

**(1976) 02 CAL CK 0002****Calcutta High Court****Case No:** Civil Revision No. 109 of 1976

Sushil Chandra Roy Chowdhury

APPELLANT

Vs

Sambhu Nath Saha

RESPONDENT

**Date of Decision:** Feb. 12, 1976**Acts Referred:**

- West Bengal Premises Tenancy (Second Amendment) Act, 1969 - Section 4
- West Bengal Premises Tenancy Act, 1956 - Section 13, 13(1), 13(3A), 17D, 17E

**Citation:** (1977) 1 ILR (Cal) 219**Hon'ble Judges:** Chittatosh Mookerjee, J**Bench:** Single Bench**Advocate:** Anil Kumar Sett, for the Appellant; M.N. Ghose, for the Respondent

### **Judgement**

Chittatosh Mookerjee, J.

This application arises out of a proceeding u/s 17E of the West Bengal Premises Tenancy Act, 1956. The learned Judge, Tenth Bench, City Civil Court, Calcutta, has allowed an application u/s 17E of the West Bengal Premises Tenancy Act made by the present Petitioner and has set aside the decree for recovery of possession passed against him in Ejectment Suit No. 209 of 1967 brought by the landlord opposite party. But he has declined to dismiss the said ejectment suit.

2. The Petitioner was a monthly tenant in respect of the suit premises at a rent of Rs. 46.-75 per month according to the English Calendar. Previously one Becharam Das was the owner and the landlord of the said premises. On December 2, 1966, Becharam Das sold his interest in the suit premises in favour of the opposite party Sambhu Nath Saha, On February 4, 1967, Sambhu Nath Saha instituted the aforesaid Ejectment Suit No. 209 of 1967 against the present Petitioner in the City Civil Court at Calcutta for eviction from the suit premises on the ground that he reasonably required the suit premises for his own use and occupation in terms of Clause (f) of Sub-section (1) of Section 13 of the West Bengal Premises Tenancy Act,

1956 (as the said provision stood at the relevant time). On November 20, 1968, the trial Court decreed the said suit in favour of the Plaintiff landlord u/s 13(1)(f) of the West Bengal Premises Tenancy Act. On January 2, 1969, the present Petitioner preferred an appeal from the Original Decree No. 267 of 1969 against the said ejectment decree. The said appeal is still pending in this Court.

3. On November 14, 1969, the West Bengal Premises Tenancy (Second Amendment) Act, 1969 (XXXIV of 1969), came into force. By the said Amending Act the original Clauses (f) and (ff) were substituted in place of the said clause. The said West Bengal Premises Tenancy (Second Amendment) Act, 1969, also inserted Sub-section (3A) in Section 13 of the said Act. On March 6, 1970, the West Bengal Premises Tenancy (Amendment) Act (XVIII of 1970) came into force. Section 17E was inserted in the West Bengal Premises Tenancy Act by the said Amending, Act of 1970.

4. On April 7, 1970, the present Petitioner filed in the trial Court an application u/s 17E of the West Bengal Premises Tenancy Act for setting aside the decree passed in Ejectment Suit No. 1324 of 1965 and for dismissal of the said suit of the ground that the Plaintiff (the opposite party of the present Rule) had brought the said suit before the expiry of three years from the date of acquisition of his interest. On April 26, 1972, the trial Court had allowed the said application u/s 17E filed by the present Petitioner. The present opposite party obtained the C.R. No. 1512 of 1972 against the said order. On November 29, 1972, a Division Bench of this-Court made the said Rule absolute, set aside the order u/s 17E of the West Bengal Premises Tenancy Act and directed the trial Court to dispose of the application under the said section according to law. Thereafter, on June 14, 1973, the trial Court had dismissed the said application u/s 17E on the ground that Section 17E had been pronounced by this Court to be ultra vires. The trial Court did not record any finding on the merits of the application. The Defendant tenant being aggrieved by the said order obtained C.R. No. 4142 of 1973. On January 9, 1975, a Division Bench of this Court made the said Rule absolute. According to the Division Bench Section 17E had been held by the Supreme Court not to be ultra vires. Therefore, they set aside the order of the trial Court and again remanded the proceedings for re-hearing on merits.

