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**(2011) 01 CAL CK 0081**  
**In the Calcutta High Court**  
**Case No : C.O. No. 943 of 2002**

Smt. Nita Mukherjee and Another

APPELLANT

Vs

Sandip Banerjee and Others

RESPONDENT

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**Date of Decision :** 05-01-2011

**Acts Referred:**

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

**Citation :** (2011) 01 CAL CK 0081

**Hon'ble Judges :** Prasenjit Mandal, J

**Bench :** Single Bench

**Advocate :** Runu Chaudhuri, for the Appellant;

**Final Decision :** Allowed

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## **Judgement**

Prasenjit Mandal, J.—This application is at the instance of the Plaintiff and is directed against the order No. 79 dated January 21, 2002 passed by the learned Judge, Small Causes Court, Second Bench, Calcutta in Ejectment Suit No. 956 of 2000 thereby disposing of an application u/s 17(2) and (2A) of the West Bengal Premises Tenancy Act, 1956.

2. The short fact is that the Plaintiff/Petitioner herein instituted a suit for eviction stating, inter alia, that the Defendant/opposite party is a tenant in respect of three rooms with bath and privy situated on the first floor of the premises No. 56F, Shyampukur Street under P.S. Shyampukur, Calcutta-700 004 at a consolidated monthly rent of Rs. 120/- per month payable according to English calendar month. In that suit, the Defendant appeared and filed an application u/s 17(2) and (2A) of the West Bengal Premises Tenancy Act, 1956 stating, inter alia, that he is a tenant in respect of the premises situated not only on the first floor of the said premises but also on the second floor of the said premises and that the Defendant was inducted as a monthly tenant by Ranjit Kumar Bose and Anr. in respect of the entire first floor with its roof over the same building at a rental of Rs. 150/- per month payable according to English calendar month. The Plaintiff is a subsequent purchaser. After entering appearance in the suit, he has

been depositing the rents from the premises with the Court month by month u/s 17(1) of the West Bengal Premises Tenancy Act, 1956. However, he has filed the application for determination of the relationship and he has prayed for permission to deposit the arrears of rent, if any. That application u/s 17(2) and (2A) of the West Bengal Premises Tenancy Act, 1956 was disposed of by the impugned order. Being aggrieved by such order, the Plaintiff/landlord has come up with this application.

3. Now, the point that arises for consideration is whether the impugned order should be sustained.

4. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the Plaintiff filed an objection to the petition u/s 17(2), (2A) and (b) of the 1956 Act and both the parties adduced evidence and they placed materials in support of their contentions. Upon perusal of the evidence on record, the learned Trial Judge has held that the Defendant is a defaulter in payment of rent since June, 1990 and that the rate of rent is Rs. 120/- per month. The learned Trial Judge has also held that there is no dispute about the relationship. So far as the findings on these aspects, there is no challenge before this Court with regard to the impugned order. The point that has been raised by the Plaintiff/Petitioner herein that the learned Trial Judge has determined the extent of tenancy over the entire first floor and second floor of the premises at 56F, Shyampukur Street, Calcutta - 700 004. In this application, the extent of tenancy has been raised as a ground for revision before this Hon"ble Court.

5. During submission, Mrs. Chaudhuri, learned Advocate appearing on behalf of the Petitioner, submits that since it is the main point with regard to the extent of tenancy in the suit, this should be left for final decision before the learned Trial Judge.

6. In consideration of the materials in dispute and on perusal of the papers in support of the application, I am convinced that the main dispute between the parties is as to the extent of tenancy. It is the specific case of the Plaintiff that the Defendant is a tenant in respect of the first floor of the premises No. 56F, Shyampukur Street, Calcutta - 700 004 only, whereas the Defendant has specifically claimed that he is a tenant not only with regard to the entire first floor but also the second floor of the said premises. This being a main issue of the suit and since this cannot be decided summarily in disposing of an application u/s 17(2) and (2A) and (b) of the 1956 Act, I am of the view that such submission should be accepted.

7. Accordingly, the revisional application succeeds. It is allowed.

8. So far as the finding relating to the extent of tenancy, the impugned order is set aside. This issue is kept open for decision at the time of final hearing of the suit.

9. Since the suit is old one, the learned Trial Judge is directed to dispose of the suit within six months from the date of communication of the order.

10. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.