
(1971) 05 CAL CK 0009
In the Calcutta High Court
Case No : Suit No. 674 of 1969

Rajputana Trading Co. Pvt. Ltd.

APPELLANT

Vs

Iswarsingh Kripalsingh and Another

RESPONDENT

Date of Decision : 21-05-1971

Acts Referred:

West Bengal Premises Tenancy Act, 1956 — Section 17(1), 21, 22

Citation : AIR 1972 Cal 56 : (1973) 2 ILR (Cal) 80

Hon'ble Judges : S.C. Ghose, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Ghose, J.—This is an application, inter alia, for, reconsideration of an order passed by me on August 26, 1970 u/s 17 (3) of the West Bengal Premises Tenancy Act, 1956, hereinafter referred to as the Act directing the striking out of the defence of the petitioner so far as delivery of the possession of the premises in suit was concerned. The said order was passed by me u/s 17 (3) of the West Bengal Premises Tenancy Act, 1956 on the ground that the defendant had failed to pay the landlord or deposit either in Court or with the Rent Controller an amount equivalent to the rent in respect of the six tenancies mentioned in the plaint for the month of May 1969, that is, a period after the institution of the suit.

2. On March 6, 1969, the suit was filed by the plaintiff against the defendants for recovery of possession of the premises in suit which were the subject-matter of six different tenancies. The Writ of Summons was served on the defendants on April 7, 1969. The defendants entered appearance and filed written statement on or about May 5, 1969. On February 28, 1969 an application was made by the plaintiff in this suit, inter alia, for striking out the defence of the defendants so far as the recovery of possession was concerned on grounds of various defaults made in payment or deposit of rent mentioned in the petition filed in the said proceeding. After hearing the said application I held that the defendant No. 2 had defaulted in paying or depositing an amount equivalent to rent in respect of the

tenancies which are the subject-matter of the suit for the month of May 1969. In that view of the matter, I directed the defence so far as recovery of possession was concerned in the suit to be struck out as mentioned earlier. This application, is made in the inherent jurisdiction of this Court to reconsider and recall the said order and rehear the said application on merit.

3. The defendant No. 2 who is the petitioner in the instant application alleges that in fact there was no default in payment or deposit of rent in accordance with the provisions of the statute in respect of the said tenancies for the month of May, 1969. The petitioner has stated that the petitioner through one Govindlal Das on or about June 10, 1969 tendered to the landlord through one of its Directors, Durga Prosad More a total sum of Rs. 537.28 p. in respect of the six tenancies of the defendant at premises No. 97, Vivekananda Road, Calcutta "on account of rent and/or amount calculated at the rate of rent for the month of May 1969". Durga Prosad More refused to accept the said sum tendered to him in cash, as stated in sub-paragraph (i) of paragraph 13 of the petition in the instant application. In sub-paragraph (ii) of the said paragraph it is stated "upon such refusal to accept the rent so tendered" Mr. Das went to the Beadon Street Post Office and remitted the said total sum of Rs 537.28 p. by Money Order to the landlord.

4. The post office obviously as the agent of the petitioner duly tendered the said sums to the landlord. On June 12, 1969 the landlord refused to accept the said sums so tendered. The petitioner received back the Money Order in respect of the said six tenancies on June 16 and 17, 1969. On June 20, 1969, the said sum of Rs. 537.28 p. in respect of the said six tenancies were duly deposited with the Rent Controller in accordance with the provisions of the West Bengal Premises Tenancy Act, 1956. Mr. Bhabra submitted that the said sum of Rs. 537.28 p. was tendered to Durga Prosad More as the Director of the landlord and was wrongfully refused to be accepted by the said Durga Prosad More as such landlord. Thus there was payment of the said sum to the landlord as contemplated by Section 17 (1) of the West Bengal Premises Tenancy Act, 1956. Secondly, Mr. Bhabra submitted that even if the said tender be deemed not to be payment to the landlord as contemplated by Section 17 (1) of said Act, the said sums were deposited within the time mentioned in proviso to Section 22 (1) of the said Act. According to Mr. Bhabra, the petitioner had 15 days under proviso to Sub-section (1) of Section 22 of the said Act to deposit the money with the Rent Controller from the respective dates when he had received back the Money Order remitted by him.