5. In the meantime, the present opposite party as Respondent in Appeal From Original Decree No. 267 of 1969 filed an application for acceptance of fresh pleading in the light of the observations made by the Supreme Court in B. Banerjee Vs. Smt. Anita Pan. On June 24, 1975, myself sitting with S.K. Bhattacharyya J. allowed the said application for amendment of the plaint and also accepted the additional written statement filed by the Defendant. We framed two additional issues. The trial Court was directed to proceed to try the said issues and thereafter to return its findings and reasons therefore. It was further directed that the trial Court would first dispose of the pending Section 17E application filed by the Defendant. Thereafter, the trial Court would try the said additional issues, if necessary.

6. As already stated, the trial Court has now allowed the application u/s 17E of the West Bengal Premises Tenancy Act and has set aside the ejectment decree dated November 20, 1968. The trial Court, however, held that three years have already expired from the date of the acquisition of interest by the Plaintiff. The Plaintiff had also filed fresh pleading. Therefore, the Plaintiff's suit cannot be dismissed u/s 17E. The trial Court had fixed, a date for taking evidence on the additional issues framed by this Court in Appeal from Original Decree No. 267 of 1969. The Defendant tenant has obtained the present Rule against the aforesaid order. The Plaintiff landlord also has filed a revisional application in this Court. No Rule has been issued on the said application and the said application has been heard along with the Civil Rule obtained by the tenant.

7. Mr. Sett, learned Advocate for the tenant Petitioner, has submitted that the learned Judge of the Court below has clearly failed to exercise a Jurisdiction vested in him by law by not dismissing the suit in terms of Sub-section (4) of Section 17E. Sub-section (4) to of Section 17E does not contemplate rehearing of a suit after setting aside of a decree for recovery of possession.

8. Mr. Ghose, appearing on behalf of the landlord opposite party has made a three-fold submission. In the first place, he submitted that the Division Bench which disposed of C.R. No. 4142 of 1973 was not correct in its view regarding the effect of the majority judgment of the Supreme Court in *B. Banerjee v. Sm. Anita Pan Supra* (166) . Mr. Ghose in this connection drew my attention to the following observations of Krishna Iyer J. with whom Beg J. had agreed:

It was noticed in the course of arguments that a later Amending Act of 1970 purporting to give relief to tenant against whom decrees for eviction had been passed but dispossession had not ensued, had been put on the statute book. It is Surprising that counsel on either side did not choose to address us any arguments on the basis of these provisions. We, therefore, do not go into the impact of that Act on situations where eviction has been ordered by Courts.

Secondly, Mr. Ghose has submitted that the provisions of Section 17E are not applicable in case an appeal against the ejectment decree in question is pending in a superior Court. Section 17E governs cases where an ejectment decree u/s 13(1)(f) (as the said provision stood prior to the enactment of the West Bengal Act XXXIV of 1969) obtained by a transferee landlord within three years of acquisition of his interest in the premises had become final and where either there had been no appeal against the said decree or the appeal in question had been already disposed of. But the tenant Defendant was still continuing in possession. According to Mr. Ghose, in case an appeal pending against such a decree obtained by a transferee landlord, the appropriate provision applicable would be Sub-section (3A) of Section 13. Section 17E was enacted by the Amendment Act of 1970 to give relief in those cases which were not covered by Sub-section (3A) of Section 13. Mr. Ghose has further submitted that the scheme of the West Bengal Premises Tenancy Act, as

amended by the Second Amendment Act of 1969 and the Amendment Act of 1970 would indicate that Sub-section (3A) of Section 13 and Section 17E are not simultaneously applicable and these provisions apply to different sets of facts and circumstances. Mr. Ghose has further submitted that even assuming that Section 17E was attracted in the instant case, in no event the suit brought by the Plaintiff Respondent can be dismissed. The reasons given in the majority judgment of the Supreme Court in B. Banerjee v. Sm. Anita Pan (Supra) would be equally applicable and therefore the learned Judge of the Court below has acted in accordance with law by restoring the suit for fresh hearing.

9. I am unable to give any countenance to the first submission of Mr. Ghose regarding the correctness or otherwise of the remand order made by the Division Bench in C.R. No. 4142 of 1973. The said order, until set aside by a superior Court, not only binds the parties but also myself exercising co-ordinate jurisdiction. The said order of remand must be considered as final in this Court. I may also add that S.P. Mitra C.J. and A.K. Janah J. in their decision in the case of Amal Kumar Chatterjee v. Promode Kumar Banerjee 76 C.W.N. 743 had mainly relied upon the decision in Sailendra Nath Ghosal and Others Vs. S. Ena Dutt and Others, which was heard analogously with the case of B. Banerjee v. Anita Pan (Supra), Subsequently, the Supreme. Court in B. Banerjee v. Sm. Anita Pan and Kamal Pal Ghosal v. Sm. Ena Dutta overruled the Division Bench decisions of this Court. Therefore, really the foundation for pronouncing Section 17E of the Act as ultra vires no longer subsists. For the reasons already given, however, I need not pursue the point further.

