(1987) 12 CAL CK 0004

Calcutta High Court

Case No: S.A. No. 385 of 1984

Nanda Dulal Nandan		APPELLANT
	Vs	
Kanai Lal Basak		RESPONDENT

Date of Decision: Dec. 11, 1987

Acts Referred:

- West Bengal Premises Tenancy Act, 1956 - Section 13(1)(i), 17, 17(1), 17(2), 17(2)(A)

Citation: 92 CWN 828

Hon'ble Judges: S.K. Mookherjee, J

Bench: Single Bench

Advocate: R.K. Dutt and S.K. Basu, for the Appellant; S.P. Roychowdhury and A.K. Ghoshal, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Mookherjee, J.

The present Second Appeal is directed against a Judgment of affirmance. The suit was one for the eviction of the appellant on the ground of default for the months of August, 1977 to November, 1977. In terms of an agreement between the landlord and the tenant, the rent at the rate of Rs. 80/- (Rupees eighty only) per month was payable within the 7th day of the month following the one for which the rent becomes due. In an earlier suit for eviction the defendant was already granted relief against eviction in terms of the provisions of Section 17(4) of the West Bengal Premises Tenancy Act. The instant suit had been decreed with a finding that the defendant was a defaulter for more than four successive months from October, 1977 for the second time. The defendant/appellant filed an application u/s 17(2)(A)(B) which had not been disposed of by the learned munsif.

2. The courts below have concurrently found that the notice to quit had been properly served; that the rent was payable within the 7th of the month following one for which the rent fell due; that the tenant-appellant was a defaulter for more than 4

(four) successive months from October, 1977 onwards.

3. All these are findings of fact and Mr. Dutta appearing in support of the appeal has failed to place before me any material to persuade me to differ from such findings. Case of waiver, estoppel and acquiscence not having been pleaded was not entertained by the courts below. In the above state of facts, the only point which raises a question of law and which has been urged on behalf of the appellant very emphatically by Mr. Dutta is whether the decree is liable to be set aside for failure on the part of the court below to dispose of the applications under Sections 17(2)(A) and (B) of the West Bengal Premises Tenancy Act. In connection with the aforesaid point, it is necessary to bear in mind the admitted fact that the tenant obtained relief and avoided the mischief of default by compliance with the provisions of Section 17 of the West Bengal Premises Tenancy Act in an earlier suit on 22nd of January, 1976 and that the application u/s 17(1) of the West Bengal Premises Tenancy Act made on behalf of the landlord in the present suit stood dismissed for not being pressed. Mr. Dutta, in developing his above point, has raised a two-fold contention, namely; that the provisions of Section 17 impose a mandatory obligation on Court to dispose of applications made there under prior to passing of a decree and secondly, even if the tenant-appellant is a defaulter for 4 (four) months such default must occur within immediately succeeding 12(twelve) months from the date of obtaining first relief which in this case is admittedly 22nd of January, 1976. In other words, Mr. Dutta has endeavoured to avoid the mischief of the proviso to Section 17(4) of the West Bengal Premises Tenancy Act by pointing out that the second default occured for the first time after lapse of 18 (eighteen) months from the date of relief granted to the tenant u/s 17(4) of the West Bengal Premises Tenancy Act earlier. Mr. Roy Chowdhury has, however, submitted that the user of the terms "once" and "again" in the proviso to sub-section (4) of Section 17 clearly indicates the intention of the Legislature to deprive the tenant of the benefit of sub-section (4) if the tenant commits a default four months within a period of any 12 (twelve) months. Thus his argument is that a default for 4 (four) months occurring within any 12 (twelve) months after the grant of relief to the tenant in terms of sub-section (4) of Section 17 will put the proviso into operation and keep the tenant deprived of relief for the second time. Mr. Roy Chowdhury has tried to lend support to the above position by emphasizing the language of the previous proviso which kept the tenant totally deprived of any relief under sub-section (4) of Section 17 if he committed a default for 4 (four) months within a period of 12 (twelve) months. Since the Act in question is a beneficial legislation for the tenants, the Legislature curtailed or mitigated the hardship by bringing into existence the present proviso through the Amendment Act of 1969. Mr. Roy Chowdhury has also referred to the approach in the matter of interpretation to the basic Section 13(1)(i) of the Act in question and Section 17 in its present form by reference to the cases of Kasturilal v. Ram Krishna Lal and Jamuna Prasad v. Kishorilal, reported in 70 CWN 680 and 77 CWN 278 respectively. According to Mr. Roy Chowdhury in view of the specific finding of fact

