

16.7.2014

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W.P.L.R.T. 260 of 2013

Chhaya Banerjee

-versus-

State of West Bengal & Ors.

Mr. Dhiraj Trivedi,

Mr. Pankaj Iadia.

... For the Petitioner.

Admittedly, the petitioner herein was a subtenant under Narendranath Das, the respondent no. 4, who was a tenant under Supriya Saha & Tamanjan Saha, the respondent nos. 2 & 3 herein. The tenant, namely, Narendranath Das, filed an eviction suit against the petitioner herein for recovery of possession of the portion of the tenancy, let out to him by the tenant. The said suit which was registered as Ejectment Suit No. 716 of 1982 was decreed on contest on 10th July, 1985. Being aggrieved by the said judgment and decree passed by the Learned Trial Judge on 10th July, 1985 in Ejectment Suit No. 716 of 1982, an appeal was preferred by the petitioner (subtenant) before this Hon'ble Court. The said appeal being F.A. No. 10 of 1986 was dismissed on contest on 16th September, 1999. An execution proceeding has been initiated for recovery of khas possession of the suit premises from the petitioner (subtenant). The said execution proceeding is still pending. This is one chapter of this litigation.

Next chapter of this litigation starts with the following facts.

The petitioner (subtenant) now claims protection under Section 26(3) of the West Bengal Premises Tenancy Act, 1997. He wants to be a direct tenant under the superior landlord, namely, the respondent nos. 2 & 3, as per the provision of the said Act. Sub-section 2 of Section 26 of the said Act deals with the provision regarding service of notice by a pre-act subtenant to his landlord and the superior landlord for accepting him as a direct tenant under the superior landlord. For the sake of convenience of understanding, the provision contained in Section 26 (2) & (3) of the said Act are set out hereunder:

"Section 26(2) - Where before the commencement of this Act, the tenant has, with or without the consent of the landlord, sublet any premises either in whole or in part, the tenant and every subtenant to whom the premises has been sublet, shall give notice to the landlord of such subletting in the prescribed manner within (two years) of the commencement of this Act and shall, in the prescribed manner, notify the termination of such sub-tenancy within one month of such termination.

Section 26(3) - Where in any case referred to in sub-section (2), there is no consent in writing of the landlord, and the landlord denies that he gave any oral consent, the Controller shall, on an application made to him in this behalf either by the landlord or by the sub-tenant within two months of the date of receipt of the notice of subletting by the landlord or the issue of the notice by the sub-tenant, as the case may be, by order, declare that the interest of the tenant in so much of the premises as has been sublet shall cease and that the sub-tenant shall become a tenant directly under the landlord from the date

of the order. The Controller shall also fix the rents payable by the tenant and the sub-tenant to the landlord from the date of the order. Rent so fixed shall be deemed to be fair rent for the purpose of this Act."

On consideration of those two provisions it appears to us that when a tenant, whose tenancy was created before commencement of the West Bengal Premises Tenancy Act with or without the consent of the landlord, sublet any premises either in whole or in part, the tenant and every subtenant to whom the premises has been sublet, are required to give notice to the superior landlord about creation of such sub-tenancy in the prescribed manner within two years of commencement of this Act and shall in the prescribed manner, notify the termination of such sub-tenancy within one month of such termination.

Sub-section (3) of Section 26 provides that when no consent was given by the superior landlord for creation of such sub-tenancy in writing and when the superior landlord denies grant of permission for creation of such sub-tenancy by the tenant, then if an application is made by such subtenant to the Controller within two months from the date of issuance of such notice by the subtenant, the Controller may by order declare that the interest of the tenant, in so much of the premises, as has been sublet, shall cease and that subtenant shall become a tenant directly under the superior landlord from the date of the order. The Controller is also required to fix the rent payable by the tenant and the subtenant to the superior landlord from the date of the order.

If the provision contained in Section 26(2) & (3) are considered minutely, then it will appear that the said benefit is extended only to the existing subtenant and not to a subtenant who has suffered a decree of eviction, as after suffering a decree of eviction, the subtenant no longer retains the character of subtenant, but he becomes merely a judgment-debtor with the passing of the decree of eviction against him. Section 26(2) & (3) of the said Act was not introduced for granting relief to the subtenant who has already suffered a decree of eviction. In view of the definition of tenant as defined in Section 2(h) of the West Bengal Premises Tenancy Act, 1956 tenancy of a tenant ceases with the passing of the decree of eviction against him. As such, the tenancy of the sub-tenant under his landlord comes to an end with the passing of the eviction decree against him. As such, the said benefit which was extended only to the existing subtenant who is in possession as subtenant in the portion let out to him, cannot be extended to the petitioner after passing of an eviction decree against him.

Since admittedly, the notice under Section 26(2) of the said Act was served by the petitioner upon the superior landlord on a date when he already suffered a decree for eviction, the notice which was served by him upon the landlord and the superior landlord, cannot be regarded as a notice given by the subtenant to his landlord and the superior landlord.

As such, in our considered view, the benefit under Section 26(3) cannot be extended to such a subtenant who has suffered a decree for eviction passed by a competent court of law which was also affirmed in appeal by this Hon'ble Court.

Thus, we do not find any merit in this writ petition. The judgment and/or decree passed by the Learned Tribunal which is under challenge in this writ petition is affirmed.

(Jyotirmay Bhattacharya, J.)

(Ishan Chandra Das, J.)