10. I am also unable to accept the submission made on, behalf of the landlord opposite party that Section 17E would be inapplicable in case an appeal; is pending against an ejectment decree, obtained by a transferee landlord who had brought the said suit within three, years from the date, of acquisition of his interest. Sub-section (1) of Section 17E lays down the following pre-requisites for; attracting the jurisdiction, of the trial. Court, to set aside an ejectment decree u/s 13(1)(f) passed in a suit brought by a, transferee landlord within three years from the, date, of transfer : (i) the landlord had acquired, his interest; in the suit premises by a transfer within three years before the date of institution of the suit (ii), the ejectment suit was on one or more grounds mentioned in Clause (f), of Sub-section (1) of Section 13 as it was in force before the commencement of the West Bengal Premises. Tenancy (Second Amendment) Act, 1969; (iii) the decree for, recovery of possession, was passed before commencement of, the West, Bengal. Premises, Tenancy (Second. Amendment) Act, 1969; (iv) the tenant, was continuing in, possession and (v) the tenant, made the application u/s 17E within 60 days from the date of commencement of the, West Bengal Premises Tenancy (Amendment) Act, 1970

11. It is true that power of the trial Court to set aside the decree u/s 17E is exercised even when no appeal is pending or when an appeal against the ejectment decree,

had been already disposed of, before the commencement of Act XXXIV of 1969. The Statute has not provided that, remedy u/s 17E would be an alternative one available in a case where, no appeal had been preferred Section 17E neither expressly nor by necessary intendment excludes the jurisdiction of the trial Court to set aside a decree u/s 13(1)(f) passed in a suit brought by a transferee landlord within three years, from the date of transfer to him merely because an appeal may be pending against the said decree. Even, when an appeal is pending the, trial Court retains its jurisdiction in view of the wide amplitude of powers conferred upon it by the Statute itself Mr. Ghose did not very seriously dispute the general proposition that under, certain circumstances the Court has jurisdiction to amend its judgment even when an appeal is pending in a superior, Court. It is unnecessary to refer to the series of decisions which, recognise the power, of the trial Court to entertain applications to set, aside or review its judgment and decree notwithstanding pendency of an appeal. I would, therefore, contend by referring to the decision in *Damodar Manna v. Sarat Chandra Pal* 13 C.W.N. 846 and also to the later, decision in, *Kumud Nath Roy Chowdhury v. Rai Jatindra Nath Chowdhury* 15 C.W.N. 399.

12. Further in this case there could be no question of merger of the judgment of the trial Court in the judgment, of the appellate Court. In the first place, the explanation to Sub-section (1) of Section 17E confers exclusive jurisdiction on the trial Court, Secondly, in the present case the appeal presented by the Defendant tenant is admittedly still pending in this Court.

13. In my View, the passages at pp. 40, 43, 45 and 46 in *Maxwell On the Interpretation of Statutes* (12th ed.) relied upon by Mr. Ghose, appearing on behalf of the opposite party, do not at all advance his client's case. After all as *Maxwell's Interpretation of Statutes*, (chap. 2, p. 29) points out that where the language is plain and admits of but one meaning the task of interpretation can hardly be said to arise.... Where by the use of clear and unequivocal language capable of only one meaning, anything is indicated by the Legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be.... The interpretation of a Statute is not to be collected from any notion which may be entertained by the Court as to what is just and expedient. Words are not, Construed contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should not, be expressed, or excluded. The duty of the Court is to expound the law as it stands and to leave the remedy (if one be resolved upon); to, others. I have already indicated that Section 17E unequivocally lays, down, the conditions to be fulfilled for invoking the jurisdiction of the Court to set aside certain decrees passed in suit brought by the transferee landlords within three, years from the date of transfer. Therefore, I am unable to accept, the submission of Mr. Ghose that in the present case. I should apply the dicta in *Heydon's case* and limit the applicability of Section 17E to cases where no appeals are pending against the kind of decrees specified in Section 17E. The so-called "golden rule" is equally of no avail to Mr. Ghose's client. If I have to accept the

submission of Mr. Ghose that the power of the Court to set aside the decree u/s 17E is subject to a further qualification that no appeal was pending at the date of presentation of the application u/s 17E, it would not be a case of merely collecting the intention for enacting the Statute but also engraving an additional condition for preferring of an application u/s 17E.