in the instant case that the tenant once obtained relief under sub-section (4) of Section 17 of the Act earlier and that the tenant has again defaulted for more than four months, non-dispsal of applications by the tenant under different sub-sections of Section 17 in the present suit does not in any way affect the validity of the decree'' because no relief would have been available under sub-section (4) of the Section 17 to the tenant-appellant.

4. In my view, there is strong force in the submissions of Mr. Roy Chowdhury. Ordinarily a tenant is liable to be evicted if he has committed default in terms of Section 13(1)(i) of the West Bengal Premises Tenancy. Act. The cause of action based on such default, however, is not permitted to be enforced if a tenant complies with the provisions of sub-sections (1) and (2) of Section 17 of the said Act. Section 17 with all its sub-sections is complete in itself. Whatever relief the tenant is entitled to get by such compliance becomes available to him under sub-section (4) of Section 17 of the said Act. The previous proviso to sub-section (4) placed a restriction on availability of such relief and the substantive part of this sub-section and the proviso as it stood earlier were inextricably linked up. The amendment, however, has made the proviso and the substantive part of Section 17(4) of the aforesaid Act operative in a different manner. A tenant who is a defaulter, having once obtained relief under sub-section (4) of Section 17, by virtune of the said proviso, attracts the liability of default if on a subsequent occasion he commits default with regard to rents for four months within a period of twelve months. Since this is a beneficial legislation, the Legislature has been careful enough to allow tenants to continue'' to get the benefit even with default for second or grater number of times provided the default relates to a period of less than four months. Even in a case where default is for four months on the second occasion, such four months must fall within a period of twelve months. In this context, as mentioned earlier, the clause ''within a period of twelve months'' falls for scrutiny. Since the legislative intention, as appears from the incorporation of the proviso by way of amendment, is to curtail the right of tenant to reap the benefit of sub-section (4) the said clause must mean any twelve months subsequent to the grant of the first relief and not immediately succeeding twelve months only as the latter interpretation would result in destroying the spirit of the proviso as a whole. To read into the proviso the word ''immediately'' would militate against the well-known cannon of construction that in interpreting a statutory provision the court should be loath to read into the same words which do not appear therein. Any other construction would practically render the provision of Section 13(1)(i) of the aforesaid Act nugatory.

5. In view of the admitted position as found earlier that the tenant was a defaulter for more than four months from October 1977 onwards, in the present case, he would not have been entitled to any relief on the basis of his application under Sections 17(2),(A)(B) of the West Bengal Premises Tenancy Act, 1956, and, accordingly, non-disposal of such application does not in any way cause any prejudice to the tenant/appellant so as to call for any interference with the decree

under appeal. Such a procedure, however, should be avoided as there may be cases where it may result in serious complications and prejudice being caused to one or other of the parties to the proceeding.

6. In the result, the appeal fails and is dismissed with costs, hearing fee being assessed at 3 Gms. On the prayer of Mr. Dutta on behalf of the appellant and after hearing Mr. Roychowdhury, appearing for the respondent, I permit the tenant-appellant to continue in the occupation of the suit premises, without transferring and/or in any other way encumbering the same, for a period of one month from to-day unconditionally and if within that period the tenant appellant furnished an undertaking to the effect that he will deliver the vacant and peaceful possession of the suit premises to the landlord respondent and also would not in any way encumber the occupation of the suit premises or transfer it to any other person, he will be allowed to continue such occupation till the end of 1988 subject, however, to payments of occupation charges regularly. In default of filing the undertaking as aforesaid, the decree will become executable at once.