
(1992) 07 CAL CK 0010
In the Calcutta High Court
Case No : C.O. No's. 134-35 of 1991

Escorts Limited

APPELLANT

Vs

Misrilal Properties Ltd.

RESPONDENT

Date of Decision : 17-07-1992

Acts Referred:

West Bengal Premises Tenancy Act, 1956 — Section 21, 21(4A), 22, 22(1), 22(2)

Citation : (1993) 1 CALLT 297 : 96 CWN 1126

Hon'ble Judges : Samir Kumar Mookherjee, J; Abani Mohan Sinha, J

Bench : Division Bench

Advocate : Subrata Roy, for the Appellant; Bhaskar Bhattacharya, for the Respondent

Judgement

Samir Kumar Mookherjee, J.—The subject-matter of challenge in the present, revisional proceedings is an order, dated 24th September, 1990, passed in Case Nos. C 18358 and C 18359, by the Rent Controller, on applications of the revisional petitioner for deposit of rents for the months of June, July and August, 1990 and the succeeding months. The Rent Controller rejected the applications on the ground that the rents for the months as referred to above not having been deposited nor tendered within the statutory time, the prayer made was liable to be rejected.

2. The relevant facts needed for disposal of the present revisional application, upon consideration of the propriety of the order passed by the Rent Controller, are that on refusal by the landlord to accept the rent for the month of May, 1990, the tenant petitioner sent the said monthly rent for May, 1990, by money order, on 7th May, 1990 and the said money order returned on 9th August, 1990 with postal endorsement "not claimed"; the said amount was thereafter, deposited with the Rent Controller after making necessary affidavit u/s 21 of the West Bengal Premises Tenancy Act, on 22nd August, 1990 that is, within 15 days from the date of return of the money order and such deposit was found in the impugned order by the Rent Controller to have been validly made. The prayer for

deposit of rents for the months of June onwards had, however, been refused as stated above by the Rent Controller by the impugned order and the validity and propriety of the said order have been assailed in the present revisional proceedings.

3. The petitioner has averred that its comprehensive application for simultaneous deposit of the rents for the aforesaid four months had not been entertained by the Rent Controller and as such two separate application as above had to be made.

4. We have heard Mr. Subrata Roy, in support of the application, and Mr. Bhaskar Bhattacharyya, on behalf of the contesting opposite parties. The law of tender and deposit with the Rent Controller, as it stood prior to the amendment of the provisions of Sections 21 and 22 of the aforesaid Act, rendered every deposit with the Rent Controller, which was not preceded by valid tender invalid. After the decision in the case of Ballav Das Agarwat (P) Limited v. Dalhousie Properties Limited reported in 65 CWN 1021 followed by other decisions a question arose as to whether after tender and refusal of a month's rent, subsequent deposits were needed to be preceded by fresh tenders ? By a subsequent Division Bench decision of this Court, in the case of Kabiraj Srinarayan Sarma Vs. Baijnath Bhartia, it was laid down that all deposits with the Rent Controller must be preceded by tender. In other words, refusal by the landlord once was held not to dispense with the requirement of tender of rents for the subsequent months and deposits with the Rent Controller without such tender would not be valid in the absence of such tender. That state of law, however, had been altered by amendments in the provisions of Sections 21 and 22 of the West Bengal Premises Tenancy Act. Whatever confusion was there has been set at naught by and removed clear language of the amendments introduced in 1969. Proviso to Section 21, which was in existence from before 1969, dispensed with filing of an affidavit in support of an application under the said section after the first deposit if the reasons and circumstances under which such deposit had been made remained the same. Proviso to Section 22(1) of the said Act indicates that in case of tender of rent by money order and refusal to accept the same by the landlord, the time for deposit with the Rent Controller would stand statutorily extended by 15 days from the date from which it returned to the tenant. Sub-section (3) of the said Section 22 lays down that a deposit made in compliance with sub-section (1) of Section 22, including the Proviso referred to above, if not invalid by the provision of sub-section (2) of Section 22 would constitute payment of rent to the landlord, as if, the amount deposited had been validly tendered to the landlord. Sub-section (4A) of Section 21 of the said Act dispenses with tender of rent ordinarily after the monthly rent tendered by a tenant has been refused and deposited with the Rent Controller. Reading the aforesaid provisions together and bearing in mind that the West Bengal Premises Tenancy Act is a beneficial piece of legislation, it becomes clear that the legislature intended that there would be no necessity of making a further tender once a valid tender had been made and date of deposit of the refused tendered

amount would stand extended from the date of return; of the money order to the tenant. It can, from the aforesaid, be concluded that a tenant could wait till the return of the money order coupon for taking necessary steps with regard to the rents for the months succeeding the one, the rent for which had been tendered the money order and which might have fallen into arrear in the meantime. Any other construction would nullify legislative intent. After the aforesaid amendments, the ratio propounded by the Division Bench in the case of Kabiraj Shri Narayan Sharma (*supra*) cannot be said to be relevant any longer.

5. Applying the aforesaid ratio, after the amendments as referred to above by us, the impugned order of Rent Controller cannot be sustained. The revisional petitioner's liability to deposit the rents for June onwards with the Rent Controller accrued after the return of the money order coupon and all rents which fell due up to the date of the return of the money order coupon could be deposited, without further tender, within 15 days from the date of return. Since the impugned rejection is based upon a view that without tender, there could not be any valid deposit with the Rent Controller, we set aside the impugned order, directing the Rent Controller to re-consider the applications according to law and on merit on the lines of the observations by us as made above.

6. Before parting with the case, we keep it on record that the points about the jurisdiction of the Rent Controller to adjudicate on the validity of the deposits with him as also applicability of the West Bengal Premises Tenancy Act, has been left open by us.

There will be no order as to costs.

7. Let urgent certified copies, if applied for, be delivered by the department within two weeks from the date of deposit of the requisite stamps and folios.

A.M. Sinha, J.

8. I agree.