
(1973) 09 CAL CK 0003
In the Calcutta High Court
Case No : C.R. No. 796 of 1973

Kazi Abul Hossain

APPELLANT

Vs

Fazlur Rahaman and Bros.

RESPONDENT

Date of Decision : 25-09-1973

Acts Referred:

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

Citation : 79 CWN 549

Hon'ble Judges : R. Bhattacharya, J

Bench : Single Bench

Advocate : Biman Kanti Basu, for the Appellant; Mrityunjoy Palit, for the Respondent

Final Decision : Dismissed

Judgement

R. Bhattacharya, J.—The instant re-visional application under Sec. 115 of the CPC has been filed by the petitioner, Kazi Abdul Hossain alias Abul Hossain who is the defendant in the Title Suit No. 5 of 1972 pending before the Court of the 3rd Munsif, Howrah against an order dated 21.12.72 passed by the learned Munsif rejecting the application under Sec. 17(2) read with Sec. 17 (2A) of the West Bengal Premises Tenancy Act. 1956 filed by him. The plaintiff opposite party is Fazlur Rahaman & Bros. having their office at Howrah. The plaintiff's case, in short, was that the defendant was a tenant in respect of the suit premises at a monthly rental of Rs. 22/- payable according to English calendar month. The plaintiffs filed the suit to evict the defendant from the suit premises on the ground that the latter was a defaulter in payment of rent since June, 1970. The suit was filed on 7.1.72.

2. The defendant appeared in the trial Court and filed an application under Sec. 17(2) read with Sec. 17(2A) of the West Bengal Premises Tenancy Act, 1956 stating that, it was not correct that he was a defaulter in payment of rent since June, 1970. His case was that he had already paid rents to the plaintiffs till the month of May, 1970 and thereafter he further amicably paid rents for six months

from June, 1970 to November, 1970 to the plaintiffs, but without any receipt. By this petition the defendant prayed for determination of the period in default, if any, and pass necessary orders for payment of the dues by easy instalments by extending time as the Court may think fit.

3. The application was opposed by the plaintiff and the learned Munsif on hearing both sides, held that according to the defendant himself, he was a defaulter from December, 1970 to April, 1972 after which he started depositing rental amounts month by month. Admittedly, the defendant did not deposit the rents for 17 months amounting to Rs. 374/-. In this view of the matter, the learned Munsif has held that when after appearance in the suit the defendant did not deposit the admitted rents from December, 1970 to the date of his appearance in the suit, the application under Sec. 17(2) of the West Bengal Premises Tenancy Act, 1956 was not maintainable and that the ancillary prayer for instalment or extension of time for payment of the dues could not be allowed.

4. Against the said order passed by the learned Munsif, the present revisional application has been filed. I have heard Mr. Biman Kanti Bose appearing for the petitioner and Mr. Mrityunjoy Palit for the Opposite Party. At the outset Mr. Palit for the opposite party takes a preliminary objection that the combined application under Secs. 17(2) and 17 (2A) of the West Bengal Premises Tenancy Act, 1956 was not maintainable in law in view of the Rule 20(2) of the Civil Rules and Orders framed by the High Court. The sub-rule (2) of Rule 20 relied upon by Mr. Palit says that applications in regard to distinct subject matter shall be made in separate petitions. In this connection Mr. Palit refers to sub-rule (2) of Rule 20 which says that the petition must not contain more than one prayer or one series of alternative prayers of the same kind. I do not find that this contention of Mr. Palit is of any substance. This technical objection cannot stand in my view. Section 17(2) of the West Bengal Premises Tenancy Act, 1956 relates to the determination of a dispute as to the arrears of rents payable by the defendant and Section 17 (2A) relates to the extension of time or instalment as the case may be for deposit of money specified in Sub-sec. (1) and Sub-sec. (2) of Section 17. The two matters are, therefore, very much connected and the Court can pass orders directing the defendant to pay the arrears of rent after determining the dispute by extension of time or otherwise, as mentioned in Sub-sec. (2A) of the West Bengal Premises Tenancy Act, 1956 by the same order. I, therefore, hold that the prayer for extension of time or instalment, as the case may be and the payment of arrears on determination are very much connected and cannot be stated to be distinct matters for which separate applications are to be filed. I do not think that the joint petition under Sec. 17(2) and Sec. 17 (2A) of the West Bengal Premises Tenancy Act, 1956, in the present case and in the present circumstances is maintainable.

