

CIVIL RULE.

Before Greaves and B. B. Ghose JJ.

1922

Feb 20.

BASANTI CHARAN SINHA

v.

RAJANI MOHAN CHATTERJI.*

Lease—Optional lease—Calcutta Rent Act (III of 1920) s. 4, sub-s. (1), cl (iii)—Lease for three years with option of renewal for another three years, if a lease for five years and upwards—Civil Procedure Code (Act V of 1908) s. 115—Proper case for revision.

The option of renewal for a further period of three years after the expiration of the first three years of a lease, does not make the lease, a lease for five years and upwards within the meaning of section 4, sub-section (1), clause (iii) of the Calcutta Rent Act.

The rejection of an application for fixing a standard rent made by the holder of such a lease, on the ground that the provisions of the Rent Act were not applicable, is a refusal by the Rent Controller to exercise jurisdiction conferred upon him by the Rent Act and accordingly is a proper case for interference under the provisions of section 115 of the Civil Procedure Code.

APPLICATION under section 115, Civil Procedure Code, by Basanti Charan Sinha, the petitioner.

Before the passing of the Calcutta Rent Act, the petitioner entered into an agreement with the opposite party for the lease of a certain premises for three years with option to renew it for a further period of three years. After the passing of the Rent Act the petitioner made an application to the Rent Controller, for fixing a standard rent. This was dismissed on the ground that the lease was one for five years and upwards having regard to the option for renewal, and the provisions of the Rent Act were not applicable.

* Civil Revision No. 385 of 1921.

The petitioner moved the High Court against the dismissal and obtained this Rule.

Babu Nagendra Nath Ghose and Mr. J. W. Chippendale, for the petitioner.

Babu Dwarka Nath Chakravarti and Babu Hira Lal Chakravarti, for the opposite party.

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GREAVES AND GHOSE JJ. This Rule was granted at the instance of the petitioner calling upon the opposite party and the Rent Controller under the Calcutta Rent Act to show cause why the order of the Rent Controller, dated the 25th April 1921, should not be set aside. The material facts are shortly as follows:— The petitioner on or about the 2nd January 1920, entered into an agreement with the trustees of the late Baboolal Agarwalla for a lease of premises No. 10, Creek Lane, for a period of three years from the 16th January 1920 with an option in the petitioner to renew his tenancy for a further period of three years at the expiration of the first three years. Correspondence passed but no agreement was actually signed nor has any lease been actually executed. Under the agreement of the 2nd January the petitioner entered into possession of the premises. Under this agreement rent was payable at the rate of Rs. 400 a month, the previous rental of the premises having been Rs. 150 a month. The petitioner paid at the rate of Rs. 400 for a short period, but upon the Rent Act coming into force on the 5th May 1920, he claimed to pay rent only at the rate of Rs. 150 a month plus an additional ten per cent. The trustees refused to accept rent at this rate and accordingly at the instance of the petitioner an application was made to the Rent Controller to fix a standard rent. On the 25th April 1921, the Rent Controller made the order complained of in which he

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said that the lease was for a period of six years having regard to the fact that there was an option for renewal.

The only point therefore which arises in the Rule is whether the Rent Controller is right in holding under the circumstances that this was a lease entered into before the commencement of the Act for a period of five years or upwards.

The opposite party contends that upon the true construction of the lease and of the provisions of section 4 sub-section (1), cl. (iii) of the Rent Act, the Rent Controller was right in holding that this was a lease for period of five years and upwards within the meaning of s. 4, sub-section (1), cl. (iii). It is further contended on behalf of the opposite party that this case does not fall within the provisions of section 115 of the Code of Civil Procedure, inasmuch as even if the Rent Controller was wrong, all that he has done is to wrongly construe the provisions of section 4, sub-section (1), cl. (iii), and that this does not give this Court jurisdiction to interfere under the provisions of section 115. So far as the first point is concerned, we think that the demise was clearly for a period of three years and the fact that there was an option for renewal for a further period of three years after the expiration of the first three years, does not make it a lease for five years and upwards within the meaning of section 4, sub-section (1), cl. (iii). So far as the second point is concerned, it seems to us that what the Rent Controller has done is to refuse to exercise the jurisdiction conferred upon him by the Calcutta Rent Act, and accordingly this is a proper case for the interference of the Court under the provisions of section 115. We should add that we have read the explanation furnished by the Rent Controller.

In the result the Rule is made absolute with costs, the hearing fee being assessed at three gold mohurs.

A. S. M. A.

Rule absolute.