

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)**

APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty

&

The Hon'ble Justice Partha Sarathi Chatterjee

WPLRT 9 of 2024

Rajib Ghoshal & Ors.

-Vs.-

The State of West Bengal & Ors.

For the Petitioners : *Mr. Probal Mukherjee,*
Mr. Meghajit Mokherjee,
Ms. Mobina Ali.

For the Respondent : *Mr. Ashim Kumar Roy.*
Nos. 2 & 3.

Heard on : *24.05.2024*

Judgment on : *27.06.2024*

Partha Sarathi Chatterjee, J.:-

Prelude:

1. An intricate and drawn-out legal wrangle over the issue of the payment of enhanced fair rent has barged into the extra-ordinary jurisdiction of this Court through this writ petition which has been instituted to question the

justifiability of the order dated November 30, 2023 passed by the learned Tribunal in M.A. no. 1065 of 2023 preferred by the respondent nos. 2 and 3 in connection with his original application being O.A. no. 2358 of 2022.

Facts:

2. Sans unnecessary details, the facts crucial for resolving the issue raised in the writ petition must be noticed.
3. Way back in 1965, by a registered instrument, an office space admeasuring 620 sq.fts. situated on third floor of the premises no. 4, Ganesh Chandra Avenue, Kolkata-13 (hereinafter, the premises) was let out with an option to sublet, either to the respondent nos. 2 and 3 or their predecessor initially for 31 years and then the lease on the similar terms, was renewed for another term of 20 years. Sometimes in 1977, the premises was sublet to the predecessor of the petitioners at a monthly rental of Rs.620/-.
4. In 2004, the respondent nos. 2 and 3 presented an application before the Rent Controller seeking enhancement of rent as per the provision of Section 17(4A) of the West Bengal Premises Tenancy Act, 1997 (in short, the 1997 Act). The application was registered as R.C. case no. 170 of 2004.
5. While the proceedings before the Rent Controller were ongoing, the predecessor of the petitioners passed away and as such, the sub-tenancy devolved upon the petitioners. To keep the things concise, the respondent numbers 2 and 3 are hereinafter referred to as the tenants, and the petitioners as the sub-tenants.
6. Meanwhile, the lease held by respondent numbers 2 and 3 expired on December 31, 2016. The owners of the premises initiated a suit *vide*. Title Suit

no. 813 of 2017 praying for decrees of recovery of possession and mesne profits against the tenants. The suit is awaiting final adjudication in the City Civil Court, XI Bench, Calcutta.

7. In 2017, nearly 13 years later, the tenants filed an application for an amendment before the Rent Controller to include a prayer in the main application for the enhancement of fair rent as per Section 17(6) of the West Bengal Premises Tenancy Act, 1997 (in short, the 1997 Act). The Rent Controller rejected the application for amendment by an order dated 06.03.2018.
8. The order dated 6.3.2018 was assailed in a civil revision *vide* C.O. no. 705 of 2018 before this Court. By an order dated 30.01.2019, the C.O. no. 705 of 2018 was allowed. The tenants were directed to submit amended application whereas the petitioners were directed to file their written objection to that application within the time specified therein. Additionally, the Rent Controller was directed to dispose of the main proceeding within a specific time frame.
9. However, the Rent Controller allowed the amendment by an order dated 17.01.2020. Subsequently, this order was challenged by the sub-tenants in a civil revision petition, *vide* C.O. no. 617 of 2020. Meanwhile, alleging wilful violation of the order dated 30.01.2019 by the Rent Controller for not concluding the proceeding within the stipulated time frame as per the order dated 30.01.2019 passed in C.O. 705 of 2018, the tenants filed a contempt petition, registered as CPAN 478 of 2022.

10. However, by an order dated 30.06.2022, the Rent Controller disposed of the proceeding, fixing the rent at Rs. 7200/- w.e.f. 28.08.2003 in terms of the provisions of Section 17(6) of the 1997 Act. The tenant was directed to pay 10% of the fair rent, i.e., Rs. 720/- per month, as maintenance charge, and 20% of the fair rent, i.e., Rs. 1440/- per month, as occupier's share of municipal tax, along with 20% of the fair rent, i.e., Rs. 1440/- per month, as commercial surcharge. Furthermore, it was directed that the rent would increase by 5% after every three years.
11. Feeling aggrieved by the order dated 30.06.2022, both the tenants and the sub-tenants say, the petitioners preferred two separate original applications being O.A. no. 2358 of 2022 and O.A. no. 2629 of 2022 respectively.
12. On 27.09.2022, the tenants instituted a suit *vide* T.S. no. 2160 of 2022 seeking decrees of recovery of possession and *mesne* profits against the sub-tenants. However, this suit was dismissed as withdrawn on 27.04.2023.
13. In the midst thereof, on 15.03.2023, the tenants preferred an application under Section 151 of the Code of Civil Procedure, 1908 in T.S. no. 813 of 2017 seeking permission from the Court to surrender the possession of the premises in favour of its original owners. However, the application was rejected.
14. During pendency of the both the original applications, the tenants preferred an interlocutory application being M.A. no. 1065 of 2023 in connection with their original application being O.A. no. 2358 of 2022.

