

03.09.2024
Court No.13
Item Nos.18 to 20
pk

**F.A.T. No. 429 of 2011
With
I.A. No. CAN 3 of 2023
And
I.A. No. CAN 4 of 2024
Meena Mondal
in place of Padmabati Khan (since deceased)
Versus
Omprakash Gupta
With
F.A. No. 223 of 2014
With
I.A. No. CAN 3 of 2023
And
I.A. No. CAN 4 of 2024
Meena Mondal
in place of Padmabati Khan (since deceased)
Versus
Joyprakash Gupta
With
F.A.T. No. 430 of 2011
With
I.A. No. CAN 2 of 2023
And
I.A. No. CAN 3 of 2024
Meena Mondal
in place of Padmabati Khan (since deceased)
Versus
Baby Gupta**

Mr. Rabindra Narayan Dutta
Mr. Sibasish Ghosh
Mr. Hare Krishna Halder
Mr. Koushik Bhattacharya
Mr. Arkoday Mukherjee
Mrs. Debjani Bandopadhyay
Mr. Soham Banerjee

...For the Appellants.

Mr. Sourav Sen
Mr. Partha Chakraborty
Mr. Muhammad Obaid
Mr. A. Ghosh

...For the Respondents.

1. These appeals are directed against the judgement and decree datged 15th September, 2011 passed in T. S. No. 1783 of 2007 by the 8th Bench of the City Civil Court at Calcutta.

2. By the impugned judgement and decree the suit was dismissed ex parte on the ground that the schedule of the lease deed differed from the schedule mentioned by the plaintiff in the plaint.

3. The brief facts of the case are, inter alia, that the respondent was inducted by the appellant and/or her predecessor in interest under a registered lease for a period of 51 years dated 12th July, 1990. The lease property in FAT 429 of 2011 comprised in 17957 square feet on the 1st floor of Premises No.4/1A, Ramdhan Khan Lane, Calcutta-700005. The other two appeals being FA 223 of 2014 and FAT 430 of 2011 are for the ground floor and 2nd floor respectively.

4. In terms of the registered lease, the monthly rental for the first floor was Rs.500/- that was enhanceable by 10 per cent every five years. The lessee was obliged to pay Corporation tax and also to maintain the premises in good, repair and condition. There are several other clauses which this Court does not wish to enter into for the purpose of the instant decision.

5. For failure to pay rent and Corporation tax and charges for well over six months, the appellant issued a notice under Section 110 of the Transfer of Property Act on 08.03.2007 to the respondents. By the said notice, the respondent was asked to quit, vacate and hand over the peaceful possession of the premises by 30.04.2007.

6. Upon expiry of the period mentioned in the notice, T.S. No. 1782 of 2007 came to be filed in respect of the ground floor. Similarly, notices to quit were issued by the appellant to the respondent in respect of the first floor and second floor and upon failure of the respondent to comply, T. S. No. 1783 of 2007 and T. S. 1784 of 2007 were filed.

7. The complaints in the three suits are copies of one and another. The defendant filed the written statement in all three suits. The defendant/respondent admitted most of the complaint case. Except for vaguely stating that the suit was not maintainable, no specific reason was advanced in the written statement by the defendant.

8. The defendant also did not make any application in the court below under Section 114 of the T. P. Act for any protection.

9. For failure on the part of the respondent/defendant to take steps, three suits were placed in ex parte based by the trial court. The plaintiff/appellant examined one witness and proved all the documents i.e. the lease deed, notice to quit and also defendant's reply thereto etc.. The defendant did not produce any witness from his side. He did not adduce any other documentary evidence. He did not cross examine the plaintiff's witness.

10. The Court below thereafter went on to pronounce the judgement and dismissed three suits on the sole ground that the description of the property in the

schedule to the plaint was differing from the schedule toin the lease deed.

11. It is now well-settled that when the description of the suit property is available from the other evidence available on record, i.e., the notice to quit and other related documents, it would be inappropriate on the part of a trial Court to dismiss the suit on such ground.

12. Reference in this regard is made to two decisions of a Coordinate Benches in the case of **Smt. Gita Devi Shah and others Vs. Smt. Chandra Moni Karnani and others** reported in **1993 SCC Online Cal 87** and in the case of **Sri Bhandul Shaw @ Manik Shaw** reported in **2024 (1) CHN (Cal) 125**. This Court is in complete agreement with the views expressed in the aforesaid two decisions.

13. For the reasons stated above, the impugned judgment and decree is not sustainable in law and is hereby set aside.

14. The learned counsel for the appellant would argue before this Court by reference to the decision of the Supreme Court in the case of **Shivakumar and others Vs. Sharanabasappa and others** reported in **(2021) 11 SCC 277**, particularly, paragraph 26 thereof that it would be unfair to the landlord/party if the Court sitting in first appeal would remand the matter back to the trial Judge. The proceedings are pending for more than 17 years since filing of the suit

and that this Court should, based on the evidence on record pronounce decree in favour of the appellant in three appeals.

15. This Court has carefully heard the learned counsel for the appellant and the respondents.

16. Learned counsel for the respondent/defendant has indicated that by reason of Section 3C of the West Bengal Premises Tenancy Act, 1997 the defendant/respondent would be entitled to protection thereunder.

17. It is further argued that the suit itself in its present form could not have been maintained in view of the fact that Section 3C of the Act of 1997 does not protect leases registered prior thereto. It is also argued that the lease provides for sooner determination of the same and have covered under the Act of 1997. It is also pointed out that the lease rent for suit property, which is residential in nature, being less than Rs. 1500/- and as revised from time to time presently being Rs. 5000/-. The lessee/respondent would be a protected tenant within the meaning of the Act of 1997.

18. Learned counsel for the appellant would want to counter the argument by reference to a decision of a Single Bench of this Court in the case of **Punalur Paper Mills Limited Vs. Central Bank of India** reported in **AIR 1995 Cal 154** particularly paragraphs 7, 8, 12 and 14.

19. In the said decision, the expression “sooner determination” in the lease was not held to be within the expression “prior termination” within the meaning of Section 3(2) of the Act of 1956 which is the predecessor of the Act of 1997. What, however, still remains is the quantum of rent.
20. This Court does not wish to make any final pronouncement in this regard as it has already been found above that the finding of the trial Judge was incorrect.
21. The suit is remanded for consideration afresh by the Court below. The parties shall be at liberty to take steps as they may be advised in accordance with law.
22. These appeals are allowed and disposed of.
23. It is expected that the Court below tries to dispose of the suit as expeditiously as possible preferably within a period of 6 months from the date of receipt of a copy of this order.
24. All the parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)