

In The High Court At Calcutta
Civil Revisional Jurisdiction
Appellate Side

CO 1191 of 2012
With
CAN 4955 of 2014

Mrinal Kanti Ghosh
-vs.-
Mango Debi

Present : **The Hon'ble Justice Arijit Banerjee**

For the petitioner : Mr. Saptangshu Basu, Adv.
Mr. Nandadulal Banerjee, Adv.

For the respondent : None

Heard On : 20/01/2015 & 05/02/2015

Judgment On : 24/02/2015

Arijit Banerjee, J.:

(1) A short and interesting question of law, and a question of some importance, arises for consideration in the present case. The question is whether or not a Civil Court has jurisdiction to entertain a tenant's application for effecting repairs to the suit premises in a pending suit between the landlord and the tenant.

(2) The petitioner herein filed Ejectment Case No. 5 of 2005 against the opposite parties in the 3rd Court of the Civil Judge (Junior Division) at Sealdah. In the said suit, the opposite parties filed an application dated 18th March, 2008 praying for leave to effect repairs to the suit premises.

(3) Before the Ld. Trial Judge the petitioner/landlord strongly opposed the said application and contended that under the West Bengal Premises Tenancy Act, 1997 only the Controller has the power to entertain such an application. It was contended that since the Controller is empowered to entertain such an application, under Section 44 of the said Act the

jurisdiction of Civil Courts is barred. The Ld. Trial Judge held that the Controller will have jurisdiction only when no litigation is pending between the landlord and tenant in a Civil Court. However, when a litigation is pending between the landlord and the tenant before the Civil Court, the Controller will have no jurisdiction. The Ld. Judge allowed the application of the opposite parties for making repairs to the suit premises by an order dated 16th March, 2012. Being aggrieved by such order the petitioner/landlord is before this Court by way of the instant revisional application.

(4) I have heard Mr. Saptangshu Basu, Ld. Senior Advocate, appearing for the petitioner. In spite of notice, nobody appears on behalf of the opposite parties.

(5) Mr. Basu has referred to Section 35 of the West Bengal Premises Tenancy Act, 1997 which is set out hereunder:

“S. 35. Making of repair and taking of measures for maintenance of essential service. (1) If the landlord neglects or fails to make tenantable repair of the premises or to take measures for due maintenance of essential supply or service comprised in the tenancy, the Controller shall, on application made to him by the tenant in possession of the premises, cause a notice to be served in the prescribed manner on the landlord requiring him to make such repair or take such measures for due maintenance therein of the essential supply or service.

(2) If after the service of notice under sub-Section (1), the landlord fails to show proper cause or neglects to make such repair or to take, within reasonable time, such measures, as the case may be, the tenant may submit to the Controller an estimate of the cost of such repair or measures with application for permission to make such repair or take such measures

himself, and thereupon the Controller may, after giving the landlord an opportunity of being heard and after considering such estimate and making such inquiries as may be considered necessary, by order in writing, permit the tenant to make such repair or take such measures at such cost as may be specified in the order.

Explanation. 'Essential supply or service' shall have the same meaning as in Explanation 1 to Sub-Section (5) of Section 27."

(6) He then referred to Section 44 of the said Act which is reproduced herein:-

"S. 44. Jurisdiction of civil courts barred in respect of certain matters save as otherwise expressly provided in the Act. Save as otherwise provided in the Act, no Civil Court shall entertain any suit or proceeding in so far as it relates to fixation of fair rent in relation to any premises to which this Act applies or to any other matter which the Controller is empowered by or under this Act to decide and no injunction in respect of any action taken or to be taken by the Controller under this Act shall be granted by any Civil Court"

(7) Mr. Basu submitted that since Section 35 of the said Act empowers the Controller to entertain an application of the tenant for making repairs to the tenanted premises by virtue of Section 44 of the said Act the jurisdiction of the Civil Court in that regard is ousted. The Controller has exclusive jurisdiction for entertaining a tenant's application for making repairs.

(8) Mr. Basu then submitted that Section 6 of the said Act was amended by the West Bengal Premises Tenancy (Amendment) Act, 2005 by vesting jurisdiction to pass an eviction decree in the Civil Judge instead of Controller. However, Section 35 of the said Act was not amended. According to him this was a conscious decision of the legislature. Had the

legislature intended to vest the power to entertain a tenant's application for repairs in the Civil Court, it would have amended Section 35 of the said Act just as it amended Section 6 of the said Act. However, the legislature did not do so. Hence the Controller continues to have exclusive jurisdiction to entertain a tenant's application for repairs irrespective of whether any litigation is pending between the landlord and the tenant in a Civil Court.

