
(1983) 06 CAL CK 0024
In the Calcutta High Court
Case No : Civil Revision No. 1450 of 1980

Makhan Lal Bose	Vs	APPELLANT
Charupama Debi and Others		RESPONDENT

Date of Decision : 16-06-1983

Acts Referred:

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

Citation : AIR 1984 Cal 44 : 87 CWN 897

Hon'ble Judges : S.N. Sanyal, J; Anil K. Sen, J

Bench : Division Bench

Advocate : Ashutosh Ganguly and A.N. Mondal, for the Appellant; Haradhan Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Anil K. Sen, J.—This is a revisional application at the instance of the defendant in a suit for eviction being Title Suit No. 146 of 1976 of the 6th Court of the learned Munsif at Alipore.

The order impugned is one dated 8-1-80, passed by the learned Munsif disposing of the defendant's application u/s 17 (2) of the West Bengal Premises Tenancy Act.

2. The plaintiffs-opposite parties instituted the suit for eviction on the ground amongst others of default. After appearance, the tenant-defendant filed an application u/s 17 (2) of the West Bengal Premises Tenancy Act, raising various disputes. One of the disputes raised was to the effect that there exists no relationship of landlord and tenant between the plaintiffs and the defendant. The other dispute raised was with regard to the quantum of arrears. According to the defendant, he had advanced a sum of Rs. 6,350.00 to the landlords on a specific agreement that the said amount would be adjusted against monthly rents due and payable by the defendant on and from the month of May 1970. That amount was taken loan of by the landlords for effecting repair to the premises as they

were short of funds. It was further claimed by the tenant-defendant in this application u/s 17 (2) of the Act that notwithstanding such advance the landlords effected no repairs and, as such, he himself was compelled to effect repairs at a total cost of Rs. 1,950.00. He claimed that he is entitled to claim adjustment of the above two amounts of Rs. 6,350.00 and Rs. 1,950.00. He further claimed adjustment of a sum of Rupees 329.73 towards the Corporation taxes paid by him on behalf of the landlords.

3. This application was strongly contested by the plaintiffs-landlords both on merits and on the technical objection that such a claim of adjustment is not admissible in an application u/s 17 (2) of the Act.

4. On the materials before the Court, the learned Munsiff found the existence of relationship of landlord and tenant between the plaintiffs and the defendant and that dispute raised in the application u/s 17 (2) was decided in favour of the plaintiffs. On the claim of adjustment the learned Munsif took the view that the tenant-defendant cannot claim adjustment of any of the amounts as claimed since those advances were made as separate transactions and cannot be gone into in an application u/s 17 (2) of the Act. In holding as such, the learned Munsif relied on an earlier single Bench decision of this court in the case of Bhagban Shaw v. Smt. Simmi Goyal, 1978 (2) Cal LJ 254 : (AIR 1978 NOC 248) (Cal). That is the order now impugned before us in this revisional application.

5. Mr. Ganguly appearing in support of this Rule has Contended that the learned Munsif failed to appreciate correctly the principles enunciated by this court in the case referred to hereinbefore. According to Mr. Ganguly, if any amount be found due by the landlord to a tenant which upon a lawful agreement between them is to be adjusted against rent payable by the latter to the former, there is no reason why the tenant in an application u/s 17 (2) of the Act is not entitled to claim adjustment of such an amount. Mr. Banerji, however, has strongly contested this point. According to Mr. Banerji, such dues of the tenant arising out of a separate transaction has to be enforced in an independent proceeding and not in an application u/s 17 (2) of the Act.

6. On careful consideration of the rival contentions, we are of the view that there is ample substance in the contention of Mr. Ganguly. If any lawful advance which the landlord accepts from the tenant or any amount which is lawfully due from the former to the latter, be agreed between the parties to be adjusted against the rent, that certainly confers a right upon the tenant under the contract to get an adjustment against the rents actually accruing and there is no reason why the tenant cannot assert that right in an application u/s 17 (2) of the Act. Although the provision of the West Bengal Premises Tenancy Act imposes a statutory bar on the landlord receiving any consideration other than an advance of one month's rent by way of security for creation of the tenancy, that provision does not stand in the way of the landlord incurring any loan from an existing tenant or otherwise creating a relationship of debtor and creditor between them in any lawful manner not being in reality any consideration for creation of the tenancy.

