

(1981) 05 CAL CK 0003

Calcutta High Court

Case No: C.R. No. 4099 of 1980

Susamabala Das and Others

APPELLANT

Vs

Subhas Chandra Banerjee

RESPONDENT

Date of Decision: May 14, 1981

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Limitation Act, 1963 - Section 5
- West Bengal Premises Tenancy Act, 1956 - Section 17, 17(1), 17(2), 17(3)

Citation: 85 CWN 897

Hon'ble Judges: S.M. Guha, J

Bench: Single Bench

Advocate: S.P. Roychowdhury and A.K. Ghosal, for the Appellant; B.M. Mitra, for the Respondent

Final Decision: Allowed

Judgement

S.M. Guha, J.

The order dated 20.11.80 passed by the learned Munsif, 3rd Addl. Court, Alipore in Title Suit No. 131 of 1979 has been challenged under the present application for revision. The suit for ejectment being Title Suit No. 382 of 1976 was filed on 10.8.76. That suit on subsequent transfer has been re-numbered as Title suit No. 131 of 1979. The grounds for ejectment as stated in the plaint were reasonable requirement and nuisance. The defendant opposite party made his appearance on 16.9.76. On 6.6.78 the plaintiff petitioner filed an application u/s 17(3) of the West Bengal Premises Tenancy Act for striking out the defence of the opposite party against delivery of possession as he has failed to comply with the provisions of section 17 of the West Bengal Premises Tenancy Act. Objection to the said application was filed by the tenant opposite party on 9.6.78 and thereafter on 19.8.78 the tenant opposite party filed a petition u/s 17(1) of the Act read with

section 151 of the CPC for acceptance of rent for the month of July, 1976 after condoning the delay. Again on 20.7.78 he also filed an application u/s 5 of the Limitation Act alleging that he had no laches and or negligence in the matter of payment of rent for the month of July, 1976 and he had no knowledge of such default prior to 6.6.78, when the plaintiff had come with an application u/s 17(3) of the Act. Herein also he made the prayer to condone the delay in making the deposit of the rent for the month of July, 1976. Both these applications came up for hearing before the learned Munsif 3rd Addl. Court at Alipore who was pleased to reject both the applications by an order dated 21.4.80. Being aggrieved by the said order the opposite party came up before this Court with an application which after the caveat was numbered as C.O. 2347 of 1980. The said application came up for hearing along with the caveat before Monoj Kumar Mukherjee, J. who by an order dated 8.7.80 was pleased to direct the trial court to rehear the application u/s 17(1) read with section 151 of the Act. It would be better to quote the exact portion of the order which goes as follows:-

In view of the above discussions, I set aside the impugned order and direct the learned Munsif to rehear the application u/s 17(1) read with section 151 of the CPC filed by the petitioner and dispose of the same on merits on the basis of the materials, including the evidences already placed before him. The learned Munsif will dispose of the application within a month from the date of the communication of this order.

On remand the said application u/s 17(1) read with section 151 of the CPC came up for hearing before the learned 3rd Addl. Court of Munsif at Alipore who was pleased to allow the said application on contest with a cost of Rs. 100/- to the plaintiffs by order No. 170 dated 20.11.80. While disposing of the application the learned Munsif observed as follows :--

On scrutiny of evidence placed before me it is clear that the petitioner has not come with clean hands. 17(1) of W.B.P.T. Act implies a duty on the defendant to deposit the rent in Court within one month from the service of summons upon him. No matter whether it is because on the ground of default or not I do not agree with the learned lawyer for the defendant that as because there is no case of default I have to take the matter very lightly. Although, I am of the view, that petitioner, was gross negligent regarding the deposit of rent for the month of July, 1976, but however, for ends of justice, I am inclined to allow the petitioner, as plaintiff will not suffer any loss, if it is allowed. But plaintiffs have suffered material loss and for that reason they should be compensated with compensatory cost.