15. The application being M.A. no. 1065 of 2023 was disposed of by an order dated 30.11.2023 directing the petitioners herein to pay Rs. 30,20,882.54 by Banker's cheque/ demand draft to the tenants within two weeks from the date of communication of the order with a further direction upon the petitioner to pay current rent @ Rs. 14473.03/- p.m. w.e.f. 11.10.2023 by the 10th of each successive month till disposal of the '*appeals*'. A cost of Rs. 1 (one) lakh was imposed upon the petitioners. Hence, this writ petition.

16. We have been informed that the tenants preferred a contempt application against the petitioners before the learned Tribunal, alleging wilful violation of the order dated 30.11.2023 passed in M.A. no. 1065 of 2023, for failing to make payments of enhanced fair rent, current rent, and costs. Upon conclusion of the hearing of the contempt application, the tribunal has reserved judgment.

Submissions:

17. Mr. Mukherjee, learned senior advocate appearing in support of the writ petition argued that the lease granted to the tenants expired on 31.12.2016. The tenants themselves by preferring an application in T.S. 817 of 2017 sought permission of the Court to surrender the possession of the premises in favour of its original owner. As such, the tenants' right in the property is precarious.

18. He argued that by the order impugned, the learned Tribunal has virtually executed the order of the Rent Controller. According to him, if the

tenants or sub-tenants refused to pay the enhanced fair rent, the only recourse available is to file a money suit.

19. He next contended that keeping the main proceedings pending, the learned Tribunal has granted final relief to the tenants on an interlocutory application and as such, the order granting such final relief cannot be sustained.

20. Inviting our attention to the plaint filed in the suit titled T.S. 2160 of 2022, he argued that the tenants referred to the petitioners as licensees in respect of the premises. Mr. Mukherjee asserted that there's a disagreement concerning the petitioners' status regarding the premises.

21. He sought to argue that it is necessary for the learned Tribunal to determine whether the Rent Controller erred in fixing the fair rent in terms of the provisions of Section 17(6) of 1997 Act instead of invoking the provisions of Section 17(4A) of the Act.

22. He submitted that according to the calculations, as made by the petitioners, the dues would amount to Rs. 11 (eleven) lakhs approximately. The petitioners are prepared with a bank draft of Rs. 15 (fifteen) lakhs and if the Court so desires, the amount can be secured. He asserted that such amount cannot be directed to be paid to the tenants.

23. Mr. Roy, learned advocate appearing for the tenants advanced argument on behalf of the tenants. In addition to his argument, he submitted his written notes of argument. Let the written notes of argument be kept with the record.

- 24.** Mr. Roy sought to justify the decision of the Rent Controller contending the amount of the rent was too low and as such, the fair rent was fixed in terms of the provisions of Section 17(6) of the 1997 Act.
- 25.** He argued that suit vide. T.S. no. 813 of 2017 is not the subject matter of the present writ petition. He sought to contend that the Transfer of Property Act, 1882 is not the specified Act within the meaning of the provisions of Section 2(r) of the West Bengal Land Reforms & Tenancy Tribunal Act, 1997 and therefore, neither the learned Tribunal nor this Court can address the question whether the petitioners are sub-tenants or licensees.
- 26.** Mr. Roy argued that the petitioners did not pray for an order of stay of operation of the Rent Controller's order before the learned Tribunal. In such circumstances, the fair rent would replace the contractual rent, and the petitioners were obligated to continue paying the fair rent. However, the tenants have failed to pay even the contractual rent since 2004.
- 27.** He cited two decisions, reported at 2022 SCC OnLine SC 827 (HSBC PI Holdings v. Pradeep Shantpershad) and (2022) 6 SCC 662 (Urban Infrastructure v. Dharmesh S. Jain) for the proposition that executability of an order will not preclude the filing of a contempt petition. Citing a decision, reported at (1998)8 SCC 640 (Dr. H. Phunindre Singh & Ors. v. K.K. Sethi & Anr.), he sought to contend that the contempt petition, which was preferred alleging the wilful violation of the order under the appeal, should be decided first keeping the appeal pending.
- 28.** Referring to the decisions, reported at 2018 SCC OnLine Cal 6943 (Parijat Investments vs. Vandana Agarwalla), he argued that in a similar

