
(1983) 09 CAL CK 0007
In the Calcutta High Court

M/s. Jiia Ens

APPELLANT

Vs

Hindusthan ICE and Cold Storage Co. Ltd.

RESPONDENT

Date of Decision : 06-09-1983

Acts Referred:

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

Citation : 88 CWN 78

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

Bench : Division Bench

Advocate : Sudhis Dasgupta and Tarun Chatterji, for the Appellant;Saktinath Mukherji, Ganesh Basak, A.N. Mukherji and Kalpana Banerji, for the Respondent

Judgement

Anil K. Sen, J.—A preliminary order made u/s 17 (2) of the West Bengal Premises Tenancy Act. 1956 (hereinafter referred to as the said Act) is the subject-matter of challenge in the present revisional application. The tenant-defendant is the petitioner before us and the order challenged is the one dated June 29, 1983, passed by the Id. Subordinate Judge, 8th Court, Alipore, in Title Suit No. 22/82. The application is being heard as a contested application. The landlord-opposite party instituted the above suit for eviction on the ground, amongst others, of default in payment of rent. It is not disputed that the monthly rent payable is Rs. 2, 609.50 and it is also not disputed that no rent whatsoever has been paid since January 1980.

2. The tenant-defendant entered appearance in the suit and on July 21, 1982, filed an application u/s 17 (2) read with section 17 (2A) of the said Act. In this application the tenant-defendant raised an objection that they are entitled to suspend payment of rent since the plaintiff landlord had suspended supply of electricity and water and has further interfered with lawful enjoyment of the demised premises. Having filed such an application, the tenant-defendant started delaying hearing of the suit as also disposal of the said application u/s 17 (2)read with section 17 (2A) of the said Act. Though any number of adjournments were taken to file their written statement, they did not do so until the court fixed the

suit for ex parte hearing on May 12, 1983. The written statement was filed on May 11, 1983.

3. So far as the application u/s 17(2) read with section 17 (2A) of the said Act is concerned, it appears to us that the tenant-defendant had the said application adjourned from date to date until the said application was adjourned for the last time till April 20, 1983 and on which date the tenant-defendant simply rendered themselves scarce from the court by their non-appearance. On the contrary, on that date the lawyer for the tenant-defendant filed an application for incorporating certain other facts into the application u/s 17(2) read with section 17 (2A) of the said Act and obviously, not out of any bona -fide motive but to further delay the said application. The Id, Judge, however, did take a strict attitude in not conceding the said prayer but directing the application to be taken up for hearing on the day following.

4. On April 21, 1983, the tenant-defendant again filed an application for adjournment of hearing of the application u/s 17(2) read with section 17 (2A) of the said Act. Though the said prayer was not granted, the application could not be taken up on that day but the application was actually taken up for hearing on June 29, 1983, when the Id. Subordinate Judge passed a preliminary order directing the tenant-defendant to deposit a sum of Rs. 1, 06, 989.50 being the tentative amount of rent for the period from January 1980 to May 1983 within a month from the date of the order and he further directed that the dispute raised in the said application will be taken up for final adjudication on the next date fixed for hearing. It is not disputed that in arriving at the aforesaid figure of Rs. 1, 06, 989.50 the Id. Subordinate Judge calculated the arrears from January 1980 to May 1983 at the undisputed monthly rate of rent, namely, Rs. 2, 609.50. Feeling aggrieved by this order, the tenant-defendant has preferred the present revisional application.

5. Mr. Das Gupta appearing in support of. this revisional application has strongly contended that, in view of the nature of the dispute raised by the tenant-defendant, it cannot be held that the aforesaid sum of Rs. 1, 06, 989.50 or, as a matter of fact, any amount is due by the tenant-defendant to the landlord so that there can be any order for deposit of such an amount under sub-section (2) of section 17. According to Mr. Das Gupta, the tenant-defendant had raised a bona fide dispute that they are entitled to totally suspend payment of rent on grounds pleaded in the application and until that dispute is decided, it cannot be held that any amount is due and payable by the tenant-defendant which can be directed to be deposited even by a preliminary order made under sub-section (2) of section 17 of the said Act.

6. The point thus raised by Mr. Das Gupta has been strongly disputed by the Id. Advocate for the landlord opposite party. According to him, the dispute proposed to be raised is a sham one. The only object of the tenant-defendant is to defraud the landlord of the rent lawfully payable to them. Naturally, strong reliance has been placed by the Id. Advocate for the plaintiff landlord on the manner in which

the tenant-defendant had been carrying on the proceeding to indicate that it was never the bona fide intention of the tenant-defendant to have even the dispute adjudicated at an early date.

7. We have carefully considered the rival contentions put forward before us. Sub-section (2) of section 17 entitles the tenant-defendant to deposit in court the amount admitted by him to be due and then file an application for determination of the rent payable by raising a bona fide dispute as to the amount so payable. Then, the sub-section provides. "On receipt of such application, the court shall-

(a) having regard to the rate at which rent was last paid and the period for which default may have been made, by the tenant, make, as soon as possible within a period not exceeding one year, a preliminary order, pending final decision of the dispute, specifying the amount, if any, due from the tenant and thereupon the tenant shall, within one month of the date of such preliminary order, deposit in court or pay to the landlord the amount so specified in the preliminary order; and

(b) having regard to the provisions of this Act, make, as soon after the preliminary order as possible, a final order determining the rate of rent and the amount to be deposited in court or paid to the landlord and either fixing the time within which the amount shall be deposited or paid or, as the case may be, directing that the amount already deposited or paid be adjusted in such manner or within such time as may be specified in the order.

