarter allotted to Pabitra, a Gazetted Officer;
- iii) Consequently, initially, Railway authority discontinued payment of his House Rent Allowance (HRA) from March, 1996 holding that HRA paid to respondent from September, 1994 till February, 1996 amounting Rs.6733/- as overpayment and damage rent was of Rs.60,729/- was levied;
- iv) Respondent filed a series of cases. He took the dispute to Central Administration Tribunal by filing one original application *vide*. O.A. no. 1296 of 1997 which was decided against the respondent. Respondent filed one review application *vide*. R.A. 23/1998 which was also rejected;
- v) Aggrieved thereby, respondent impugned the order of the learned Tribunal before the Hon'ble High Court at Calcutta by taking out an application *vide*. W.P.C.T. no. 55 of 2000;
- vi) WPCT no. 55 of 2000 was disposed of on 27.7.2001 by giving necessary guidelines to the appellants to deal with the matter and in obedience to the order dated 27.7.2001, matter was referred to Estate Officer concerned, who initiated a proceeding

under Sub-section (2) of Section 7 of the Act of 1971, which was registered as Case no. E/16/2002/GRC and by an order dated 6.8.2002, respondent was directed to pay damages to the tune of Rs.3,10,912/- which was directed to be recovered from his monthly salary in 60(sixty) equal monthly instalments;

- vii) In the meantime, respondent filed another original application being O.A. no. 146 of 2003 seeking direction upon the appellants to release the unpaid amount of HRA amounting to Rs.52,371/- withheld from the salary of the respondent from March, 1996 to 24th August, 1999 and balance amount of damage rent to the tune of Rs.9,519/- with interest @ 18% per annum which was disposed of directing the parties thereto to seek proper remedies as per law. Assailing the order passed in O.A. no. 146 of 2003, another writ petition *vide*. WPCT no. 384 of 2006 was filed by the respondent which has been disposed of;
- viii) It was claimed that as per the guidelines of the Hon'ble High Court given in WPCT no. 55 of 2002, Rs.3,10,912/- was deducted from the salary of the respondent and it was further claimed that suit was bad for non-joinder of necessary party being FA & CAO (Admn-Bills).

5. Upon pleadings of the respective parties, the learned Court framed as many as five issues and in corroboration of the facts depicted in the plaint, plaintiff/respondent examined himself as PW-1 and tendered the documents which were admitted in evidence as Ext.1 to 4 whereas to refute

the claim of the plaintiff, defendants/appellants adduced oral testimony of one Smt. Tanuja Thakur and one copy of the order passed in WPCT no. 55 of 2000 was produced and marked as 'X' for identification.

6. Learned Court below decreed the suit and directed the appellants to refund the amount being Rs.3,10,912/- along with interest @ 8% p.a. accrued thereon from the date of suit till the date of realization thereof.

7. Aggrieved thereby, the appellants have impugned the judgment and decree in the present appeal contending, *inter alia*, the learned Court did not consider that the respondent illegally occupied the quarter allotted to Pabitra and learned Court below omitted to consider the complaint of Pabitra, enquiry report on such complaint and other orders passed in the matter and learned Court below did not consider that Estate officer passed the order directing the respondent to pay Rs.3,10,912/- as per the order passed in WPCT no. 55 of 2002.

8. Mr. Atarup Banerjee, learned advocate representing the appellants submits that the respondent illegally occupied the quarter allotted to Pabitra and Pabitra made a complaint to the effect that he was subjected to torture and on enquiry, such complaint was found to have substance and he contends that as per the service rules governing the respondent, no non-gazetted employee can occupy the quarter allotted to gazetted officer but in the case at hand, respondent being one non-gazetted employee had illegally occupied the quarter allotted to Pabitra, who happened to be a gazetted officer and hence, Estate officer correctly directed the respondent to pay the damages to the extent of Rs.3,10,912/-.

9. According to Mr. Banerjee, Estate officer concerned passed the order directing the respondent to pay Rs.3,10,912/- in accordance with the order passed by the Hon'ble Court in WPCT no. 55 of 2002. He contends that judgment and decree, which was passed ex parte, cannot be sustained and hence, those are required to be set aside.

