
(1987) 04 CAL CK 0010
In the Calcutta High Court
Case No : Civil Order No. 3677 of 1986

Ruby Banerjee

APPELLANT

Vs

Mechanics Enterprises Pvt. Ltd.

RESPONDENT

Date of Decision : 08-04-1987

Acts Referred:

West Bengal Premises Tenancy Act, 1956 — Section 17(1), 17(2)

Citation : AIR 1988 Cal 252 : (1987) 1 CALLT 130 : 92 CWN 152

Hon'ble Judges : Ajit Kumar Nayak, J;A.M. Bhattacharjee, J

Bench : Division Bench

Advocate : Bidyut Kumar Banerjee and Shila Sarkar, for the Appellant;Abhijit Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Bhattacharjee, J.—On being sued for ejectment on the ground of default and also other grounds, the tenant-petitioner filed an application u/s 17(2) and (2A) of the West Bengal Premises Tenancy Act disputing her liability to pay any rent on the ground that it was agreed by the landlord-opposite party that the cost of repairs made by her in respect of the suit-premises would be adjusted towards the rent and that on such adjustment no amount of rent would be due from or payable by her. The application having been rejected by the "trial Court, the tenant has moved this Court in revision and we have heard the learned Counsel appearing both for and against the revision at great length. As the case at hand involves a proper construction of the provisions of Section 17(2) of the West Bengal Premises Tenancy Act, the same are reproduced hereinbelow :

"(2) If in any suit or proceeding referred to in sub-section (1) there is any dispute as to the amount of rent payable by the tenant, the tenant shall, within the time specified in subsection (1), deposit in Court the amount admittedly due to be due from him together with an application to the Court for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. 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. --

(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 to be adjusted in such manner and within such time as may be specified in the order."

2. A literal construction of the above-quoted Sub-section (2) may give rise to the impression that the provisions thereof would operate only when a portion of the rent alleged to be in arrears is admitted by the tenant to be due from and payable by him as the subsection provides that the tenant shall deposit in court the amount admitted by him to be due from him along with the application under that sub-section for determination of the rent payable. But where, as here, the tenant asserts that as per agreement with the landlord no amount of rent is due from or payable by him as the entire amount alleged to be in arrear stands adjusted towards the cost of repairs undertaken by the tenant in respect of the suit-premises, there is obviously a "dispute as to the amount of rent payable by the tenant" within the meaning of Section 17(2). And in such a case, no amount being admitted by the tenant to be due from him, no liability to deposit any amount admitted by him can obviously arise. Lex non cogit ad "impossibilia and a tenant cannot obviously deposit any amount as admitted by him to be due where he in fact admits none and asserts that no amount is due

3. We are inclined to think that where the tenant denies his liability to pay any amount as rent and does not admit any portion thereof to be due from him, he is nevertheless raising a "dispute as to the amount of rent payable" by him within the meaning of Section 17(2) of the Act and the tenant is therefore entitled to ask that, notwithstanding his case of "no-liability" to pay any amount, his liability, if any, to deposit any amount towards rent, if payable, be determined by the court u/s 17(2). We are of the view that even though the letters of Section 17(2) require that, while making an application thereunder, "the tenant shall..... deposit in court the amount admitted by him to be due from him", the provisions on their proper interpretation would require payment of such amount, only if any such amount is admitted by the tenant to be due and payable.

4. Such interpretation of Section 17(2) would bring in within its protection not only those tenants who admit a portion of the amount alleged to be in arrear to