matter, despite pendency of the appeal against the order of the Rent Controller, the learned Tribunal directed the sub-tenant to pay Rs. 20 lakhs as arrears of enhanced fair rent holding that the amount if found to have been paid in excess shall be adjusted against future rent. The order of the learned Tribunal was assailed in a writ petition, which was dismissed upholding the decision of the learned Tribunal. Citing another decision, reported at (2024)3 SCC 224 (*Mary Pushpam v. Telvi Curusumary*), he argued that judicial discipline and propriety demand that decision of a coordinate Bench is binding upon another coordinate Bench.

- 29.** In addition to the afore-referred decisions, to invigorate his submission, in his written notes of argument, he referred to the following decisions:

2024 SCC OnLine SC 980 (Bijay Kumar Manish Kumar Huf v. Ashwin Banulal Desai); 2016 SCC OnLine Cal 5487 (2017(1) Cal LJ 57) (Ram Gopal Agarwala & Ors. v. Prasun Guha); AIR 2019 Cal 216 (Sachin Halder v. Md. Shaid); 2023 SCC OnLine SC 1356 (Debasish Paul & Anr. v. Amal Boral); 2019 SCC OnLine Cal 9336 (Bharat Kumar Giridharilal Hariyani v. Ardhendu Sekhar Kundu & Anr.); 2019 SCC OnLine Cal 9359 (Books & Forms v. Insulation Materials Mfg. Co. (P) Ltd.); 2011 SCC OnLine Mad 1006 (Girdharilal Chandak Bros (HUF) represented by its Kartha, Mr. Girdharilal Chandak (died) & Anr. v. S. Mehdi Ispahandi & Ors.).

Analysis:

30. The parties are not in a position to dispute that in the present writ petition, this Court has been enjoined upon to decide as to whether the learned Tribunal was justified in passing the order on an interlocutory application directing the petitioners herein to pay Rs. 30,20,882.54/- as arrears of enhanced fair rent, current rent @ Rs. 14473.03 p.m. w.e.f. 11.10.2023 by the 10th of each successive month till disposal of the 'appeals' and costs of Rs. 1 (one) lakh.

31. As noticed earlier, throwing challenge to the order dated 30.06.2022 passed by the Rent Controller fixing the fair rent, both the parties have preferred two separate original applications which are awaiting final adjudication before the learned Tribunal.

32. During pendency of both the two original applications, the tenants had presented an interlocutory application seeking a direction upon the petitioners, the sub-tenants to pay Rs. 35,19,611.45/- and also to pay realistic actual costs and exemplary costs.

33. The learned Tribunal found the proposition laid down in Giridharilal Chandak & Ors (*supra*) as decisive and/or guiding light in deciding the issue and ordered the petitioners to pay Rs. 30,20,882.54/-, current rent @ Rs. 14,473.03/- p.m. and costs of Rs. 1 lakh.

34. It is condign to note that Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in

which they appear to have been stated. The judgments of the courts are not to be construed to as statutes. Judges interpret statutes and not the judgments. Each case depends on its own facts and a close similarity between one case and another is not enough. One additional or different fact may make a world of difference between conclusions in two cases. (See, judgment delivered in case of Bharat Petroleum Corpn. V. N.S. Vairamni, reported in (2004)8 SCC 579).

35. In the case at hand, the tenants seeking direction upon the sub-tenants to pay all the arrears of the enhanced fair rent and current fair rent to them though the lease by which the tenants had been inducted in the premises has expired in 2016. The original owners of the premises have instituted a suit for a decree of recovery of possession and mesne profits against the tenants. By making an application in connection with that suit, the tenants expressed their desire to surrender the possession of the premises in favour of the original owner thereof.

36. Therefore, a crucial question which will inevitably come is that whether or not, the tenants can claim any rent after 2016. Moreover, if there is any overpayment, it should not be adjusted against future rent. The core issue whether the fair rent is to be enhanced in terms of Section 17(4A) or Section 17(6) of 1997 Act is awaiting its final resolution before the learned Tribunal.

