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**(1977) 03 CAL CK 0017**

**In the Calcutta High Court**

**Case No : Civ. Rev. Case No. 4135/4136 of 1975**

Satya Charone Roquittee

APPELLANT

Vs

A Firpo Ltd. Now Known as Ritz Continental Hotels Ltd.

RESPONDENT

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**Date of Decision : 04-03-1977**

**Acts Referred:**

West Bengal Premises Tenancy Act, 1956 — Section 17D

**Citation : 81 CWN 913**

**Hon'ble Judges : S.K. Datta, J;G.N. Ray, J**

**Bench : Division Bench**

**Advocate : G.N. Chanda, for the Appellant;Dhirendra Kr. Das, for the Respondent**

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## **Judgement**

S.K. Datta, J.—These two Rules are directed against an order dated 6.9.75 passed in Ejectment Suit No. 1247 of 1957 rejecting the preliminary objection raised by the plaintiff-decree-holder about the maintainability of an application filed u/s 17D of the West Bengal Premises Tenancy Act, 1956. The impugned order also governs the preliminary objection taken in respect of the application u/s 17D in Suit No. 1251 of 1957. It appears that the plaintiff petitioner obtained decrees against A. Firpo Ltd. in the aforesaid ejectment suits in respect of the respective suit premises and appeals have been preferred against the decrees which are pending in this court. It further appears that in Company Petition No. 212 of 1963 this court by order dated 22.11.63 sanctioned an amalgamation of A. Firpo Ltd. with Ritz Continental Hotels Ltd. Under the terms of the amalgamation properties mentioned in the schedules to the order as also other properties belonging to A. Firpo Ltd. vested in Ritz Continental Hotels Ltd. without any further document. The terms of amalgamation also provided that all proceedings pending by or against the said A. Firpo Ltd. on 1st November, 1962 on such transfer would be continued by or against the said Ritz Continental Hotels Ltd. It is stated before us that there was due recording of the transferee company in place of the defendant in the appeals as also in the connected proceedings.

2. There is no dispute that the possession of the premises had not been taken at the time the applications u/s 17D was filed. The plaintiff decree-holder, petitioner before us, took a preliminary objection about the maintainability of the applications contending that the Ritz Continental Hotels Ltd. were not entitled to maintain the application. This contention was not accepted by the learned trial Judge. Mr. Chanda, learned advocate appearing for the petitioner before us, has submitted that the order was wrong inasmuch, as A. Firpo Ltd. had no right to transfer their tenancy interest in the property. It would appear to us that there was really no question of transfer in the instant case. A. Firpo Ltd, under the provision of the Companies Act was amalgamated with Ritz Continental Hotels Ltd. with all its assets and liabilities and, in view of such, amalgamation, the transferee company become entitled to carry on all proceedings by or against it in terms of amalgamation sanctioned by this court. We are accordingly of opinion that the said transferee company was entitled in law to carry on the proceeding so long carried against the transferor company A. Firpo Ltd.

3. It has been further contended that in view of the appeals pending in this court against the ejectment decrees passed by the Court of Small Causes, Calcutta the applications u/s 17D were not maintainable. Mr. Chanda submitted that as the appeals have been filed the said decrees are under challenge and, accordingly, the provision of section 17D was not applicable. Further, it was necessary for the defendant judgment-debtor to make an election as to whether they would proceed with the appeals in this court before filing applications u/s 17D. The language of section 17D provides two conditions for an application under that section. The first condition is that there has been a decree passed before the commencement of the West Bengal Premises Tenancy (Amendment) Act 1968. There is no dispute that the decree under appeal was passed before that date. The second condition is that the possession of such premises had not been recovered by execution of the decree which is also admittedly the position here. The third condition is that such application must be made within a period of 60 days from the commencement of the West Bengal Premises Tenancy (Second Amendment) Act, 1969. There is also no dispute that the applications were filed within the statutory period. The mere filing of an appeal against the decree puts the decree under challenge but its pendency does not take away the nature or character of the decree under appeal and such decree unless set aside, modified or confirmed is executable on its own force. Accordingly, -we are of opinion that the mere fact that the appeals are pending, cannot take away the nature or character of the decrees which are under appeal. The applications accordingly appears to us to be in terms of the provision of section 17D. The learned trial court was justified in holding that the applications u/s 17D were maintainable rejecting the preliminary objection of the plaintiff decree-holder. Both the Rules accordingly fail and are discharged.

There will be no order as to costs.

G.N. Ray, J.

I agree.