IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.O. 1591 of 2020

Dilip Kumar Bajaj & Anr.
Versus
General Manager, Metro Railway, Kolkata

For the Petitioner	:	Mr.Tapan Coomer Dey Ms. Shreya Chatterjee
For the Metro Railway Kolkata	:	Mr. S. Narayan Dutta Mr. Ayanabha Raha Mr. Saikat Karmakar
Heard on	:	31.07.2024
Judgment on	:	20.11.2024

Dr. Ajoy Kumar Mukherjee , J.:

1. The petitioners being aggrieved by the judgment and order dated 20th February, 2020 passed by the learned Appellate Tribunal in Misc. Appeal no. 02 of 2016 arising out of Claim Case no. 01 of 1993, moved this court, which has given rise to the instant matter.

2. It can be seen that the instant matter has a long career spreading over more than three decades. The petitioners filed a claim application being case no. 01 of 1993 before the competent authority for determination of damages under section 25 and 22 of the Metro Railways (construction of works) Act 1978 (in short Act of 1978), stating that the petitioners were the lawful owners of premises no. 170A Chittaranjan Avenue, Calcutta which is a five storied building and fully occupied by tenants comprised of shops on the ground floor and one branch of Syndicate Bank on the first floor. The petitioner's only source of income is the monthly rents realized from the tenants. As per the notification dated 3rd August, 1980, by the Metro Railways Authority, the petitioners demolished the front portion of the said building for which petitioners received compensation. Petitioners further case is that in the year 1988-1989, when metro construction work started along Chittaranjan Avenue from Esplanade to Belgachia section, crack started appearing on the brick walls of the building, in the month of August 1989 as the excavation work progressed in front of the building. Accordingly petitioners brought it to the notice of Metro Railway Authority in August, 1989 when the authorities inspected the building. By February, 1992 the damages to the building including premises no. 170B Chittaranjan Avenue reached an alarming stage and the Kolkata Municipal Corporation (in short KMC) issued notice to the petitioners and advised to repair the building as it had become the source of potential hazard to the neighborhood. The Metro Railway Authorities asked the tenants to vacate their respective position and shift elsewhere for which they offered them compensation of Rs. 1200/- per month. The branch of Syndicate Bank was occupying the major portion of the first floor of the said building as a tenant and they vacated the said premises in September 1992 after terminating lease agreement because of the unsafe condition of the building. Accordingly petitioners filed aforesaid claim case no. 01 of 1993 claiming compensation from Metro Railway Administration for the loss of earnings by way of rent from the Syndicate Bank for the remaining period of tenancy for about ten years for a total amount of Rs. 47,13,558.92/-.

3. The Metro Authority contested the case by filing written objection and in their objection they pleaded that they were not aware of any lease with the Syndicate Bank or its termination or commencement. However, they have not denied that they issued notice upon the tenants to vacate the premises in the interest of safety. During pendency of the proceeding, one amendment was made in the main claim application to the effect that aforesaid Syndicate Bank was tenant at the first floor and they got tenancy under Tee Jay Properties/lessee, who surrendered the lease in favour of the claimants/petitioners in February 1992.

4. However the competent authority framed two issues one for maintainability of the case and the other as to whether the petitioners /claimants are entitled to any relief. Upon hearing the competent authority by it's order dated 12.10.1995 though held that the case is maintainable, but did not award any compensation as it disbelieved exhibit-4 (which pertains to a letter dated 15.10.1984 given by Syndicate Bank to M/s Tee Jay properties for opening the branch of the bank at the building in question) and that no registered document was produced and secondly competent Authority also accepted the argument that the bank with prior three months notice vacated their premises and the property was not leased out by registered document in accordance with the provision of law.

5. Petitioners preferred a civil revisional Application bearing no. 3202 of 1995 before this High Court and this Court dismissed the said Application observing that the petitioner had alternative and efficacious remedy and that should be availed. Petitioners therefore filed claim appeal no. 1 of 2001 before Appellate Authority, Metro Railway against aforesaid order dated 12.10.1995.The said appeal was heard on contest and ultimately the Appellate Authority by its judgment dated 15th March, 2002 dismissed the said appeal on the ground that petitioners' claim does not fall within the ambit of section 22(3) or section 25(1) or 25(3) of the Act of 1978 and affirmed the judgment and order passed by the competent authority.

