

A BIJAY KUMAR MANISH KUMAR HUF

v.

ASHWIN DESAI

(Civil Appeal Nos. 12025-12026 of 2018)

B DECEMBER 12, 2018

[N. V. RAMANA AND

MOHAN M. SHANTANAGOUDAR, JJ.]

Suit – Maintainability of – Appellant-landlord filed suit for recovery of khas possession, mesne profits, permanent injunction against the respondent – Respondent filed application u/Or.VII, r.11 CPC and claimed rejection of plaint on ground of non-issuance of statutory notice u/s. 6(4) of West Bengal Tenancy Act, 1997 – Application was dismissed by the Trial Court – However, in revision it was allowed by the High Court – Appellant contended that they were governed by the provisions of the Transfer of Property Act, 1882 as lease executed between the respondent and the erstwhile landlord was executed in 1992 when the West Bengal Tenancy Act, 1997 was not in force and the same cannot have retrospective effect – Whether the West Bengal Tenancy Act, 1997 or the Transfer of Property Act, 1882 applies – Held: This dispute could be resolved by framing an issue by the trial Court on the said point and by adjudicating the same as a preliminary issue – Since, the suit was still in the preliminary stage, the trial Court could be directed to frame issue, relating to maintainability of suit and applicability of enactments and decide the same in accordance with law – West Bengal Tenancy Act, 1997 – Transfer of Property Act, 1882.

F CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 12025-12026 of 2018.

G From the Judgment and final Orders dated 15.11.2016 and 20.07.2017 of the Calcutta High Court in C.O. No.3348 of 2016 and in R.V.W 377 of 2016 respectively.

WITH

Civil Appeal Nos. 12029-12030 of 2018

Civil Appeal Nos. 12031-12032 of 2018

Civil Appeal Nos. 12027-12028 of 2018

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Jaideep Gupta, Sr. Adv., Ganesh Shaw, Kunal Chatterji, A
Ms. Maitrayee Banerjee, Saurav Gupta, Advs. for the Appellant.

Siddharth Bhatnagar, Ms. Sonia Dube, Debdut Mukherjee,
S. Chakraborty, Ms. Kanchan Yadav, Ms. Harshita Verma (for M/s Legal
Options), Advs. for the Respondents.

The Judgment of the Court was delivered by B

N. V. RAMANA, J.

1. Delay condoned.

2. Leave granted.

3. Heard Mr. Jaideep Gupta, learned Senior counsel appearing C
for the appellant and Mr. Siddharth Bhatnagar, learned counsel appearing
for the respondent.

4. These four appeals are filed against the orders dated 15/
17.11.2016 and 20.7.2017 passed by the Calcutta High Court. The
appellant before us is landlord of a building which is the subject matter of D
lease. This building was leased by the erstwhile owner, Nanjee Shamjee &
Comp. (lessor) to the respondent (lessee) for a period of 99 years at
Rs.350/- per month via a Registered Lease Deed on 20.11.1992. Later,
on 30.8.1996 the appellant purchased the entire premises of the disputed
property from the erstwhile owner via a Registered Deed of Conveyance.
Thus, the appellant stepped into the shoes of the said lessor. E

5. On account of default in payment of lease money, a suit, viz.,
Title Suit No.2450 of 2007 was instituted by the appellant before the XI
City Civil Court, Kolkata for recovery of *khas* possession, mesne profits,
permanent injunction and other reliefs. The respondent had filed an Order
VII, Rule 11 CPC application for rejection of plaint which was dismissed F
by the trial court on 03.02.2015 and again by High Court in revision on
31.03.2015. A second application under Order VII, Rule 11 CPC was
filed by the respondent claiming that plaint ought to be rejected for non-
issuance of statutory notice under Section 6(4) of West Bengal Tenancy
Act, 1997. This was dismissed by the trial court on 18.08.2016. However,
the revision petition against this was allowed by the High Court on G
15.11.2016 and it is against this that the present appeal is filed.

6. The contention raised by the appellant is that they are governed
by the provisions of Transfer of Property Act, 1882 because the lease
was executed in 1992 when the West Bengal Tenancy Act, 1997 was
not in force and the same cannot have retrospective effect. On the H

A other hand, the respondent contended that the suit was filed on 06.09.2007 when the West Bengal Tenancy Act, 1997 was in force.

7. Thus, the question involved in these appeals is whether the West Bengal Tenancy Act, 1997 or the Transfer of Property Act, 1882 applies.

B 8. This dispute can be resolved by framing an issue by the trial court on the said point and by adjudicating the same as a preliminary issue.

C 9. Taking into consideration the peculiar facts and circumstances of the case, since the suit is still in the preliminary stage, we dispose of the appeals directing the trial court to frame the issue, relating to maintainability of suit and applicability of enactments, as mentioned *supra*, and decide the same in accordance with law as a preliminary issue as expeditiously as possible, preferably within a period of six months from the date of communication of this judgment.

D

Ankit Gyan

Appeals disposed of.