

**(1987) 12 CAL CK 0017**

**Calcutta High Court**

**Case No:** None

In Re: Sadhu Chowdhury

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** Dec. 1, 1987

**Acts Referred:**

- West Bengal Premises Tenancy Act, 1956 - Section 17(3)

**Citation:** 92 CWN 908

**Hon'ble Judges:** Mitra, J

**Bench:** Single Bench

**Advocate:** M.N. Ghose, for the Appellant;

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### **Judgement**

Mitra, J.

Having heard the learned Advocates for the parties and going through the impugned order it appears that the learned Munsif was wrong in holding that the third instalment not having been deposited by the 15th October, 1984 but having been deposited on 27th October, 1984 was invalid as the said deposit was not made within the 15th of each succeeding month. The learned Munsif failed to consider that the sower court remained closed in the particular year for Puja vacation upto the 26th October, 1984 and re-opened on 27th October, 1984 when the said deposit was made. In such view of the matter the said deposit can not be held to be an invalid deposit. So far as other instalments are concerned, those were directed to be deposited by Court's order within 15th of each succeeding month. Even if, the said deposits were made before 15th or in advance that could not have been a valid ground for discarding the said deposits as invalid. The decision reported in 1984 (2) C.L.J., 269, in my view, really puts an unnecessary hardship upon the tenant even if the tenant deposits the rent before the stipulated time which does not prove his lack of bonafide. In order to consider the deposits made by the tenant in an ejectment suit, the court must consider the nature and scope of the Act under which such deposits are made. The West Bengal Premises Tenancy Act, 1956, is certainly a

beneficial legislation aimed mainly to give benefits to the tenant. A rigid or dogmatic approach should not be made to frustrate the intent and object of such beneficial legislation. Moreover the Supreme Court in its recent decision in the Case of M/s. B.P. Khemka (P) Ltd. v. Birendra Kumar Bhowmik and Anr., 1987 SC 1010 has clearly state interpreting word "shall" in Section 17(3) of the West Bengal Premises Tenancy Act, 1956 that the words "shall order the defence against delivery of possession to be struck out" accuring in Section 17(3) have to be construed as a directory provision and not a mandatory provision as the word "shall" has to be read as "may". Such a cannon of construction is warranted otherwise the intendment of the legislature will be defeated and the class of tenants, for whom the beneficial provisions were made by the ordinance and the amending Act, will stand deprived of them. The court is vested with discretion to pass order either striking out of the defence or not depending upon the circumstances of the case and the interests of justice. As such, in the present case the court ought not to have struck out defence of the defendant/petitioner against delivery of possession in the interest of justice specially when the tenant had deposited all arrears of rent as well as the current rent, be that, before the stipulated time or otherwise. According to my opinion Court should take a pragmatic view of the matter while disposing of the application u/s 17(3) of the Act instead of becoming too technical. The result is that the revisional application succeeds and the impugned order is set aside. The application u/s 17(3) of the West Bengal Premises tenancy Act 1956 filed by the opposite party is, accordingly, rejected. Let this order be communicated to the trial court forthwith. The learned Munsif is directed to dispose of the suit as early as possible but defenitely within May", 1988 and the parties are also directed to co-operate with the court in getting the same disposed of as early as possible and also within the aforesaid period.