6. Being aggrieved and dissatisfied with the said judgment, the petitioners herein preferred a revisional application before this Court being CO 1669 of 2002 and the Hon'ble Court by its order dated 20th March, 2007 was pleased to set aside the impugned judgment dated 15.03.2002 of the appellate authority and remanded the case for fresh decision.

7. After the remand order, the opposite party herein made an application that the property in question being sold by the petitioners in the meantime, the said appeal is not maintainable. However, after contested hearing the learned appellate authority by its order dated 22nd January, 2008 rejected the said application, questioning the maintainability. During the course of hearing it was argued by the authority that pursuant to a lease deed dated 28.12.1981 the claimants/petitioners herein as lessor leased out the first floor of the premises being no. 170 A Chittranajan Avenue to M/s Tee Jay Properties. Subsequently said Tee Jay Properties sub-leased it to Syndicate Bank during the year 1982 and collected rents from the bank. In terms of aforesaid tenancy with Syndicate Bank, a letter was issued by the bank and as per clause 8 of the said letter, the initial rent was fixed at Rs. 28,084/- and in clause 16 it specifies that the rent will be increased by 15% in every 5 years during the total lease period of 20 years (clause 12).

8. It was further argued that said Tee Jay Properties subsequently surrendered the said lease to the petitioners herein and it appears from their letter dated 21st February, 1992 that they asked Syndicate Bank to attorn the land lord and pay all future rents to them on the same terms and conditions. Accordingly it was further argued that the lease agreement was for 20 years and as such vacation of the building by the Bank in September, 1992 was ten years before the schedule time and had the building not suffered such an extensive damages, the Bank ought not to have shifted it's office from the said building and accordingly it was reasonable expectation of the appellants while entering into the lease agreement that they would be earning a certain amount of money from letting out the same.

9. The Appellate Authority Metro Railway hearing the matter on remand again dismissed the appeal on 08.05.2008 by affirming the order passed by the competent authority on the grounds that no lease deed with the Syndicate Bank was produced and it could not be established that the claim falls within the purview of section 25 of the Act of 1978.

10. Challenging the impugned order dated 08thMarch, 2008 passed in Misc. Appeal no. 01 of 2001 the petitioners preferred Revisional application before this court being C.O. 1997 of 2008 and this Court by its order dated

11th February 2014 was pleased to allow the said application by setting aside the impugned judgment dated 8th May, 2008 by giving direction upon appellate authority to adjudicate the appeal under the provisions of Metro Railway (construction) Act, 1978 afresh on merit, given liberty to the petitioner to file fresh Miscellaneous Appeal for this purpose.

11. Thereafter on remand the appellate authority Metro Railway upon hearing the parties was pleased to set aside the judgment and order dated 12.10.1995 passed in claim case no. 01 of 1993 and allowed the appeal by its judgment and order dated 20th August, 2014 and by the aforesaid judgment and order the appellate authority directed the respondent/Metro railway to pay a sum of Rs. 42,42,019/- to the petitioner after deducting Tax, towards compensation for loss of earning.

12. Challenging the said order and judgment dated 20th August, 2014, Metro Railway Authority preferred revisional application before this court in C.O 3485 of 2014 on the ground that there was no tenancy agreement with the Syndicate Bank and the petitioners and there was no surrender letter of tenancy. The other grounds taken was that Syndicate Bank accepted direct tenancy in February, 1992 when the damage was in alarming position, so syndicate bank once admittedly accepted damaged property as rented property, petitioners cannot claim for termination for damages on the ground of unsafe condition.

13. The said revisional application was taken up for hearing by this court and was dismissed initially observing that the court does not find any illegality and or material irregularity in the order impugned. However, as the said order was passed in absence of respondent/opposite party, a recall application being CAN No. 7427 of 2015 was filed and this court upon hearing recalling application, remitted the case back to the authority for deciding afresh.