5. It is to be noticed that Section 17 (1) of the Act contemplates payment to the landlord or deposit in Court or with the Rent Controller; it does not mention the word "tender". Section 38 of the Indian Contract Act enunciates the law of tender in India. Section 38 of the Indian Contract Act is set out hereunder :--

"38. Where a promisor has made an offer or performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-

performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions :

(1) It must be unconditional.

(2) It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then, to do the whole of what he is bound by his promise to do.

(3) If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them."

It is clear, therefore, from the said section that it discharges a promisor from performing his promise and keeps intact his rights under the contract where the promisor offers to perform unconditionally the promise to the promisee and is prevented by him from doing so. According to Mr. Bhabra as soon as the tenant tendered the rent to the landlord as stated in paragraph 13 (i) of the petition herein and such rent was refused to be accepted by the landlord, the tenant was absolved from all liabilities or obligations u/s 17 (1) of the said Act. Mr. Bhabra relied on the case of Jagat Tarini Dasi v. Nabagopal Chaki (1907) 5 Cal LJ 270 wherein it was held as follows :--

"Now it is well settled, that while a tender does not extinguish the indebtedness, a valid tender which is kept good stops the running of interest after the tender; see Gyles v. Hall, (1726-2 P. Wms. 378); Wallace v. McConnell 1839-13 Peters (US) 136) and Bissel v. Heyward (1877-6 Otto (US) 580). It was argued, however, that this rule is not applicable to cases under the Bengal Tenancy Act, and that in order to stop interest, a tenant must prove, that after improper refusal of a tender validly made, he deposited the amount due in Court under the provisions of Section 61 of the Bengal Tenancy Act.

In support of this position, reliance was placed upon the decision of this Court in Rangit Singha v. Bhagabutty Charan (1900-7 Cal WN 720). It may be conceded, that there are observations in that judgment which lend some apparent support to the contention of the respondent; but upon closer examination of the facts of the case, which we have ascertained from the records, it appears to be clearly distinguishable. There it was alleged that rent had been tendered and improperly refused, and upon this basis alone, it was contended that interest would cease to accrue from the date of the tender. There was not the remotest suggestion, nor any proof whatever, that the tender had been kept good. Under these circumstances, the learned Judges held that the tenant could not successfully claim to be relieved of his liability to pay interest, unless he proved a deposit u/s 61 of the Bengal Tenancy Act. The learned Judges did not lay down, that even if

it was established, that not only had a valid tender been made, but also that it had been kept good, the tenant would continue to be liable for interest until such time as he could make a deposit u/s 61 of the Act. In the first place, such a view would be totally opposed to the well established principle, that a valid tender which is kept good stops the running of interest. (See the judgment of Wilde, C.J. in *Dixon v. Clark* (1848-5 CB 365). The principle of the plea of tender is, to use the language of Mr. Justice Clifford in *Colby v. Reed* (1878-9 Otto (US) 560) that the defendant has always been ready to perform the contract, and that he did perform it as far as he was able, by tendering the requisite money, the plaintiff himself having prevented a complete performance by his refusal to accept the tender (See also *Bullen and Lake on Precedents of Pleadings*, 3rd Ed. p. 693). That principle is substantially embodied in Section 38 of the Indian Contract Act, and was recognised by the Judicial Committee in *Buta v. Municipal Committee of Lahore* (1900 ILR 29 Cal 854)."

6. Mr. Bhabra also cited (1913) 18 Ind Cas 442 (Cal) which follows the aforesaid decision in (1907) 5 Cal LJ 270. Mr. Bhabra then cited the case of *Gopal Banerjee v. Manindra Nath Dey* (1966) 70 Cal WN 864 and contended that the penal consequence visiting upon a default in payment or deposit of rent or money equivalent to rent in terms of Section 17 (1) of the said Act should be construed strictly and where there is any doubt as to whether the default has taken place or not the section should be construed in favour of the tenant for whose benefit the said West Bengal Premises Tenancy Act was enacted. Thus in the instant case a liberal construction should be given to the word "pay" in Section 17 (1) and where there has been a valid tender by the tenant the same should be held to have satisfied the requirements of payment contemplated by the said section.