be due, but also those tenants who assert that no amount is due from or payable by them and such construction, in our view, would be in perfect consonance with the object for which these rent Acts are enacted. As observed by the Supreme Court in *Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others*, , "the scheme of the various Rent Acts and the public policy underlying them are clear, that the policy is to give protection to the tenants". As pointed out further by the Supreme Court in *Murlidhar Aggarwal and Another Vs. State of Uttar Pradesh and Others*, , the provisions of the Rent Acts are for the benefit of the tenants, the provisions are "primarily intended for the protection of the tenants". In *Nataraj Studios AIR 1981 SC 537*, the Supreme Court has again observed that "Rent Act is a welfare legislation aimed at the definite social objective of protection of tenants". That such has all along been the object of the West Bengal Premises Tenancy Act and its subsequent amendments has also been noted by a Division Bench of this Court in *Kameswar v: Sahadeb* 74 CWN 715 where it has been observed that "each time the Legislature takes up the matter into its hands, the law is made more and more in favour of the tenant and prejudicial to the landlords" rights under the general law of landlord and tenant". Our interpretation, therefore, as pointed out by one of us in a Division Bench decision of this Court in *Sarashibala v. Manorama* (1986) 1 CHN 253 , must be inspired with such objective of giving protection to the tenants and, therefore, if two or more interpretations are possible, then the interpretation which is protective or more protective of the interest of the tenants must be preferred to the one which is protective or more protective of the interest of the landlords.

5. Reference in this connection may be made to a recent decision of a Division Bench of this Court in *Makhan Lal Bose Vs. Charupama Debi and Others*, , where it has been held (at Pp. 900-901 (of Cal WN) (at Pp 45 to 47 of AIR)) that where a tenant claims that he made certain advances to the landlord towards the repair of the premises under an agreement with the landlord that the latter would adjust the same towards rent, the tenant can assert the right to claim adjustment in an application u/s 17(2) of the Act. This Division Bench decision has approved an earlier single Judge decision of this Court in *Ramesh Chandra Majumdar Vs. Sm. Sobodhbala Dasi*, where *Harrish, C.J.*, ruled that where such an agreement is pleaded, the Court must decide as to whether the amount so spent would balance or more than balance the claim for arrears. And all that we decide here is that where the tenant claims that any such amount whether lent by him or spent by him on repairs, would, under the agreement with the landlord, wholly balance or more than balance the claim for rent, the tenant need not deposit any amount to sustain his application u/s 17(2). Reliance placed by the trial court on the single Judge decision in *Sri Sarada Sangha Vs. Asoka Sengupta*, was entirely misplaced as in that case according to the tenant's own case there was some amount due from and payable by him and, therefore, an application u/s 17(2) could not obviously lie unless the amount admitted to be due was deposited along with the application. We would accordingly hold that the

learned Judge was wrong in holding that the application u/s 17(2) was not maintainable as the same was not accompanied with the deposit of any amount as rent.

6. But the trial court has rejected the application on merits also and on a consideration of the provisions of the Deed of Lease between the parties and the evidence adduced by the petitioner-tenant, the court has held that "the case as introduced by the defendant is false and concocted for the purpose of delaying the suit" and for retaining the occupation of the premises without any payment. This finding obviously based on facts is unassailable in revision as we find no jurisdictional issue to be involved in the shape of non-exercise, or illegal or irregular exercise, or illegal assumption of jurisdiction. It now stands settled by a weighty catena of Division Bench decisions of this Court in *Gujarat Printing Press* 64 CWN 157, in *Tarak Nath Gupta Vs. Lt. Col. Karuna Kumar Chatterjee and Others*, , in *Biswanath Roy* (65 CWN 149) and in *Nazrul Islam* ILR (1968) 1 Cal 170, that if the dispute posed u/s 17(2) is sham, false, frivolous and purposive and raised mala fide only to gain time, the court must hold that there is no dispute to attract the operation of Section 17(2) and the application thereunder must be dismissed. We would, therefore, hold that the impugned order dismissing the application u/s 17(2) on the finding that the dispute raised thereby was false, frivolous and purposive does not warrant interference in revision.

7. The learned counsel for the tenant-petitioner has, however, urged that the application in question was a combined one under Sub-section (2) as well as Sub-section (2A) of Section 17 and even if the application in so far it purported to be one u/s 17(2) merited rejection on the finding that the dispute raised thereby was sham and mala fide, the court was still obliged to determine and dispose of the application so far it purported to be u/s 17(2A) and the court in this case not having considered the application at all as one u/s 17(2A) also, failed to exercise jurisdiction vested in it by law. The learned counsel for the landlord-opposite party has, however, urged on the strength of a single-Judge decision of this Court in *Sudhir Kumar v. P.C. Gupta* 82 CWN 515 : (AIR 1978 NOC 108), that, as held therein, "if the application u/s 17(2) of the Act is not maintainable, the maintainability of an application u/s 17(2A) (b) of the Act does not arise." We have already quoted at the outset the provisions of Sub-section (2) of Section 17 and we proceed to extract hereinbelow the material provisions of Sub-section (2A) of Section 17 for the facility of discussion : --