14. Being aggrieved by that order the petitioners preferred Special Leave Petition before the Apex Court and the Apex Court upon hearing, was pleased to dismiss the same by an order dated 11th March, 2016.

15. The learned appellate authority after hearing the matter on remand again by the impugned judgment and order dated 20th February, 2020 dismissed the appeal on contest, affirming the order passed by competent authority in claim case no. 01 of 1993.

16. Being aggrieved by the said judgment and order, Mr. Dey on behalf of petitioners submits that the appellate authority was directed to adjudicate the appeal to determine the claim under the provisions of section 25 of the said Act of 1978. He further submits that from the ordering portion of the said C.O. 1997 of 2008, it is clear that the other questions in connection with the maintainability, legality or justifiability of the case of the petitioners have already been decided conclusively by this court and only remanded for "determination of claim", meaning thereby the extent of amount and the counting procedure of such determination of claim in monetary value which remained to be determined and no other consideration was required to be gone into by the Appellate Tribunal and the scope of remand became very much limited.

17. It was further argued that learned Tribunal judge completely failed to understood the real scope of doctrine of "cause of action estoppel" and "issue estoppel" giving rise to the doctrine of *res judicata*. The Tribunal

Judge ought to have held that the scope of said Misc. Appeal after remand and after the order of the Apex Court, left her with very little scope of adjudication. The Tribunal Judge exceeded all legal discipline and judicial propriety in not giving effect to the judgment and order passed by this court in CO no. 1997 of 2008 and she was duty bound to obey the findings of this court made in CO No. 1997 of 2008

18. It is further submitted that whether the petitioner can claim the loss in the instant claim case as they have filed another case being claim case no. 01 of 1995 before the competent authority, is immaterial as the scope of the said two claim cases is totally different and the petitioner cannot be non suited for the said reason and as such, aforesaid submission on behalf of the Metro Railway authorities is unsubstantial. Regarding the sale of the said building, the same has been gone into earlier by the authorities and no illegality or irregularity has been found for such sale, which was done much after the period for claim of loss of earning of the petitioners and as such was not germane for the instant case and such sale was perfectly valid and not connected in the instant cause of action. Accordingly petitioners have prayed for setting aside the order impugned.

19. Mr. Dutta on behalf of the Metro Railway authority submitted that a lease for the building was granted by the petitioners to M/s Tee Jay properties on 20.12.1981 which claimed to have introduced Syndicate Bank as lessee with effect from the year 1982 for a period of 20 years, but M/s. Tee Jay Properties never executed any formal deed severing their relationship with the petitioners until 1992. The petitioners have already sold the premises on 24.09.2004 and building was demolished to the ground and the new building has been erected thereon. In fact the petitioners herein have filed two litigations on the self same cause of action. It has filed claim for damages as to the whole of the building being claim case No.1 of 1995 and also claimed the instant compensation for loss of rent being claim case No. 1 of 1993 and accordingly the same is not maintainable. He further contended that the Bank had the option to vacate the premises by giving notice and accordingly the claim of unrealised rent for ten years is an evasive claim. This is more so because the demolition order of the building passed by this High Court. As the petitioner has already sold the property at a consideration with all its assets and liabilities, the claim of damages if any has got extinguished as far as the petitioners are concerned.

20. In reply to petitioners argument on the point of *res judicata* the respondent relied upon judgment of ***Iswar Dutta Vs. Land Acquisition Collector and another*** reported in **(2005) 7 SCC 190** and contended that the order dated 20.08.2014 has merged with the final order dated 09.10.2015 passed in CO no. 3484 of 2014, wherein it was specifically observed that the award of compensation by assessment of loss and damage on account of future rent for ten years i.e. from 01.09.1992 to 30.06.2002 in respect of one floor of the subject building appears to have been assessed in preposterous manner and warrants interference in as much as the appellate authority has erred in law and in fact on the ground that original claim case is pending and that the relationship between the claimants and the Bank has not been supported by any registered lease deed, tenancy agreement or rent receipt. The letter dated 07.07.1992 is disputed and on certain other grounds the court also found that no scope was given to the Metro Railway Authority for the survey of the building and for the objective calculation of the damages if any, caused to the subject building due to the Metro Railway construction work and more so the SLP filed by the petitioners was dismissed by the Apex Court. Accordingly he submits that the order impugned does not call for interference.