37. The use of leverage to pressure the defendant or judgment-debtor to settle the claim during the main proceeding or appeal is not uncommon in our legal system. However, it's crucial to recognize that such leverage is a significantly drastic measure and should only be employed if the necessary

circumstances are present. Whether the requisite circumstances exist is question of fact to be proved to the satisfaction of the court. There must be some circumstances and/or materials indicating that the defendant or judgment-debtor is making efforts to defeat the decree and/or the final order that may be passed against him or that the circumstances require the Court to intervene to ensure that the successful can enjoy the fruit of the final order.

38. The circumstances in the case of Giridharilal Chandak & Ors. (*supra*) are completely distinct from those in the current case. Therefore, in our opinion, the learned Tribunal has misguided itself in applying the decision of Giridharilal Chandak & Ors. (*supra*) in the present case without adequately considering how its factual matrix align with those of the present case.

39. During the interim stage, issuing an order to enforce or execute the decision being challenged in the main proceeding will bring finality to the order in question. It is significant to note that the rationale for directing the deposit and/or payment of any amount during the interim stage is to ensure that the successful party isn't deprived of enjoying the benefits of the final order.

40. Needless to observe that if a judgment-debtor is required to deposit funds as a condition to suspend the execution and/or enforcement of an order, the title of the deposited funds will not automatically pass to the Decree-holder. The Decree-holder can only access the funds upon furnishing the security.

41. The learned Tribunal has imposed costs of Rs. 1(One) lakh upon the petitioners. Settled law governing the issue of imposition of costs is that

normally, costs would be actual and reasonable. However, when heavy and/or substantial costs are imposed, there must be clear justification, demonstrating special circumstances or reasons which prompted the court to resort to such measures. In the case at hand, no such special circumstances or reasons have been indicated.

42. Generally, exemplary or substantial costs are levied in cases where a litigant engages in deceitful practices, abuses the legal process, or commits fraud. The issue of prolonged non-payment of rent by a tenant or sub-tenant has already been addressed by legislation. Heavy costs should not be imposed based on irrelevant factors. In given case, the petitioners have admittedly exhibited some delay and/or laches, warranting the imposition of reasonable costs.

43. A series of rulings suggest that when determining costs, courts should consider the time and expenses incurred by the successful party in pursuing the litigation and consider the factors like costs of transportation, court fees, legal fees etc.. In our opinion, given the conduct of the petitioners and the expenses borne by the tenants in seeking recourse, we inclined to direct the petitioner to pay a tentative cost of Rs. 20,000/- to the tenants.

44. Now, before delving into the decisions cited by Mr. Roy to support his arguments, it would be apposite to reiterate that our focus in this writ petition is solely on assessing the validity of the order issued by the Tribunal in M.A. 1065 of 2023. We are not here to review any order on contempt petitions, nor are we tasked with determining the maintainability of contempt petition given the circumstances. It is worth noting that we are not reviewing any judgment

or order from ongoing suits, nor are we in a position to assess the validity of order passed by the Rent Controller.

45. As noticed earlier, in the judgments delivered in cases of HSBC PI Holdings v. Pradeeep Shantpershad (*supra*) and Urban Infrastructure v. Dharmesh S. Jain (*supra*) it was ruled that the executability of an order will not preclude the filing of a contempt petition. There cannot be any quarrel in accepting this proposition but the same is not applicable to the case at hand.

46. Placing reliance upon the judgment of Dr. H. Phunindre Singh & Ors. v. K.K. Sethi & Anr. (*supra*), Mr. Roy claimed that the contempt petition, which was preferred alleging the wilful violation of the order under the appeal, should be decided first keeping the appeal pending but by using the words ‘in the facts of the case’ in paragraph -2 of the judgment of Dr. H. Phunindre Singh & Ors. v. K.K. Sethi & Anr. (*supra*), the Hon’ble Court restricted its order to the facts of that case only. Reference to paragraph -4 of the judgment, reported at (1995) Supp.4 SCC 465 (Modern Food Industries (I) Ltd. v. Sachidanand Dass) [the judgment was referred in the decision of Sachin Halder (*supra*)] may throw some light on this issue. Para-4 is quoted herein below:

“Before the High Court, appellants urged that before any contempt proceedings could be initiated, it was necessary and appropriate for the Division bench to examine the prayer for stay, or else, the appeal itself might become infructuous. This did not commend itself to the High Court which sought to proceed with the contempt first. We are afraid, the course adopted by the High court does not commend itself as proper. If, without considering the prayer for stay, obedience to the