"(2 A) Notwithstanding anything contained in Sub-section (1) or Sub-section(2), on the application of the tenant, the Court may, by order--

(a) extend the time specified in Sub-section (1) or Sub-section (2) for the deposit or payment of any amount referred to therein;

(b) having regard to the circumstances of the tenant as also of the landlord and the total sum inclusive of interest required to be deposited or paid under Sub-

section (1) on account of default in the payment of rent, permit the tenant to deposit or pay such sum in such instalments and by such dates as it may fix :"

8. We are inclined to hold that the provisions quoted above clearly indicate that a tenant, who does not dispute the amount or rent payable by him, and therefore does not invoke Section 17(2), may nevertheless, straightway invoke Section 17(2A) and obtain extension of time specified u/s 17(1) or permission to deposit by instalments the amount payable u/s 17(1). And if a tenant can invoke Section 17(2A) without invoking Section 17(2), a tenant should also be entitled to invoke Section 17(2A) even where he has invoked Section 17(2), but without success. As the non-obstante clause, with which Section 17(2A) opens, would demonstrate, the sub-section would apply irrespective of the provision of Section 17(2), and therefore would apply irrespective of the success or failure of an application u/s 17(2). This also appears to be the view held by another learned single Judge of this Court in a later decision in *Laxmi Narayan Saha Vs. Durgapada Karmakar and Others*, where it has been held (at p. 327) (of Cal. L. J.) : (at p. 354 of AIR) that even if an application u/s 17(2) is dismissed as not maintainable, that would not warrant an automatic dismissal of an application u/s 17(2A), which must still be considered and disposed of on its merits. For the reasons stated hereinbefore, we entirely agree with this view and express, with respect, our dissent from the contrary view in *Sudhir Kumar* (supra).

9. There is yet another reason for our endorsing the view in *Lakshmi Narayan* (supra) in preference to that in *Sudhir Kumar* (AIR 1978 NOC 108)(Cal) (supra). Now that two learned Judges of this Court have interpreted Section 17(2A) in two different ways, the sub-section must be taken to be capable of being construed in more ways than one. As we have already indicated hereinbefore, the West Bengal Premises Tenancy Act having been enacted with the object to give protection to the tenant, in its provisions can yield to two or more interpretations, then the interpretation which, is protective or more protective of the interest of the tenants would have to be preferred to the one which is protective or more protective of the interest of the landlord. That being so, since the view that a tenant can invoke Section 17(2A), whether or not he has invoked Section 17(2) or has invoked it without success, would be more protective of the interest of the tenant than the view that the tenant cannot invoke Section 17(2A) at all if he has failed to invoke Section 17(2) with success, we must accept and adopt the former view.

10. But we, however, note that in the case at hand, the application was evidently one under the provisions of Section 17(2) and even though the same was labelled as one u/s 17(2A) also, no ingredient of that sub-sec. (2A) can be traced anywhere in that application. On the express terms of Section 17(2A), as quoted hereinabove, an application under that sub-section must be an application praying for extension of time under Clause (a) or for permission to deposit by instalment under Clause (b). But all that has been stated in the application at hand is that the tenant-petitioner disputes her liability to pay any amount

towards the arrear or current rents as no amount is due from or payable by her and that it has been prayed that the said dispute be "settled" by the Court. There is no whisper anywhere in this application about any prayer for extension of time or for permission to deposit or pay any amount by instalments. There being thus no application u/s 17(2A) of the Act, the Court was not at all required to consider any such application and, therefore, non-consideration of the application at hand as one u/s 17(2A) was neither a failure to exercise a jurisdiction nor an exercise of jurisdiction illegally or with material irregularity and the impugned order cannot be said to have suffered from any infirmity on that score.

11. For the reasons stated, this revision must fail and we would dismiss the same with costs assessed at ten gold mohurs. Records to go down at once.

Ajit Kumar Nayak, J.

12. I agree.