5. It is submitted by Mr. Bose for the petitioner that the learned Munsif erred in law to hold that the application under Sec. 17(2) of the West Bengal Premises Tenancy Act, 1956 was not maintainable simply because the defendant did not

deposit the admitted arrears from December, 1970. His contention is that the learned Munsif should have found that the defendant-petitioner prayed for instalment or extension of time for payment of the admitted arrears along with the arrears if determined to be paid from June, 1970 to November, 1970.

6. Against the contention of Mr. Bose., Mr. Palit for the opposite party refers to a decision of a Single Bench of this Court reported in S.K. Mukherjee Vs. Smt. Saila Bala Sein and Others, wherein it has been held that the Court has no jurisdiction to extend the time for depositing in Court the amount admitted by the tenant to be due and that it was incumbent upon the tenant to deposit the admitted arrears of rent along with his application under Sec. 17(2). Mr. Bose, however, challenges this decision and submits that from the reading of Sec. 17 (2A) of the West Bengal Premises Tenancy Act, 1956, it will be clear that the Court has jurisdiction to extend time for deposit of the admitted arrears by the tenant to meet the ends of justice and in proper circumstances. According to Mr. Bose. the decision relied upon by Mr. Palit. is not in consonance with the language of sec. 17(2A). He has urged me, if necessary, to refer this matter to a larger Bench for proper decision on the point raised in view of the fact, that, cases like this appear in so many cases almost everyday. I shall, however, first of all see whether, as contended by Mr. Bose, the defendant prayed for extension of time to pay the arrears of rent after thorough determination by the Court under Sec. 17(2) of the West Bengal Premises Tenancy Act, 1956. For that purpose I am to go through the application under Sec. 17(2) read with Sec. 17 (2A) filed by the defendant. It is clearly stated in the application that the defendant paid rents to the plaintiffs amicably for 6 months from June, 1970 to November, 1970 without receipt. Nowhere does the dispute reveal that the arrears of rent from December, 1970 onwards are not payable by him in respect of the suit premises. From the plain reading of the simple language of the petition it is crystal clear that the defendant prayed for determination as to the period of default which is in dispute, namely from June, 1970 to November, 1970. There is no dispute about the arrears after November, 1970. In the prayer portion of the petition it is also stated that the Court should determine the period of default, if any, and there is the prayer that opportunity may be given to the defendant to pay the arrears of rent, if any. referring to the period of dispute, namely from June, 1970 to November, 1970. There is no indication in the body of the petition, or in the prayer portion of the same that the defendant prayed for extension of- time or instalment for paying up the arrears of rent from December, 1970 onwards to April, 1972. It is submitted that the defendant started depositing rents from May, 1972 onwards. Mr. Bose's contention was that the defendant wanted extension of time or instalment for deposit of arrears of rent both disputed for the period from June, 1970 to November, 1970 as also the admitted period from December, 1970 to April, 1972. I cannot accept the contention of Mr. Bose on reading the petition. Clearly there was no prayer under Sec. 17(2A) in respect of the admitted arrears of rent and, therefore, when the defendant did not deposit the admitted arrears of rent within time along with the application under Sec. 17(2),

as required under the law, the learned Munsif was justified in rejecting the application under Sec. 17 (2) and under Sec. 17 (2A) of the West Bengal Premises Tenancy Act, 1956. There is no occasion, therefore for me to consider whether I should accept the principle of law enunciated in the case reported in 77 CWN page 492 or to express my view on the same I find no substance in this application.

The revisional application of the petitioner, therefore, stands rejected and the Rule is hereby discharged. In the facts and circumstances of this case however, I pass no order as to costs.