Decision

21. Petitioners claim that they were erstwhile owner of their premises no. 170A Chittaranjan Avenue is not in dispute and it is also undisputed that a lease for the said building was granted by the owner/petitioners herein to M/s Tee Jay Proprietors on 20.12.1981. It also appears that a branch of Syndicate Bank was in occupation of some portion of 1st floor of the said building. The petitioner's specific case is that sub-lease was created for twenty years in favour of said Syndicate Bank by dint of Exhibit-4. It is to be mentioned in this context that Exhibit-4 which is in the form of a letter dated 15thOctober, 1984 allegedly written after two years of their alleged induction in the premises and which was addressed to M/s Tee Jay Properties, who were admittedly a direct lessee at that point of time, containing terms and conditions regarding their relationship. Clause 12 and Clause 15 of the terms and conditions mentioned in the said letter marked exhibit-4 are important for the present purpose which may be reproduced below:

> *"**Clause 12:** that you shall give the said premises on leave to the bank initially for a period of 20 years which shall be renewable for a further period of --- years on mutually agreed terms. It will be at the option of the bank to vacate the said premises by giving 3 (three) month notice."*

> ***"Clause 15:*** *that you shall execute a regular lease deed in respect of the said premises in favour of the bank at your cost."*

22. It further appears that some time in the year 1992, M/s Tee Jay Properties surrendered their lease. It is also not in dispute that owner and tenant of premises no. 170 B Chittaranjan Avenue and later on present petitioner jointly moved to this High Court in Case no. 1639 of 1992, in which demolition order was passed on 06.05.1992. Thereafter on 07.07.1992 the Syndicate Bank who was in actual possession of the property expressed there desire by writing a letter to the petitioners herein to vacate premises on 01.11.1992, informing the owner that they are fearful of their lives and safety.

23. Now it is the claim of the appellant that in terms of said Clause 12 of the letter dated 15th October,1984 (Marked Exhibit-4) the bank operated form the premises for ten years only and the Bank prematurely left the impugned premises as the building sustained extensive damages due to Metro Railway Construction work making the officials of Syndicate Bank fearful about their lives and safety. The specific case of the petitioner is that Syndicate Bank would not have left the impugned premises, had it not sustained damage to that extent due to metro construction work and for which petitioners claimed monetary loss in the form of damages to the tune of Rs. 47,13,558.92/-.

24. From the aforesaid contentions raised by the petitioners herein it is clear that the petitioners' entire claim of above mentioned damages is based on Clause 12 of Exhibit-4.

25. As I have already stated above that there is no dispute that the petitioners/owners leased out the property to M/s Tee Jay Proprietor and not to the Syndicate Bank. It is claimed herein that the aforesaid lessee M/s Tee Jay Proprietor created another lease in favour of Syndicate Bank for twenty years by dint of aforesaid letter dated 15th October, 1984 with effect from 1982 in terms of Clause 12 of the said letter. No lease deed in between M/s Tee Jay Proprietor and Syndicate Bank has been placed before any forum and petitioner's argument based on the representation that the letter marked Exhibit-4 can be treated as an agreement for lease. Even if said Exhibit-4 be treated as an agreement for lease, Clause 15 of the said document clearly stipulates that a regular lease deed would be executed in respect of the said premises in favour of the Bank at the cost of M/s Tee Jay Proprietor.

26. Here the term "regular lease deed" is significant and reflects the real intention of the parties. Section 107 of Transfer of Property Act stipulate that a lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument. Section 17 of the Registration Act 1908 provides a list of documents which are to be compulsorily registered and it includes a document whereby only immovable property has been given on lease for a term exceeding one year.