14. Further, the scope of Sub-section (3A) of Section 13 and of Section 17E does not appear to be pari materia. Krishna Iyer J. in his judgment in *B. Banerjee v. Sm. Anita Pan Supra* (para. 27) of the report pointed out:

The prohibition clamped down by Sub-section (3A), carefully read, is on suits for recovery of possession by transferee landlords on any of the grounds mentioned in Clauses (f) and (ff) of Sub-section (1). Obviously the suits with which we are concerned are not for recovery on grounds contained in Clauses (f) and (ff). They were based on the repealed Clause (f) of Section 13 of the basic Act. Strictly speaking, Sub-section (3A) brought in by Section 4 of the Amending Act applies only if (a) the suit is by a transferee landlord; (b) it is for recovery of possession of premises and (c) the ground for recovery is what is mentioned in Clause (f) and Clause (ff) of Sub-section (1). Undoubtedly the third condition is not fulfilled and therefore Sub-section (3A) is not attracted.

Krishna Iyer J. pointed out that the same did not mean that the suit could be proceeded with and decree for recovery passed before enactment of the Second Amendment Act, 1969. His Lordship pointed out that Section 4 of the said Amendment Act had retrospectively introduced amendments in Section 13 of the basic Act set out earlier in his judgment. Therefore, since new Clauses (f) and (ff) were introduced by the Amendment Act in Section 13 of the basic Act and since the suits concerned did not seek eviction on those grounds they should be dismissed on account of the omnibus inhibition on recovery of possession contained in Section 13 itself.

15. There are certain differences to be noted with regard to the scope of Section 17E. In the first place, the power to set aside the decree has been conferred exclusively upon the Court of first instance. Secondly, Sub-section (1) of Section 17E itself lays down the condition to be fulfilled for obtaining relief u/s 17E. Further, the power of the civil Court u/s 17E seems to be more in tune with the power conferred u/s 17D. (In case of decrees, passed on account of default in payment of rent before the commencement of the West Bengal Premises Tenancy Amendment Act, 1968). It may be noted, u/s 17D in case the Court allows an application it has to set aside the decree for recovery of possession and dismiss the suit. In the above view, I hold that in the instant case the trial Court notwithstanding the pendency of the appeal was not ousted of its powers to proceed in terms of Section 17E in the absence of any bar imposed by the Statute itself.

16. In my view, the last submission raised on behalf of the landlord opposite party cannot be also sustained. Sub-section (4) of Section 17E clearly lays down what is to be done by the Court in the event the tenant deposits the amount ordered by the Court within the time fixed. It is provided that the Court shall allow the application under Sub-section (1) and set aside the decree passed in the suit and dismiss the suit. In the above view, the Court after allowing an application and setting aside the decree for possession cannot stop short of dismissing the suit. Under Sub-section (4) no discretion has been left to the Court in the matter of dismissal of the suit.

17. In my view, the decision of the Supreme Court in *B. Banerjee v. Sm. Anita Pan* (Supra) does not support the submission of Mr. Ghose that in the instant case the trial Court has acted lawfully by declining to dismiss the suit. In the first place, the wordings of Sub-section (3A) of Section 13 and Section 17E are not identical. Krishna Iyer J. in his decision referred to the complexity of the interpretation of Sub-section (3A) in cases where suits were instituted by transferee landlords before commencement of the Second Amendment Act, 1969 and already three years had elapsed from the date of such institution. His lordship proceeded to interpret Section 13 and give effect to Section 4 of the Amending Act in the manner set out in para. 28 of his judgment. But I have already indicated, having regard to the very clear language used in Sub-section (4) of Section 17E it is not open to a Court to decline to dismiss a suit coming within the mischief of Section 17E. Sub-section (4) does not contain any ambiguity nor does it admit of any other meaning. The Statute in plain language provides that after the decree for possession is set aside the suit shall be dismissed. In the above view this Rule succeeds.

18. For the reasons already given I hold that there is no merit in the revisional application riled by the landlord opposite party.

19. I, accordingly, make this Rule absolute and set aside the order complained of. The case is remitted to the trial Court for passing a fresh order in terms of Sub-section (4) of Section 17E of the West Bengal Premises Tenancy Act. The revisional application filed by Sambhu Nath Sana is summarily dismissed.

20. There will be no order as to costs.

21. Let a copy of this order be communicated to the Court below expeditiously.