7. Mr. Kapoor on the other hand contended that tender of rent to be effective and binding must be followed by deposit either in Court or with the Rent Controller in strict compliance with the provision of Section 17 (1) of the Act to enable the tenant to get the benefit of Section 17 (4) of the said Act. Mr. Kapoor relied on the case of *Dinanath Mondal v. Fatik Chand Seal* (1966) 70 C WN 1086. Mr. Kapoor further contended that Sections 21 and 22 of the said Act are not applicable to cases of deposit with the Rent Controller u/s 17 (1) of the said Act and thus rent or amount equivalent to rent if deposited with the Rent Controller has to be deposited within 15th of the month following that for which rent was deposited in accordance with the provision of Section 17 (1) of the said Act. Mr. Kapoor relied on the Special Bench case of *Siddheswar Paul Vs. Prakash Chandra Dutta*, . In order to appreciate the contentions of Mr. Kapoor on this point the relevant portions of Sections 21 and 22 of the said Act are set out here-under :--

"21. Deposit of rent by the tenant.--(1) Where the landlord does not accept any rent tendered by the tenant within the time referred to in Section 4 or where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner.

(Provided that where any rent is remitted by the tenant to the landlord by postal money order, the date of issue of the postal money order shall for the purposes of this sub-section, be deemed to be the date of tender of such rent by the tenant to the landlord.)

(2) The deposit shall be accompanied by an application supported by an affidavit by the tenant stating-

(a) the premises for which the rent is deposited with the description sufficient for identifying the premises;

(b) the period for which the rent is deposited;

(c) the name and address of the landlord, or the person or persons claiming to be entitled to such rent;

(d) the reasons and circumstances for the application for deposit of the rent;

Provided that in the case of deposits of rent for successive months during any continuous period, no affidavit in support of application shall be required after the first deposit if the reasons and circumstances which led the tenant to make the first deposit remain the same.

22. Time-limit for making deposit and consequence of incorrect particulars in application for deposit-

(1) No rent deposited u/s 21 shall be considered to have been validly deposited under that section for purposes of Clause (i) of Sub-section (1) of Section 13, unless deposited with fifteen days of the time fixed by the contract in writing for payment of the rent or, in the absence of such contract in writing, unless deposited within the last day of the month following that for which the rent was payable.

Provided that where any rent remitted to the landlord by postal money order within the time referred to in Section 4 is returned to the tenant by the postal authorities as undelivered either on account of the landlord having refused to accept payment thereof or for any other cause such rent may also be validly deposited for the purposes of the said clause within 15 days from the date on which it is so returned to the tenant.

(2) No such deposit shall be considered to have been validly made for the purposes of the said clause if the tenant wilfully or negligently makes any false statement in his application for depositing the rent, unless the landlord has withdrawn the amount deposited before the date of institution of a suit or proceeding for recovery of possession of the premises from the tenant.

(3) If the rent is deposited within the time mentioned in Sub-section (1), and does not cease to be a valid deposit for the reason mentioned in Sub-section (2), the deposit shall constitute payment of rent to the landlord as if the amount deposited has been valid legal tender of rent if tendered to the landlord on the

date fixed by the contract, or, in the absence of any contract, on the fifteenth day of the month next following that for which rent is payable."

In the said case of Siddheswar Paul Vs. Prakash Chandra Dutta, it was held that deposit of rent in terms of Section 21 of the said Act which is deemed to constitute payment of rent to landlord under Sub-section (3) of Section 22 of the said Act is not equivalent to payment of rent contemplated in Section 17 (1) of the said Act. Section 17 (1) of the said Act is set out hereunder :--

"17 (1). On a suit or proceeding being instituted by the landlord on any of the grounds referred to in Section 13, the tenant (shall, subject to the provisions of Sub-section (2), within one month) of the service of the writ of summons of him (or where he appears in the suit or proceeding without the writ of summons being served on him, within one month of his appearance) (deposit in Court or with the Controller or pay to the landlord) an amount calculated at the rate of rent at which it was last paid, for the period for which the tenant may have made default including the period subsequent thereto upto the end of the month previous to that in which the deposit or payment is made together with interest on such amount calculated at the rate of eight and one-third per cent per annum from the date when any such amount was payable upto the date of deposit, and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate."