27. Now if I read the term "regular lease deed" in the context of Clause 15 of Exhibit-4 with that of Section 107 of the Transfer of Property Act read with section 17 of the Registration Act, it is very much clear that no lease was created in between M/s Tee Jay Proprietor and Syndicate Bank as it did not fulfil the condition laid down in Exhibit-4 in compliance with the statue. Accordingly petitioners infact trying to enforce a clause which has not been legally documented nor fulfilled the conditions laid down in the said document.

28. It is not in dispute that the original lessee Tee Jay Proprietor terminated the lease sometimes in the year 1992. Even after termination of said lease by the Tee Jay Proprietor, the Syndicate Bank did not enter into any lawful lease agreement by executing registered deed with the present petitioners. In the absence of execution of any regular lease deed in terms of Clause 15 of Exhibit-4 (if it can be considered as lease agreement), I must say that there was no relationship of lessor and lessee in-between M/s Tee Jay Proprietor and the Syndicate Bank, and during the said period whatever amount has been paid by the Syndicate Bank, has been paid as occupational charges and not as a lease rent. Accordingly the question of monetary loss on account of future rent/lease rent does not arise in the present context in the absence of any valid lease documentation.

29. Learned counsel appearing on behalf of the petitioner heavily relied upon the observation made by the Appellate authority in its judgment dated 20.08.2014, allowing the claim of the petitioner and which was initially affirmed by a co-ordinate bench of this court by it's order dated July 3, 2015 where this court observed:-

> "*The order impugned was to show that the appellant/claimant was awarded an order of Rs. 42,42,019/- (Rupees forty two lakh forty two thousand and nineteen only) with a direction to issue a cheque in the same of the appellants for the said amount within sixty days from the date of receiving of the order and with further direction upon the Metro Railway to deposit an amount of Rs. 4,71,335/- (Rupees four lakh seventy one thousand three hundred thirty five only) by issuing a separate cheque in favour of*

Commissioner of Income Tax authority of the concerned ward through particular TAN FA & CAO/MTP. Competent Authority, Kolkata in respect of income tax of present award of compensation towards damage/loss of appellants.

This order does not appear to have been given effect to by the authority of the Metro Railway since the Metro Railway Authority being the petitioner is not prosecuting this case.

This case is liable to be dismissed as this Court does not find any illegality and with material irregularity in the order impugned.

Hence this revisional application is dismissed without any order as to costs."

30. In this regard it can be said that such observation of the co-ordinate Bench dated 3rd July, 2015 along with the order of the appellate authority granting compensation dated 20.08.2014, has been merged with the final order passed by the same Bench of this court on 9th October 2015 in the self-same C.O. 3485 of 2014, with the following observation:-

"*Taking into consideration the rival contention of the parties, it is understood that the respondents/claimants has already earned profit form the subject building by sale in the year 2004 at a consideration of Rs. 30,00,000/- (Rupees Thirty Lac). Therefore, award of compensation by assessment of loss and damage on account of future rent for ten years i.e. from 01.09.1992 to 30.06.2002 in respect of one floor of the subject building appears to have been assessed in preposterous manner in my considered view and warrants interference in the impugned judgment in as much as Appellate Authority has erred in law and in fact on the following counts—*

Firstly, that original claim case is still pending,

Secondly, the relationship between the claimants and the Bank has not been supported by any registered lease deed, tenancy agreement or rent receipt.

Thirdly, the letter dated 07.07.1992 of Syndicate Bank is disputed as the signature of the Manager is without seal and stamp.

Fourthly, the short date of surrender of Tee Jay Proprietor i.e. February, 1992 to the owner and notice of Syndicate Bank for termination of tenancy to Mr. Bajaj is July, 1992, is suspicious in nature.

Fifthly, the cracks and damages were found in the year 1989 when Tee Jay properties was the tenant of the claim petition and Syndicate Bank became direct tenant in the year 1992. That is *to say, admittedly the bank accepted direct tenancy in respect of a portion of the building in damaged condition.*

Sixthly, it was imperative for the Appellate Authority to consider that without leave of the Concerned Authority or without leave of the court and without leaving scope for survey of the building to assess the quantum of damage and injury to the building caused due to the metro construction work, the subject property was sold to third party during pendency of the claim case and the claimants could not maintain the claim case for double gain from the said property and in a situation like this the Misc. Appeal no. 1 of 2014 is not maintainable by claimants claiming themselves as landlords after absolute sale of the subject property to third party in the year 2004

This Court also finds that no scope was given to the Metro Railway Authority for the survey of the building and for the objective calculation of the damages caused to the subject building due to the Metro Railway construction work. The subject building is admittedly not in existence as on this day because a high rise building has been constructed by the buyer of the building.