(9) Before expressing my view, it may be helpful to take note of certain earlier decisions of this Court.

(10) In the Case of *Loken Bose-vs.-Sm. Ashima Dev reported in AIR 1977 Cal 318*, this Court held that Section 34 of the West Bengal Premises Tenancy Act, 1956 which, inter alia, empowered the Controller to allow the tenant to make repairs to the tenanted premises, did not oust the jurisdiction of the Civil Court to pass similar orders. The Court held that the bar of jurisdiction of a Civil Court should not be readily inferred. It is not the intention of the legislature to drive the tenant to a separate proceeding under Section 34 to avail of the relief as provided for therein. If, in spite of the fact that a suit for eviction is pending, the tenant has to approach the Controller under Section 34 for the restoration of essential services to the premises or for repairs, it will mean multiplicity of proceedings. Although Section 34 provides for a separate remedy which a tenant can avail of for the purpose of repairs to the premises, if the tenant has an additional remedy under any other law, then he should not be deprived of the same.

(11) In the case of *Sreepada Dey-vs.-Amal Kr. Chatterjee reported in 85 CWN 919*, this Court expressed a similar view. Following the decision in *Loken Bose (Supra)*, this Court held that if in spite of the fact that a suit for eviction is pending, the tenant is required to file an application under Section 34 of the West Bengal Premises Tenancy Act, 1956, that will mean

multiplicity of proceedings. In a suit for eviction the power of the Court to grant temporary mandatory injunction for making of essential repairs has not been fettered or restricted by the provisions of Section 34 of the said Act.

(12) In the case of *Oil & Natural Gas Commission-vs.-Kanak Investment Pvt. Ltd. reported in 90 CWN 1076*, a Division Bench of this Court held that a Civil Court has concurrent jurisdiction along with the Controller to grant relief under Section 34 of the Premises Tenancy Act, 1956.

(13) Mr. Basu would, however, contend that the three decisions of this Court referred to above deal with the 1956 Act which did not contain a provision like Section 44 of the 1997 Act barring jurisdiction of Civil Courts in respect of matters which the Controller is empowered to decide under the Act. According to him, those decisions are of no relevance in the context of the 1997 Act.

(14) There are, however, at least two decisions of this Court which deal with Sections 35 and 44 of the 1997 Act.

(15) The first decision is in the case of *Sri Somnath Mukherjee-vs.-Smt. Mamata Rani Saha reported in 2006 1 CLJ (Cal) 614*. In this case, a Ld. Single Judge of this Court squarely addressed the issue as to whether or not in view of Section 44 of the 1997 Act, the Controller has exclusive jurisdiction to entertain the tenant's application for repairs and whether or not the Civil Court's jurisdiction in that regard is ousted. The Ld. Judge held that if a litigation is already pending between the landlord and the tenant in a Civil Court, that Court will have exclusive jurisdiction to entertain a tenant's application for repairs. It is only when no lis is pending between the landlord and the tenant in a Civil Court that the Controller will have jurisdiction under Section 35 of the 1997 Act. In this connection, paragraphs 18, 22, 23 and 24 of the judgment are set out hereunder:-

“18. It is true that both under Section 27 of the 1997 Act as well as under Section 35 thereof, (which is equivalent to Section 34 of the 1956 Act) it is the Controller who has been empowered but, in view of Section 6 of the 1997 Act, there cannot be ouster of jurisdiction of the Civil Judge in matters where he is ALREADY IN SEISIN of an application of a landlord for the eviction of the tenant.....

22. Such being the position, it does not stand to reason that a Civil Judge having jurisdiction to entertain a matter relating to a dispute qua the landlord and tenant in respect of the tenanted premises would cease to have jurisdiction when the same tenant complains of disruption and/or curtailment of essential services in respect of the same premises. Such a position would be extremely disharmonious and will certainly give rise to multiplicity of proceedings between the same parties in respect of the same premises causing an additional prejudice to both the parties of having to undergo harassments in different forums when, the same can be decided by the Civil Judge having jurisdiction to entertain a matter relating to recovery of possession. When any violation and/or grievance is made in respect of essential services of the premises which is the subject-matter of a pending litigation between the landlord and the tenant under Section 6 of the 1997 Act, the Civil Judge will certainly have powers to deal with the same.

23. This Court, therefore, is of the view that wherever a matter relating to recovery of possession under Section 6 of the 1997 Act is pending, the Civil Judge having jurisdiction to deal with the same, will alone have the jurisdiction to deal with all matters arising out of Chapters VIII and IX containing Sections 27 to 37 of the 1997 Act and in all such pending matters, the jurisdiction of the Controller shall be ousted.

