

ORIGINAL CIVIL.

Before Rankin J.

I. J. COHEN

v.

S. E. HOTTINGER.*

1921

June 28.

*Landlord and Tenant—Calcutta Rent Act (Beng. III of 1920) s. 11—
Monthly tenant—Fixity of tenure—Decree for possession—Civil Procedure Code, 1908, s. 115.*

Where a Judge of the Calcutta Small Cause Court had found as a fact that the rent payable for certain premises on the 1st November 1918 was Rs. 65 (and not Rs. 55 as alleged by the tenant) and it appeared that the sum of money which the tenant had paid to the Rent Controller was insufficient to meet either the rent that would be allowed under s. 2 (1) of the Act, or the contractual rent or the rent ultimately fixed as the standard rent by the controller the decision of the Small Cause Court Judge that the tenant was in the circumstances not a person who was entitled to the benefit of the provisions of s. 11 of the Act was entirely right and would not be interfered with under section 115 of the Civil Procedure Code.

The Calcutta Rent Act gives to a mere monthly tenant considerable fixity of tenure upon a condition, namely, that he is a rent-paying and not a defaulting tenant.

APPLICATION.

The facts of the case are as follows:—The plaintiff-landlord sued in the Court of Small Causes at Calcutta (being suit No. 21209 of 1920) for possession of a suite of rooms in No. 14D, Temple Street, Calcutta, and for ejectment of the defendant who was holding the said premises as a monthly tenant at the rate of Rs. 70 per month. The latter had not paid the agreed rent in terms of an expired lease under which he was holding over and failed to vacate in spite of a notice dated 13th August 1920 determining the tenancy from

*Original Civil. Small Cause Court Suit No. 21209 of 1920.

1921

COHEN

v.

HOTTINGER.

the 30th September 1920. It was admitted that on the expiry of the term of the said lease the defendant continued as a monthly tenant at Rs. 70 and that after the Rent Act had come into force the landlord was paid Rs. 70 for the month of May. On being informed that the rent of the premises in November 1918 was Rs. 55, the defendant deposited with the Rent Controller the sum of Rs. 60-8 monthly under the *bond fide* belief that the question of standard rent which was then pending before the Rent Controller would be decided in that way. It had since then been fixed by the Controller at Rs. 65. In the Lower Court Mr. J. C. Gupta in his written judgment, dated 4th May 1921, stated the following:—" . . . the defendant did not tender any rent to the plaintiff but he paid to the Controller. The rent of the premises in November 1918 was Rs. 65. Defendant deposited only Rs. 60-8 on the assumption that the rent was Rs. 55 a month and 10 per cent. on it. Even when he came to know from Mr. White, the previous tenant, who proved before the Controller that the rent was Rs. 65, the defendant took no steps to deposit the extra amount. I therefore hold that there has been a default in payment and decree the suit with costs."

A Rule was then taken out on the 13th June 1921 under section 115 of the Civil Procedure Code on behalf of the defendant tenant on the ground that the learned Judge of the Small Cause Court had acted illegally and with material irregularity in having given a decree for possession, and that he had misconstrued his powers in that respect. The Rule now came on for hearing.

Mr. L. P. E. Pugh, for the defendant applicant, submitted that the lower Court had no jurisdiction and that the Judge acted with material irregularity.

Further, as the standardization of the rent was proceeding during the institution of the suit, the statute was satisfied if some "*bond fide* rent" was in deposit with the Controller.

1921
 COHEN
 v.
 HOTTINGER

Mr. N. N. Sircar (with him *Mr. F. R. Surita*), for the plaintiff-landlord, submitted that the lower Court had ample jurisdiction to give a decree for possession. The tenant had not complied with the provisions of the Rent Act or the agreed terms under which he held over and was disentitled to any benefit.

Mr. Pugh, in reply, referred to the judgment of Greaves J. in the case of *Ahindra Nath Chatterjee v. Lieutenant-Colonel E. K. Twiss* (suit No. 1576 of 1920) where the tenant was allowed relief against forfeiture of the tenancy.

[RANKIN J. That was a relief against forfeiture under section 114, Transfer of Property Act.]

RANKIN J. In this case I am sorry for Mr. Hottinger. I am afraid it is quite impossible for me to do anything to assist him and I am bound to say that his difficulties are due to the rather reckless method in which he has managed this part of his affairs. He was a tenant under an agreement for a year to Mr. Cohen before the Rent Act came into force, and in May 1920, that period had expired, and he was holding over as a monthly tenant upon the terms of the original agreement. The terms of the original agreement are, rent at Rs. 70, payable, as I understand, in advance on the 1st day of each month.

