

(1998) 01 CAL CK 0026

In the Calcutta High Court

Case No : Civil Revisional Jurisdiction C.O. No. 72 of 1994

Ram Darash Dusad and Others

APPELLANT

Vs

Gautam Das and Others

RESPONDENT

Date of Decision : 21-01-1998

Acts Referred:

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

Citation : (1998) 2 CALLT 309

Hon'ble Judges : Sidheswar Narayan, J

Bench : Single Bench

Advocate : Mr. Ranabir Mahapatra and Mr. M. Thakur, for the Appellant; Mr. Sarajit Sen and Mr. Shyamal Sanyal, for the Respondent

Judgement

S. Narayan. J.

1. The petitioners, being the defendants in O.C. Suit No.50 of 1992 of the Court of Munsiff, 1st Court, Malda felt aggrieved of the order dated 29.9.93 passed by the said court whereby his application u/s 17(2) of the West Bengal Premises Tenancy Act, 1956 was rejected.

2. In an application u/s 17(2) of the West Bengal Premises Tenancy Act, the petitioners, in capacity of a tenant in the demised premises, had submitted that since they had incurred expenditure towards repair of the premises to the tune of Rs. 23,404, the entire arrear of rent had been fully paid up and even the rent for the coming months also will stand paid up. There was, however, an alternative prayer also to fix up easy instalments of payment if any amount of rent is found to be due.

3. By the impugned order the learned trial court refused the prayer being time barred as also on merits.

4. Upon hearing the learned counsel for the parties it is deemed necessary to point out at the very outset that the application u/s 17(2) of the W.B.P.T. Act was time barred. Whereas the defendants-petitioners entered appearance in the suit

on 25.5.92, the above prayer was made as late as on 18.9.92 and, that too, without any prayer for condonation of delay for whatsoever reason. Obviously, the prayer u/s 17(2) of the W.B.P.T. Act was hit by limitation.

5. Now, coming to the factual score, there was no denial of the rental being Rs. 40/- per month. There was no counter case set up by the defendants-petitioners as to the arrears of rent or the period for which the rental was due. A simple case set up against the arrear dues was put forward by the defendants-petitioners on the ground that they had already incurred expenditure of Rs. 23,404/- towards the repair of the demised premises. The learned trial court has very carefully examined the materials available on the record as also pros and cons of the situation and has, thereupon, come to a definite conclusion that the petitioners' claim of repair was not acceptable. Beside this, for the reasons recorded in the impugned order it has been rightly observed that there was no agreement between the parties for adjustment of the expenditure on repairs against the rental dues. The extent of repair claimed also was beyond limit inasmuch as it exceeded much beyond the amount equivalent to six months' rental which could be reasonably asked for from the landlord and, on his refusal, necessary permission from the Rent Controller could be sought for. It was also significant to take note of the hard fact that on an earlier occasion, the defendants-petitioners also had brought a suit bearing O.C. Suit No.75 of 1988 with respect to the demised premises and had sought permission for repair of the premises from the court but such permission was granted on the condition that the costs of repair would be borne by the tenants, that is, the defendants-petitioners. This also appears to be an additional fact and not to justify the claim of adjustment of the repairing costs against the rental dues.

6. I have been, therefore, led to a conclusion that there was no reason to interfere or intervene with the impugned order. Of course, a question was raised why not there should be an order for condonation of delay in making the prayer u/s 17(2) of the W.B.P.T. Act also whether, on such condonation, the defendants-petitioners should be granted instalments to serve the ends of justice. In this context, it was true that it did fall within the discretion of a court of Law to grant or not to grant statutory remedies available under the W.B.P.T. Act. but while exercising such discretion the court would look to the backdrop of the individual case as also the conduct of the party seeking such benefit. In the instant case, what is significant to note is that the defendants-petitioners have been litigating over the tenancy-in-question ever since 1988 while initiating a proceeding first on their part and, further, that they did never prefer to make a prayer for condonation and, furthermore, that they have come forward with a fantastic claim of adjustment of rent. All these facts taken together do not suggest their conduct to be bona fide as required. Hence, suo motu. it would be difficult for a court of law to condone the delay and to grant instalments on an evasive prayer.

In the premises, this revisional application has no merit and, accordingly, it is dismissed. There shall be however, no order as to costs.

7. Petition dismissed