24. The Controller will have jurisdiction only at a stage where the complaint is filed when there is no litigation already pending between the same parties before the Civil Judge but, in all cases when a litigation is already pending before the Civil Judge, the Controller will have no jurisdiction. This is how this Court interprets Section 44 of the 1997 Act.”

(16) The second judgment is in the case of *Smt. Monisha Roy-vs.-Biplab Sengupta reported in 2007 (2) CLJ (Cal) 53*, wherein another Ld. Single Judge of this Court has expressed a similar view. The Ld. Judge has held if the Landlord has approached the Civil Court claiming certain reliefs against the tenant giving rise to a civil proceeding between the parties, the tenant can approach the Civil Court in such proceeding praying for leave to make repairs to the tenanted premises. In this connection, paragraphs 33 to 35 of the said judgment are set out hereunder:-

“33. But the fact and circumstances of the present case give it a distinct identity. Here the tenants did not approach the Civil Court initially with an application for allowing them to make repairs. It is not in dispute that the premises in question is in an extremely dilapidated condition and demands extensive repair. Having regard to the fact that the opposite parties/plaintiffs approached the learned Court with a prayer for injunction, it cannot, perhaps, be said that the petitioners/tenants have any statutory restriction to raise their voice in the said pending suit and seek permission for repair. It cannot be denied that if such voice is not heard and the petitioners/tenants are directed towards the doors of the Rent Controller, there will always be a possibility of conflicting approach, is not decisions. There will be multiplicity of proceedings as well. Apprehension of the petitioners, as ventilated on their behalf, that the Rent Controller in view of the pending Civil Suit and the stand taken by the learned Court in connection with the

same may be under painful compulsion to pause and then decide not to act, can not be brushed aside.

34. The present case is certainly not an instance where the tenants have gone to the Civil Court by filing a suit or initiating a proceeding. Here the tenants are rather on the defence and are only attempting to respond to the challenge. Section 44 of the Act of 1997 does not seem to suggest that in such backdrop, the petitioners/tenants cannot knock the door of the Civil Court and demand justice, since the dispute is already under consideration of the Civil Court.

35. In fact, for better appreciation of materials as well as in the best interest of justice, the tenants may very well be permitted to seek relief before the learned Court where the civil suit is already pending.”

(17) Having considered the relevant case laws, I will now express my views.

(18) Section 35 of the 1997 Act no doubt empowers the Controller to entertain a tenant's application for making repairs to the tenanted premises. Section 44 of the said Act provides that no Civil Court shall entertain any suit or proceeding in so far it relates to fixation of fair rent **or to any other matter** which the Controller is empowered to decide.

(19) Thus, there appears to be an apparent ouster of Civil Court's jurisdiction in respect of a tenant's application for making repairs. However, giving such an interpretation to Section 44 would, in my opinion, lead to an anomalous situation. Even when a civil suit may be pending between the landlord and the tenant, the tenant would be required to approach the Controller for the purpose of making repairs to the premises in question. This would not only be inconvenient but also would give rise multiplicity of proceedings. Further, in my view, any dispute between the landlord and the

tenant regarding repairs to the premises in question can be more effectively and conveniently resolved by the Civil Court which is already in seisin of a civil suit between the landlord and the tenant.

(20) In my view, Section 44 of the 1997 Act should be read to mean that a Civil Court shall not have the jurisdiction to entertain an original or independent suit or proceeding by the tenant for effecting repairs to the premises in question. However if a civil suit is already pending between the landlord and the tenant, it is the Civil Court in seisin of that suit which alone will have jurisdiction in the matter of repairs to the premises. According to me, it does not matter whether the landlord or the tenant has instituted the civil suit. It could be a suit for eviction and recovery of possession filed by the landlord or it could be a suit for declaration and injunction filed by the tenant. In both cases and cases of similar nature, the Civil Court alone will have jurisdiction to entertain disputes as to repairs. In this regard, I am in respectful agreement with the view expressed by the Ld. Single Judge of this Court in the case of Somnath Mukherjee (supra). This is the only way according to me, how Sections 6, 35 and 44 of the 1997 Act can be harmoniously construed.

(21) In view of the aforesaid I see no reason to interfere with the decision of the Ld. Trial Judge impugned in the present application. I find no infirmity in the order that is assailed before this Court. Accordingly the application fails and is dismissed. There will be no order as to costs.

(22) This application is accordingly disposed of.

(Arijit Banerjee, J.)