In the context of the above finding, it is now imperative for this Court to remit the case back to the Appellate Authority for decision afresh in the light of discussion made in the foregoing paragraphs.Ergo, the judgment is set aside and the revisional application under the scheme of Article 227 of Constitution of India is allowed, however, without any order as to costs."

31. Learned Appellate Tribunal below in the impugned judgment raised certain pertinent questions about document on the basis of which appellants are claiming future rent of Rs. 47,13,558.92/- from the Metro Railway, when inspite of terms and condition of that document marked exhibit-4 parties never executed any lease deed for the premises but the bank conducted their business for 10 years on oral subletting basis. In this context the Tribunal below further observed:-

"*M/s Tee Jay Proprietors entered on the premises on 20.12.1981 and left it on 17.02.1992.*

Syndicate Bank, a sub-lessee, from gathered materials on record, of M/s Tee Jay Proprietors started their official work form the premises form 01.07.1982 and self it before 01.09.1992, six (06) months after the departure of M/s. Tee Jay Proprietors form the premises. So the time period which we are getting form the record, indicates that in reality, M/s. Tee Jay Proprietors actually dealt with Syndicate Bank. Now in absence of any 'lease deed' *executed in between 'Syndicate Bank' and 'Tee Jay proprietors' as well as for non-production of rent receipts, how can we determine the real relation of the parties?*

The present appellants were not in picture when Syndicate Bank were inducted in the premises on the basis of Sub-letting" by M/s Tee Jay Proprietors, and we can find that precisely for 5-6 months, there existed a direct relation of the Syndicate Bank and the appellants at the last phase of their stay in the impugned building. Why they failed during those 5-6 months in executing any registered 'lease deed' in between themselves?

The building-in-question was an immovable property and as per law, the lease deed has to be registered before the Sub-Registrar if the lease period was for more than 11 months. Even the appellants did not try to legalise and regularize the relation and to execute and register the lease deed at any subsequent point of time. A lease of immovable property from year to year or for any term exceeding on year or reserving a yearly rent, can be made onlyby a registered instrument, where as all other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. No deed was ever executed in between M/s Tee Jay Proprietors and Syndicate Bank. Had there been any 'Sub-lease document' it could have been treated as 'Agreement' between sub-lessor and sub-lessee on their insistence."

32. It is settled law that the main grounds on which the High Court can interfere under Article 227 of the Constitution of the India are :-

A- When the Tribunal below acts Arbitrarily.

B- When the Tribunal below acts in excess of jurisdiction vested in it.

C- The Tribunal below fails to exercise jurisdiction vested in them.

33. In this context it is pertinent to mention that the High Court while exercising such jurisdiction should not interfere for correcting mere error of fact or with a finding of the Tribunal which is within the jurisdiction of such Tribunal. However if such finding is perverse in a sense that no prudent person having the knowledge of law could have arrived at such finding or the finding is not based on any material evidence or such finding results in manifest injustice or there is a mis-direction in law, then the High Court can interfere under Article 227 of the Constitution of India.

34. From the aforesaid discussion I am constrained to conclude that the ultimate finding of the Tribunal below is neither perverse nor it can be said that such finding is not based on any material evidence or the ultimate findings of the Tribunal below has resulted manifest injustice or mis-direction in law. Infact the High court under Article 227 has a little scope to interfere with the order of the Tribunal below as a matter of routine and this power cannot be taken as right of another appeal to the aggrieved party.

35. In such view of the matter I do not find any substance to interfere with the order impugned invoking supervisory jurisdiction and as such present application is liable to be dismissed.

In such view of the matter **C.O. 1591** of **2020** stands dismissed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)