Sections 21 and 22 appear under Chapter IV of the said Act which is headed "deposit of rent". Section 17 on the other hand does not contemplate payment or deposit of rent but of a sum or amount equivalent to rent. Thus the character of the money that is paid or deposited u/s 17 (1) is undefined whereas the character of money deposited u/s 21 of the Act is defined and fixed as rent. Section 21 contemplates deposit of rent for the purposes of Section 13 (i) of the Act. In the case of Kaluram Onkarmal and Another Vs. Baidyanath Gorain, , Sections 17, 21 and 22 of the said Act were considered. It was held that the scheme of Section 17 (1) is a complete scheme by itself; the Legislature intended that in suits or proceedings to which Section 17 (1) applied payment of rent by the tenant to the landlord must be made as prescribed by Section 17 (1). Section 17 (1) was enacted for the purpose of controlling the relationship between the landlord and the tenant in the manner prescribed by the said Section after a suit or proceeding for ejectment was instituted and the other provisions of the said Act namely Sections 21 or 22 could not control or govern the provisions of Section 17 (1). I am of the opinion therefore that deposit of rent even with the Rent Controller as introduced by amendment in Section 17 (1) after the decision of the said case of Kaluram Onkarmal and Another Vs. Baidyanath Gorain, by the Supreme Court and the said case of Siddheswar Paul Vs. Prakash Chandra Dutta, by the Special Bench of this Court has, not altered the position in any respect. The deposit in terms of Section 17 (1) with the Rent Controller must be made within the time mentioned in the said sub-section. The time will not be extended by operation of other sections like 21 or 22 of the said

Act. In that view of the matter, I am of the opinion that although the fact of tender of rent and refusal of the landlord to accept the same in respect of month of May 1969 was not expressly brought to my notice, at the time of hearing of the previous application, the same even if brought to my notice, could not have changed my decision in the said application.

8. Section 17 of the Act has been enacted not only for the benefit or protection of the tenant but in my opinion for the benefit and protection of the landlord as well. Although a default in payment or deposit of an amount equivalent to rent in accordance with the provisions of the Sub-section (1) of Section 17 shall be visited with striking out of the defence of the tenant so far as recovery of possession of the premises is concerned, that will not entitle the Court to put a liberal construction on the word "payment" used in the said sub-section. The principle of tender which in my opinion is a principle of the law of contract between parties cannot be made applicable to and included in the word "payment" in Section 17 (1) of the said Act. The obligation to pay an amount equivalent to rent or deposit the same within the time mentioned in the said sub-section is a statutory obligation and cannot be governed or modified by applying thereto the contractual principles of tender. In my opinion, literary meaning must be given to the word "pay" in the said Sub-section which will mean that the payment must be actual delivery of or parting with money physically.

9. In any event in my opinion, however, construction of the word "pay" in Section 17 (1) is not of any importance for deciding the instant application.

10. As noted earlier although in paragraph 13 (i), the petitioner said that the petitioners through Mr. Das tendered to Durga Prosad More the said total sum of Rs. 587.38 p. as "rent and or amount equivalent to rent," in Sub-paragraph (ii) of the said paragraph, the petitioner himself has stated that what he tendered through Mr. Das was rent which was refused to be accepted by the landlord. On the basis of affidavit evidence, it is clear therefore that the petitioner intended to tender and In fact tendered rent to the landlord. The landlord certainly was not obliged to accept any rent after institution of the suit and service of the notice to quit. That being so, it was not a valid tender. In my opinion, the landlord was justified in refusing to accept the same. For the aforesaid reasons, the application must fail. In my opinion, there is no new reason for which I should recall the order passed by me and reconsider my decision.

11. In the premises, this application is dismissed with costs.

12. The operation of this order shall remain stayed for eight weeks.