Single Judge's order was insisted upon at the pain of committal for contempt, the appellants may find, as has now happened, the very purpose of appeal and the prayer for interlocutory stay infructuous. It is true that a mere filing of an appeal and an application for stay do not by themselves absolve the appellants from obeying the order under appeal and that any compliance with the learned Single Judge's order would be subject to the final result of the appeal. But then the changes brought about in the interregnum in obedience of the order under appeal might themselves be a cause and source of prejudice. Wherever the order whose disobedience is complained about is appealed against and stay of its operation is pending before the Court, it will be appropriate to take up for consideration the prayer for stay either earlier or at least, simultaneously with the complaint for contempt. To keep the prayer For stay stand-by and to insist upon proceeding with the complaint for contempt might in many conceivable cases, as here, cause serious prejudice. This is the view taken in State of J and K v. Mohd. Yaqoob Khan.”

47. In essence, there cannot be any inflexible rule. Some directives need immediate compliance and/or instant action like an order of injunction restraining a construction or a restraining order to stop demolition requires instant action [see, the judgment of Sachin Halder (*supra*)]. Some still argue that once an appeal is preferred, the order impugned in the appeal loses its finality.
48. Therefore, no precedent can be set that when a contempt petition has been preferred alleging wilful violation of the order impugned, the appellant court or writ court shall stay its hands till the disposal of the contempt petition.

49. Likewise, if the appellate court itself enforces the order impugned in the appeal through an interlocutory application, the appeal may itself be ineffective and/or infructuous. Needless to observe that an interim order is passed in aid of the final relief and final relief cannot be granted on an interlocutory application. During pendency of main proceeding, interlocutory order is passed in supplementary proceeding and such a supplementary proceeding is initiated with a view to prevent the ends of justice being defeated. Such proceeding may not be taken recourse to in routine manner but only when an exigency of situation arises therefor.

50. As observed earlier, in an appeal, the appellate court may put the appellant on terms to ensure so that the successful party is not deprived of benefits of ultimate result of the appeal but giving direction to enforce the order impugned on an interlocutory application and compelling the appellant to pay the entire claim amount to the respondents at the interim stage is not justified. The Court is obligated to ensure fairness to both parties involved in the proceeding and in the process of dispensation of justice, the Court must not be influenced by any external factors.

51. In the judgment of Ram Gopal Agarwala & Ors. (*supra*), a coordinate Bench of this Court directed the State to mutate the land in favour of the petitioners therein. The State preferred a Special Leave Petition and prayed for an interim order. The Hon'ble Supreme Court restrained the parties from creating any third party interest in the land but the direction to mutate the land in favour of the petitioners had not been stayed and as such, a direction was given to mutate the land.

52. In the decision, rendered in case of Parijat Investment Ltd. (*supra*), the coordinate Bench assumed that surplus payment could not adjusted against upcoming rent. The facts that respondent nos. 2 and 3 themselves have become tenants at sufferance and the original owners have initiated an action to regain the possession and for mesne profits. By preferring an application, the tenants at sufferance indicated their willingness to return the premises to the owners have not been brought to the notice of the Bench. Therefore, in the given cast, there is no scope for adjustment of excess payment against future rent. The judgment of Debasish Paul & Anr. (*supra*) dealt with the issue of deposition of rent in terms of S. 7(1) or 7(2) of the 1997 Act during pendency of a suit eviction and as such, the same is distinguishable on facts.

53. Therefore, the precedents set in the judgments, as cited by Mr. Roy, are, undoubtedly binding in nature but had no relevance in the specific facts and circumstances of this case.

Order:

54. In view of the foregoing analysis, the order under challenge in this writ petition is set aside. The application vide. M.A. 1065 of 2023 is disposed of directing the petitioners to deposit a sum of Rs. 15 (fifteen) lakhs with the learned Registrar of the learned Tribunal, either through a bank draft or cheque within a period of two weeks from date and to continue depositing rent @ Rs. 5000/- p.m. with the Rent Controller till the final outcome of the original applications pending before the learned Tribunal. The learned Registrar shall deposit the amount in short term interest bearing scheme. The learned Tribunal shall make an utmost effort to dispose of both the original

applications, as noted above, as expeditiously as possible preferably within a period of six months from date. The fate of deposition of the amounts by the petitioner shall be subject to the result of the original applications.

- 55.** With these observations and order, the writ petition is, thus, disposed of with costs of Rs.20,000/- The costs shall be paid to the tenants within a period of three weeks from date and the petitioner shall produce the document showing such payment before the learned Tribunal.
- 56.** Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.
- 57.** Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)