

(2011) 06 CAL CK 0020
In the Calcutta High Court
Case No : C.O. 3706 of 2010

Haridhan Roy Chowdhury

APPELLANT

Vs

Biswa Sekhar Mondal and Others

RESPONDENT

Date of Decision : 14-06-2011

Acts Referred:

Constitution of India, 1950 — Article 227

West Bengal Premises Tenancy Act, 1956 — Section 17(2), 17(2A), 21, 22

Citation : (2011) 06 CAL CK 0020

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Probal Mukherjee and Sukanta Chakraborty, for the Appellant;
Sabyasachi Bhattacharya and A.B. Chakraborty, for the Respondent

Judgement

Dipankar Datta, J.—The Petitioners are the Defendants 1 and 2 in a suit for eviction, registered as Title Suit No. 97 of 2008, pending on the file of the learned Assistant District Judge, 1st Court, South 24 Parganas at Alipore, instituted by the Plaintiff/opposite party No. 1 (hereafter the Plaintiff).

2. An application u/s 17(2) of the West Bengal Premises Tenancy Act, 1956 (hereafter the Act) had been filed by the Petitioners praying for adjudication as to whether relationship of landlord and tenant between the Plaintiff and them existed or not and in the event the answer be in the affirmative, to adjudicate the quantum of arrears of rent in respect of the suit premises. An application u/s 17(2A) of the Act was also filed by the Petitioners praying for necessary order permitting them to pay arrears of rent, if any, by easy monthly installments.

3. It appears from the application u/s 17(2) of the Act filed by the Petitioners that rent in respect of the suit premises was paid up to April, 1992 to the Plaintiff, who collected the same on behalf of the other co-sharers. He, however, refused to accept rent for the month of May, 1992. Rent for the said month was remitted by money order but the Plaintiff refused to accept the same. Since May, 1992, the Petitioners have been depositing rent in respect of the suit premises

month by month before the Rent Controller, Calcutta to the credit of the Plaintiff and that there are no arrears.

4. The applications were contested by the Plaintiff by filing written objection whereby he prayed that the same be rejected. He averred therein that the Petitioners and the other Defendants, being the heirs of the original tenant Jagadish Chandra Roy Chowdhury (since deceased), are tenants in common under him in respect of the suit premises at a monthly rent of Rs. 62/- payable according to English calendar; that he had collected rent as landlord from the Defendants up to February, 1992; that the Defendants are habitual defaulters who defaulted in payment of rent "since March, 1992 and May, 1992 to December, 2000" and as such are not entitled to any protection; that any deposit made before the Rent Controller, Calcutta is invalid because no rent was tendered to him immediately prior thereto; and that the Defendants are not entitled to any relief.

5. By order No. 92 dated September 29, 2010, the learned Judge was of the view that the Petitioners committed default in payment of rent from April 1992 and directed payment of arrears of rent together with interest w.e.f. April, 1992 by November 30, 2010. The quantum of arrears, however, was not calculated. This order is the subject matter of challenge in the present provisional application under Article 227 of the Constitution.

6. I have heard Mr. Mukherjee, learned advocate appearing for the Petitioners and Mr. Bhattacharya, learned advocate representing the Plaintiff and perused the order impugned. Much argument was advanced by Mr. Mukherjee on tender of rent by the Petitioners by an account payee cheque dated September 8, 1992, being the rent for the month of August, 1992, sent to the Plaintiff. He attacked the material finding of the learned Judge (that such tender of rent by cheque is invalid) by referring to Section 21 of the Act as well as to the decisions of the Supreme Court reported in Mahendra Raghunathdas Gupta Vs. Vishwanath Bhikaji Mogul and others, and Damadilal and Others Vs. Parashram and Others, The cited decisions, he contended, are authorities for the proposition that payment of rent by cheque being an ordinary incident of present day life is legal and unless it is agreed by and between the parties that payment of rent must be in cash, payment by cheque shall be treated to be due payment if ultimately the cheque is encashed. According to him, Section 21 does not specify the mode of tendering rent and there being no agreement between the parties that rent must always be tendered in cash, tender of rent by cheque cannot be said to be invalid.

7. In terms of the provisions of the Act, it was obligatory for the Petitioners to prove to the satisfaction of the Court that rent due and payable to the Plaintiff by the due date was tendered personally, either in cash or by cheque, or by postal money order but was refused and that the Rent Controller was approached within 15 days of such refusal. In case of tender of rent by postal money order and refusal of the landlord to accept the rent that has been so tendered, the time limit to approach the Rent Controller in terms of Section 22 of the Act stands

statutorily extended by 15 days from date of return of the postal money order. It is therefore required to be examined whether the Petitioners did at all prove before the learned Judge that deposit of rent in the office of the Rent Controller was within the stipulated time of refusal of rent that was remitted by postal money order.

8. Even if the contention of Mr. Mukherjee that tender of rent by cheque is valid and is accepted, nothing turns on it. The plea of tender of rent by cheque is absent in the applications u/s 17(2) and (2A) of the Act. It is not comprehended as to how the learned Judge could allow the Petitioners to adduce evidence in this behalf without there being any pleading and more so when it is their specific claim that after rent for the month of May, 1992 was tendered and refused by the Plaintiff, they commenced depositing rent thereafter, month by month, in the office of the Rent Controller. Be that as it may, discussion in the impugned order regarding the effect of tender of rent by cheque has to be overlooked as redundant. However, the ultimate conclusion of the learned Judge that the Defendants 1 and 2/Petitioners are defaulters in payment of monthly rent and that they are liable to clear the arrears is unexceptionable for reasons that follow.

9. It is the categorical assertion of the Plaintiff that the Defendants are defaulters in payment of rent since the period referred to above whereas the claim of the Petitioners is that they paid rent up to April, 1992 to the Plaintiff and on his refusal to accept rent for the month of May, 1992, it was remitted by money order, which was also refused. Acceptance of rent for the month of April, 1992 by the Plaintiff/opposite party No. 1 is not disputed. However, no documentary evidence in respect of payment of rent for March, 1992 was produced either before the learned Judge or before me. It appears from the impugned order that the only evidence produced before the learned Judge was regarding remittance of rent by money order on June 6, 1992, which was refused on July 2, 1992. That understandably was the rent payable for May, 1992. The date of return of the postal money order is not readily available but a finding has been returned by the learned Judge that the Petitioners were required to deposit the rent by challan before the Rent Controller on or before July 19, 1992. This leads one to the conclusion that the postal money order may have returned on or about July 4, 1992. A further finding has been returned that the Petitioners had approached the Rent Controller only on August 6, 1992, as is evident from the first challan that was issued by his office. In such circumstances, the first deposit was found to be an invalid deposit, being beyond the stipulated time, and all subsequent deposits made by the Petitioners were also held to be invalid deposits.

10. This being the position on facts, the learned Judge was right, even without assigning good and sufficient reason, in concluding that the Defendants in the suit were defaulters and thus liable to bear arrears of rent together with statutory interest. I may add that the Rent Controller had not been approached within the stipulated time and, therefore, all deposits of rent in his office are invalid.

11. However, it is found that the learned Judge did not compute the arrears of rent payable by the Defendants in the suit to the Plaintiff as well as the quantum of statutory interest. The matter is, therefore, remitted to the learned Judge for due computation thereof as early as possible, but not later than four weeks from date of receipt of a copy of this order.

12. The application stands disposed of with the above direction. There shall be no order for costs.

Urgent Photostat certified copy of this judgment and order, if applied, may be furnished to the applicant at an early date.