The Rent Act came into force on the 5th May 1920 and Mr. Hottinger appears to have paid the contractual rent in full for the month of May. After that he made up his mind to pay the amount of rent allowable under the Rent Act and no more. *Prima facie* under the Rent Act [see sec. 2 (1)] the amount of rent

1921
 ———
 COHEN
 v.
 HOTTINGER.
 ———
 RANKIN J.

allowed would be the amount that was paid for the premises on the 1st day of November 1918 *plus* 10 per cent. He made enquiries and he was of opinion that the amount was only Rs. 55 and he proceeded to pay to the hands of the Rent Controller certain sums of money amounting to Rs. 60-8 each month. He sent this on the 7th August in respect of the month of July, on the 6th September in respect of the month of August, on the 13th October in respect of the month of September, on the 8th November in respect of October 1920.

The landlord Mr. Cohen on the 13th August gave him notice to vacate on the 30th September 1920 and on the 6th October 1920 instituted a suit for eviction in the Small Cause Court. In the meantime proceedings were pending before the Rent Controller for the fixing of the standard rent. There was a contest about what the standard rent should be, and it has been ultimately determined as Rs. 77.

When the case came on for hearing before the learned Judge of the Small Cause Court, he found the facts thus : he says that the rent in November was Rs. 65 and not Rs. 55, and if you add 10 per cent. on to that, the sum of Rs. 60-8, per month which the defendant paid to the Rent Controller, was not enough to meet the standard rent which comes to Rs. 71-8. That being so, he says that under the statute, the tenant was not a person who is entitled to the benefits of the provisions in section 11 prohibiting an ejection. In my opinion, the learned Judge of the Small Cause Court, whose judgment has been described as perverse, was entirely right. I am not concerned as regards the findings of fact, but as regards the finding in point of law, I can see no reason at all to quarrel with it.

In this case one has to remember that the statute gives to a mere monthly tenant considerable fixity of

tenure upon a condition, namely, that he is a rent-paying tenant and not a defaulting tenant. It says that "no order or decree for the recovery of possession shall be made so long as the tenant pays rent to the full extent allowable by this Act and performs the conditions of the tenancy," and then further it says that no tenant shall be entitled to the benefits of this section, "unless he pays the rent due by him to the full extent allowable by this Act within the time fixed in the contract with his landlord, or, in the absence of any such contract by the 15th day of the month next following." With that section in front of me, it appears to me that the learned Judge of the Small Cause Court could do no other than he did.

It is said, first of all, that he ought to have exercised a discretion as to whether or not to give this tenant time because, it is said, the tenant was willing, even at the last decision of the questions against him, to make up all the arrears under sub-section (5). I fail to see how under sub-section (5), it was open to the learned Judge to give him any such facility. There are other difficulties. The provision by which money can be paid to the Rent Controller is where the landlord refuses to accept the rent referred to in sub-section (1), that is to say, "rent to the full extent allowable by this Act." It is said, on the other hand, by Mr. Pugh that as there were proceedings to fix the standard rent and as these proceedings were at the instance of the landlord, the statute will be satisfied meantime provided the tenant pays some *bonâ fide* rent into the hands of the Controller. All I can say is that if that is the intention of the statute, the statute will have to be drafted again, very differently. There is no room for such provision, in my judgment, in the sections I have in front of me. A "*bonâ fide* rent" is a very curious juristic notion, and I doubt if the

1921
 COHEN
 v.
 HOTTINGER.
 RANKIN J.

1921
COHEN
v.
HOFFINGER.
RANKIN J.

Legislature intended the rights of any one to depend upon it. It has not said anything which leads me to think so. In point of fact, the applicant's difficulties were not very real. He had agreed to pay Rs. 70 a month. The relieving statute came into force on the 5th May 1920. It was open to him to pay Rs. 70 (under protest, as to part, if he liked) to preserve his rights as a tenant under the Rent Act and to recover back from the landlord, if it should be necessary. That was perfectly open to him. Instead of doing that, he acts under section 2, sub-section (1), but not correctly. He pays an insufficient rent into the hands of the Rent Controller. He pays it under circumstances which make it very difficult to say that the landlord had ever refused to accept the rent referred to in sub-section (1). I am of opinion that the learned Judge did no other than he ought to have done and that he did not do anything which amounted to illegality nor has he misconstrued his powers. In these circumstances the Rule is discharged with costs.

A. P. B.

Rule discharged.

Attorneys for the plaintiff: *Mitra & Mitra.*

Attorney for the defendant: *A. K. Sirsar.*