10. Mr. Ray, learned advocate for the respondent submits that respondent did not occupy the quarter forcibly. Pabitra fell ill and on humanitarian and sympathetic grounds, on being requested by Pabitra only to give support to Pabitra, who was suffering schizophrenia, respondent used to stay with Pabitra. He argues that appellants at one time withheld HRA of the respondent and then directed him to pay damages rent of Rs.60,729/- and then using the order of the Hon'ble High Court at Calcutta passed in WPCT no. 55 of 2002 as shield, deducted huge amount being Rs.3,10,912/- from the salary of the respondent illegally. He submits that judgment and decree have been passed assigning reason and hence, there is no scope to interfere with the same.

11. Answering our query, Mr. Ray, submitted that all the amounts deducted from the HRA and as damages excepting the amount being Rs.3,10,912/- have been refunded to the respondent.

12. We have been informed that the appellants filed an application under Order 9 Rule 13 of the Code, which was registered as Misc. case no. 19 of 2009. The same was dismissed and even the Writ petition being WPCT no. 384 of 3006 which was filed challenging the order passed in O.A. no.

146 of 2003 has also been disposed of and as on date, no case except the present *lis* is pending in between the parties hereto.

13. Indisputably, order passed in P.P. Appeal *vide* no. 01 of 2002 on 25.4.2006 has attained finality. By an order dated 25.4.2006, learned Additional District Judge, 1st Court, Alipore set aside the order dated 6.8.2002 passed by the Estate Officer, S.E. Rly, Kharagpur in Case no. E/16/2002/GRC. Appellants did not take any step to assail the order 25.4.2006 before any other forum. Appellants have given effect to the order dated 6.8.2002 passed by the Estate Officer and deducted the amount being Rs.3,10,912/- from the salary of the respondent but fact remains as on date, there is no order to lent support to deduction of the amount from the salary of the respondent.

14. Appellants took the plea in the written statement used in Money Suit no. 232 of 2009 that the Estate Officer directed deduction of the amount in obedience to the order passed in WPCT 55 of 2002.

15. A co-ordinate bench of this Court while disposing of WPCT no. 55 of 2002, in which act of withholding of HRA and recovery of damage by an letter dated 31.10.1997 were assailed, observed that S.R. 317-B-20 '*cannot be of any help for the respondent authority to empower itself to pass any order for recovery of damages for unauthorised occupation of any flat*' and in the said writ petition, it was further observed that '*when Railway servant shares Government accommodation allotted to another Railway employee, he cannot be prevented from enjoying house rent allowance as it has been clearly indicated in the second proviso of Rule 1706 of the Indian Railway*

Establishment Code Volume II and at the same time provision of Rule 1711 which starts with the caption "recovery of rent" has no application in the present case'.

16. Admittedly it was ordered therein that observation recorded in the order passed in WPCT 55 of 2002 shall not prevent the respondent authority from taking appropriate action for recovery of damages but in that order, respondent has not been declared as '*unauthorised occupant*'. Such '*appropriate action for recovery of damages*' is subject to determination of the respondent as '*unauthorised occupant*'.

17. Section 2(g) of Act of 1971 has defined the expression '*unauthorised occupation*' which is as follows:

Section 2(g) : "*unauthorised occupation*", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

18. From the complaint of Pabitra, which was drawn to our attention, it would be explicit that Pabitra himself shared the quarter with respondent meaning thereby, Pabitra voluntarily allowed the respondent to stay in the quarter and then, according to Pabitra, he was subjected to torture.

19. The appellants, on one hand, have deducted HRA from Pabitra for his occupation of the quarter and on the other hand, the appellants have

deducted damages for unauthorised occupation of a certain portion of same quarter from the respondent. Financially, appellants sought to enjoy double benefits from the same quarter which is not expected from a model employer.

20. Hence, in view of the discussion made hereinabove, particularly, since the order dated 6.8.2002 has been set aside in P.P. Appeal no. 01 of 2002 and order dated 25.4.2006 has attained finality, we have no qualm to hold that the learned Court below has not misdirected itself in giving direction upon the appellants to refund the amount being Rs.3,10,912/- along with interest @ 8% accrued thereon from the date of suit till the date of realization thereof.

21. In conclusion, the appeal fails. Judgment and decree impugned herein are affirmed. Parties shall bear their own costs.

22. Let a decree be drawn up accordingly.

23. Let a copy of this judgment along with LCR be sent down to the learned Court below forthwith.

24. Urgent Photostat copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)