Incurring such a debt is not barred under the statute and obviously any amount so due would be repayable according to the contract. If the contract between the parties be that it would be so repayable against future rents, there is no reason why the advance so made or the loan so taken cannot or should not be adjusted against the rent. It is a fortuitous circumstance that the advance pleaded in the present case is one for repair of the premises. Although there are limits imposed by the statute regarding landlord's liability for repairs, the statute never debars the landlord to effect a thorough repair beyond the limits prescribed by the statute at his own volition and at his own cost. If for the said purpose the tenant advances any amount by way of loan to the landlord as pleaded in the present case with a further agreement that the loan so advanced will be adjusted against future rents, we find no legal bar, so far as the tenant-defendant is concerned, from pleading adjustment of any sum so advanced against the rents that accrue. The learned Munsif was certainly not right in thinking that the amount so advanced can be realised only by a separate suit as it constitutes separate transaction. It may be a separate transaction but such a transaction was a contract between the parties entitling the tenant-defendant to have the advance made by him adjusted against future rents. That certainly is the right which he was asserting in his application u/s 17 (2) of the Act when he claimed adjustment of the sum of Rs. 6,350.00 and there is no legal bar for him to lay such a claim. 7. The above view of ours finds its support from a decision of this Court in the case of Ramesh Chandra Majumdar Vs. Sm. Sobodhbala Dasi, . The decision in the case of Bhagaban Shaw v. Simmi Goyal AIR 1978 NOC 248 (Cal) (supra) relied on by the learned Munsif had not considered the point from the above angle. There of course relying upon the provisions of the said Act. It was observed that any amount voluntarily spent by the tenant for effecting repairs can be adjusted only in terms of an order from the Rent Controller on an application under the Pro-visions of the Act and not otherwise. This decision may be a good authority for disallowing the claim of adjustment in respect of the second amount of Rupees 1,95.00 but not in respect of the first amount. The same learned Judge who decided the above case of Bhagaban Shaw, had an occasion to hold in the case of Jagannath Pal Vs. Kalipada Pal, , that Section 17 (2) of the Act has nothing to do with any adjustment of future rents against the possible money claimed by the tenant against the landlord for which the tenant has to take recourse to ordinary laws of the land and not by any procedure laid down under the provisions of the Act. But this part of the observation is too wide and we are not in a position to agree with such a wide proposition. If the tenant can lay a lawful claim which under the provisions of the said Act is neither barred nor recoverable in any particular manner prescribed by the statute and which under a lawful agreement between the parties is adjustable against future rent, there is no reason why the tenant cannot claim such an adjustment in an application u/s 17 (2) of the Act

8. Of course, the tenant-defendant cannot claim any adjustment of any sum voluntarily spent by him far less the sum of Rs. 1,950.00 as alleged for the

purpose of repairs without the sanction of the Rent Controller because he cannot lawfully claim any such adjustment except in accordance with the particular provisions of the said Act.

9. So far as the claim of adjustment of Corporation taxes is concerned, it is necessary to consider as to whether under an agreement between the landlord and the tenant, such tax was payable by the landlord and also whether any such payment had really been made under compulsion by the tenant on behalf of the landlords or not. All these factors are required to be gone into and the claim could not have been thrown away in the limine in the manner done by the learned Munsif.

10. On the view we have thus taken the order impugned in the present revisional application cannot be sustained. But the fact remains that the defendant-petitioner is using the process u/s 17 of the said Act more for the purpose of avoiding payment of his liability than having the alleged dispute settled by the court. This we say because even pending all these years he had not been depositing the current rent except to the extent he had been compelled under orders of this court. The dispute raised u/s 17 (2), which is yet to be adjudicated on its merits on the view we have taken, if allowed in toto, would entitle the defendant to have an adjustment of a sum of Rs. 6,600.00 and odd whereas the arrears already found by the learned Munsif is Rs. 6,300.00 as on Dec. 1979, Further arrears have accrued by nonpayment of rent

11. Taking into consideration all these aspects, we would allow the present revisional application on condition that the tenant-defendant deposits a sum of Rupees 2,000/- (Rupees two thousand) in the trial court within period of one month from date. The said amount being deposited, will be held by the trial court pending re-hearing of the application u/s 17 (2) and subject to the result thereof and in the event the defendant-petitioner fails to make the deposit of the said sum of Rs. 2,000/-(two thousand) within the period as aforesaid, the present revisional application would stand dismissed and the Rule will stand discharged and the order impugned will stand affirmed.

12. In the event the amount of Rupees 2,000/- (two thousand) is deposited in accordance with this order, the impugned order will stand set aside and the learned Munsif would re-hear the application u/s 17 (2) for considering on merits as to whether the defendant is entitled to have any of the two alleged payments of Rs. 6,350.00 and Rs. 329,73 adjusted against arrears of rent due,

13. The learned Munsif would redetermine the arrears in terms of the directions incorporated herein within a period of two months from the date of communication of this order to him and direct the defendant-petitioner to deposit the arrears found together with interest payable thereon according to law and the payment or default would entail the respective consequence as prescribed by the statute.

14. The Rule and the application filed on April 1, 1981, are disposed of

accordingly without any order as to costs.

15. Let the records be sent down at once.

S.N. Sanyal, J.

16. I agree.