

(1980) 06 CAL CK 0025
In the Calcutta High Court

Messrs. Tamluk Workers Transport Pvt. Ltd. and Others	APPELLANT
Vs	
Milan Kumar Maity and Others	RESPONDENT

Date of Decision : 04-06-1980

Acts Referred:

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

Citation : (1980) 06 CAL CK 0025

Hon'ble Judges : D.C. Chakravorti, J

Bench : Single Bench

Advocate : Bidyut Kumar Banerjee, for the Appellant; Himangshu Kumar Bose, for the Respondent

Judgement

D.C. Chakravorti, J.—This Rule is directed against orders Nos. 40 and 43 dated respectively May 23, 1979 and June 7, 1979 made by the learned Munsif, First Court at Tamluk in a suit for eviction. The opposite parties brought against the petitioners a suit for eviction. There were several ground taken on which eviction was asked for. However for our present purpose we are not concerned with those grounds. The opposite parties entered appearance on May 30, 1978 and put in applications under s. 17(2) and 17(2A) of the West Bengal Premises Tenancy Act on June 28, 1978.

2. The learned Munsif rejected the said application under S. 17(2) on the ground that it was filed out of time. The relevant provisions required an application under S. 17(2) to be filed within a month from the date of service summons on the tenants defendants or if no service could be effected, within a month from the date of their appearance Order No. 10 dated April 24, 1978 is to the following effect:

Summons served on defendants 1 and 2.

For further satisfaction to 8.5.78 for registered summons on them,

It further appears from the Order No. 12 dated May 30, 1978 that the summons sent by registered post to defendant No. 1 came back with the peon's

endorsement "refused" and that meant for defendant No. 2 came back with the endorsement "left without address". The learned Munsif proceeded on the basis that the summons were served on the defendants on April, 1978. This is the date on which the summons were said to have been served by affixation.

3. Mr. Bidyut Kumar Banerjee, learned Advocate appearing in support of the Rule, very rightly contends that the learned Munsif was wrong in refusing to go into the merits of the application under S. 17(2) on the ground that the same was filed out of time. The present suit was filed on October 19, 1977. The new Code of Civil Procedure, 1976 came into force on February 1, 1977. Decidedly therefore the provisions of the new Code would apply to the present suit. The provisions of rule 19A of Order 5 of the new Code makes it incumbent on the court to issue summons for service by registered post in addition to and simultaneously with the issue of such summons for service in the manner provided in rules just preceding the said rule 19A, i.e. rules 9 to 19 (both inclusive). In the present case it will appear from what has been stated above that the service by affixation was effected on April 3, 1978 and summonses by registered post were ordered to be issued on April 24, 1978. Accordingly, this provision of the new Code was not complied with. There was therefore no proper service of summons. In the circumstances, the learned Munsif ought to have held that the application under S. 17(2) which was filed within a month from the date of appearance of the defendants was made within the time allowed by law. In the circumstances of the present case it may very well be contended that the learned Munsif illegally refused to exercise his jurisdiction on by not having taken up for hearing the application under S. 17(2) on the ground that it was filed out of time.

4. In the circumstances aforesaid, I make the Rule absolute, set aside the impugned order and require the court below to take up expeditiously the application under S. 17(2) for hearing and disposal.

5. In the facts and circumstances of the case, however, I make no order as to costs.

Let the records be sent down expeditiously.