8. On the terms of the provisions as aforesaid, the point for our consideration is what actually is the scope for making a preliminary order by a court under the aforesaid provision. According to Mr. Das Gupta, in a case where a bona fide dispute is raised by the tenant-defendant that no rent whatsoever is payable or, as in the present case, the tenant-defendant is entitled to suspend totally payment of rent, there can be no preliminary order directing any payment or deposit because at that stage it is not decided or adjudicated what is the amount due. According to Mr. Das Gupta, even under the preliminary order what the court can direct is deposit or payment of the amount due from the tenant so that, if on the dispute raised the tenant has raised a plea that nothing is due, there can be no order for deposit or payment until such dispute is decided.

9. Upon a careful consideration of this particular provision we are, however, unable to accept the contention of Mr. Das Gupta. Whether the dispute raised is bona fide or sham, it is a part of the adjudication of the dispute itself and hence that cannot be - decided at the stage of the preliminary order. Therefore, if we accept the contention of Mr. Das Gupta, then once the tenant-defendant raises a dispute that nothing is payable by him towards rent or that he is entitled to suspend totally payment of rent, the court will have no power- under the aforesaid provision to direct any payment or deposit by way of a preliminary order. In our view, that, could- not have been the intention of-the-legislature-which substituted the old sub-section (2) for the present one incorporating a provision for a preliminary order directing tentative payment" awaiting final

adjudication of the dispute itself. Moreover the concluding part of clause (b) set out hereinbefore clearly indicates that there may be over-payment or payment of any amount not actually due which, after final adjudication, may be directed to be adjusted. By the amendment, the legislature incorporated a "scheme which clearly envisages a requirement that in case where the court is not in a position to decide the dispute at an early date, it shall make a tentative order in the light of clause (a) of subsection (2) of section 17 of that Act. In our view that clause accordingly vests in court a discretion to be exercised judicially on the facts of each case and decide whether, pending final adjudication of the dispute, the tenant-defendant should be made to deposit or pay any amount which the court at that stage finds to be due having regard to the rate at which the rent was last paid and having regard to the period of default. Obviously, this finding regarding the rent being due would be a tentative finding for the simple reason that the order is a tentative order and will be subject to further adjustment when the final order is made under clause (b). It is not correct to think that in every case where the tenant raises a dispute by denying his liability to pay any rent in an application u/s 17(2), it becomes incumbent for the court to decide that dispute before it can make even a preliminary order under clause (a) of sub-, section (2) of section 17 of that Act. Raising of such a dispute does not oust the power of the court to exercise its discretion, when thought necessary, in making a preliminary order to pay or deposit any amount adjudged due on the basis of rate of rent at which it was last paid and the period of default. It may be, in the facts and circumstances of any particular case, the court may in exercise of such a judicial discretion decide that no amount should so be directed to be so deposited or paid. But that is left to the court for decision on the facts of each case. We are, here-fore, unable to accept the extreme contention of Mr. Das Gupta that, since a dispute has been raised by the tenant-defendant in the present case that they have a right to suspend the rent totally, the court had no power to direct by a preliminary order deposit or payment of any amount. The principal contention raised by Mr. Das Gupta, therefore, is overruled.

10. Coming on to consider the order as passed, it appears to us that, in the facts and circumstances of the present case, it cannot be said that the Id. Subordinate Judge had not exercised his discretion judicially in coming to a tentative finding. As we have indicated hereinbefore, the amount of monthly rent is not in dispute; so also, there is no dispute that no rent whatsoever has been paid since January 1980 nor is being paid pending the suit. The tenant-defendant may have raised a dispute claiming a right to suspend payment of rent. But the conduct of the tenant-defendant clearly indicates that they are fighting shy to have that dispute adjudicated. Having raised such a dispute, the entire endeavour on the part of the tenant-defendant had been to keep the dispute alive and take the benefit of the fact of raising such a dispute. They would not allow "the application to be adjudicated in spite of the best efforts made by the court. In the background of the aforesaid circumstances, if the Id. Subordinate Judge had thought it fit to determine tentatively the rent due assessing the same with

reference to the rate of rent and the period of default both of which are not in dispute, we are not in a position to hold that he did so either in irregular exercise of his powers or improper exercise of his discretion. But one aspect it appears to us - was lost sight of by the Id. Subordinate Judge, namely, there is a prayer made u/s 17 (2A) of the said Act and it would not be just and proper to direct payment or deposit of the entire amount when such a prayer is still pending adjudication.

11. In that view, to meet the ends of justice and in consideration of the circumstances of the tenant and the landlord, we would merely modify the- order of the Id. Subordinate Judge by directing the tenant-defendant to deposit or pay to the landlord half the amount assessed by the Id. Subordinate Judge within the; period as specified- in section 17(2) (a) of the Act calculated from this date. Such deposit or payment will be subject to the result of- the final "adjudication to" be made under clause (b) of that sub-section.

The revisional application is disposed of accordingly.

S.N. Sanyal, J.

I agree.