2. Mr. S. P. Roychowdhury, the learned Advocate for the petitioner points out that the learned Munsif was directed by this Court to dispose of the application u/s 17(1) read with section 151 of the CPC on merits on the basis of the materials already on record. But on merits the learned Munsif found that the petitioner was gross negligent but still then the application was allowed for the ends of justice. It is

contended by him that the conclusion could not be based on the reasonings and findings of the learned Munsif herself. It is also pointed out by Mr. Roychowdhury that there was no scope in the facts and circumstances of the case to invoke the inherent power of the Court for the alleged ends of justice in allowing the application u/s 17(1) of the Act. Reference is also made on behalf of the petitioner to a decision of the Allahabad High Court in the case of Janki Sahu Trust vs. Ram Palat reported in AIR 1950 Allahabad, 580. It is held therein that in exercising jurisdiction under its inherent powers the Court is influenced by the justice of the case in favour of the party who invoked its assistance. Where the party has been guilty of laches or has been negligent in prosecuting his remedy a Court of law would be most reluctant to exercise its inherent power in his favour. In short it is contended that the learned Munsif committed an error in exercising its inherent power in favour of the opposite party who according to the learned Munsif herself had been guilty of laches or had been gross negligent in respect of depositing of rent for the month of July, 1976.

3. Mr. B. M. Mitra, learned Advocate for the opposite party contends that in the absence of any averment in the original pleadings about arrear dues, no inference can be drawn as to any dispute contemplated u/s 17(2) of the West Bengal Premises Tenancy Act. According to him as there is no dispute the tenant/opposite party was under no obligation to make any deposit of rent. In support of his argument he relies on the Bench decision of this Court in Gopal Banerjee vs. Manindra Nath Dey reported in 17 CWN 864. He specifically draws my attention to paragraph 4 at p. 866 of the report. It is held therein that in order to find a default in respect of a particular month the Court is to look to the pleadings of both the parties. Herein according to Mr. Mitra no case as to default was made out in the plaint and in fact the suit was not instituted on the ground of default. Next reference is made to another Bench decision in the case of Gunwatrai T. Kamal vs. Satyanarayan Jhunjhunwalla reported in 75 CWN 372. It is laid down by Their Lordships that section 17(2) of the West Bengal Premises Tenancy Act contains certain requirements, namely ;

- i) that there must be a dispute raised as to the amount of rent payable;
- ii) that the tenant must for the purposes of said section make deposits of all the admitted arrear within the statutory period, and
- iii) that the said deposit, if any must be along with an application praying for determination of the rent payable.

Mr. Mitra places my decision in the case of [Paritosh Kumar Ghose Vs. Smt. Saraswati Nandi](#), . The decision hereunder in no way can be invoked for the assistance of the opposite party. In this case it was found that it was incumbent on the tenant/defendant to deposit rents alleged to be in arrears or to file an application u/s 17(2) or in other sub-section of section 17 of the West Bengal Premises Tenancy

Act, 1956 in order to avail of the protection of the Act.

4. It transpires that it was also faintly argued before the learned Court below that as the suit was not on the ground of default the learned Munsif was to take the matter leniently. u/s 17 of the Act a tenant in a suit for ejectment on any ground is under an obligation to deposit in Court or with Controller or pay to the landlord within one month from the service of the summons all arrears of rent calculated upto the month previous to that in which the deposit or payment is made together with statutory interest. A tenant is under further obligation to continue to deposit or pay month by month, by the 15th of the following month, a sum equivalent to rent. Thus a tenant in order to contest a suit for ejectment on whatever ground is to comply with the provisions of section 17 of the Act.

5. It is also contended by Mr. Mitra that the default in question relates to a period prior to the institution of the suit. Thus the Court would not strike out the defence if the rent for such period is found to be in arrear. This is matter which is beyond the scope of the present enquiry. Herein I am only concerned with the matter whether the learned Munsif was justified in allowing the application u/s 151 of the Civil Procedure Code. The scope of the enquiry before the learned Munsif was very limited. The learned Munsif was to examine the case of the petitioner u/s 151 on merits on the materials already on record. It transpires that on merits the findings of the learned Munsif were against the tenant/opposite party. Now the question is whether in the face of such findings the learned Munsif can again invoke the inherent jurisdiction for allowing the application for ends of justice. If there is any glaring injustice in any case and there is no other remedy then the court would be justified to exercise inherent jurisdiction for ends of justice. In this case the result of the enquiry by the learned Munsif is not based or supported by her own findings. In the facts and circumstances of the case I will hold that the learned Munsif was not justified in passing the impugned order in favour of the opposite party. In the result, this application for revision is allowed. The Rule is made absolute. The impugned order is set aside. There would however, be no order as to cost. Let the record be sent down as early as possible.

The amount of costs if deposited and withdrawn by the petitioner may be refunded forthwith.