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**(1970) 02 CAL CK 0022**

**Calcutta High Court**

**Case No:** Civil Rule No. 1002 of 1969

Gunwantrai T. Kamdar

APPELLANT

Vs

Satyanarayan Jhunjhun Walla

RESPONDENT

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**Date of Decision:** Feb. 9, 1970

**Acts Referred:**

- Limitation Act, 1963 - Section 5
- West Bengal Premises Tenancy Act, 1956 - Section 17(1), 17(2)

**Citation:** 75 CWN 372 : (1971) 2 ILR (Cal) 304

**Hon'ble Judges:** P.N. Mookerjee, J; Amiya K. Mookerji, J

**Bench:** Division Bench

**Advocate:** Noni Coomar Chakraborty and Sailendra Bhushan Bakshi, for the Appellant; Lala Hamanta Kumar and Bidyut Kumar Banerjee, for the Respondent

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**Judgement**

P.N. Mookerjee, J.

This Rule arises out of a suit for ejectment. The Petitioner before us was the tenant and the instant Rule obtained by him is directed against an order of the learned trial Judge rejecting, in substance, his (Petitioner's) prayer for treating his application, purported to have been made u/s 17(1) of the West Bengal Premises Tenancy Act, 1956 as one u/s 17(2) of the said Act, and for passing appropriate orders thereon.

2. The impugned order also purports to deal with two other applications of the tenant, one for relief under the Ordinance of 1967 and the other for extension of time or condonation of delay in the matter of deposit of interest u/s 17(1) of the above Act u/s 5 of the Limitation Act.

3. The prayer under the Ordinance was refused upon the ground that there was no compliance in this case with, inter alia, the provisions of Section 17(2) of the above Act. The prayer u/s 5 of the Limitation Act was refused, first on the ground that the said section would not apply for condonation of delay or extension of time in the matter Of making deposit of interest u/s 17(1) and, secondly, on the merits, as the

learned trial Judge was not satisfied with the tenant Petitioner's explanation on the point.

4. In the above state of things, the rejection of the prayer under the Ordinance and also the prayer u/s 5 of the Limitation Act would not be challengeable before us as, in our view, the learned trial Judge made the correct approach on the said points provided of course his view on the question u/s 17(2) of the West Bengal Premises Tenancy Act, 1956, is correct.

5. The real question, therefore, is whether the tenant's prayer for treating his purported application u/s 17(1) of the above Act as an application u/s 17(2), either on his specific application, made for the said purpose, or otherwise should have been allowed. It is clear that, if the application u/s 17(1) could be treated as an application u/s 17(2), the tenant's prayer should be granted irrespective of any specific application, made for treating the said application u/s 17(1) as an application u/s 17(2). The point, therefore, is whether the tenant's aforesaid purported application u/s 17(1) can be treated, in the facts of the instant case, as an application u/s 17(2). For this purpose, it is necessary to set out the contents of the said application:

Application u/s 17(1) of the West Bengal Premises Tenancy Act, 1956.

The humble petition of the Defendant above-named. Most respectfully sheweth:

1. That the summons in the above suit was served on 8. 8. 1966.
2. That your Petitioner has deposited rents of the suit premises in the office of the Rent Controller, Calcutta, upto the month of July 1966.
3. That your Petitioner submits that it is necessary that your Petitioner should deposit in the above suit the rent of the suit premises for August 1966 and all future rents month by month according to English calendar month.

In the circumstances, it is prayed that your Petitioner may be allowed to deposit in Court in the above suit rents of the suit premises for August 1966 and all future rents month by month at the rate of Rs. 330 per month according to English calendar month u/s 17(1) of the West Bengal Premises Tenancy Act, 1956.

And your Petitioner as in duty bound shall ever pray.

6. It will appear from the above that this application, whatever else it might contain, was really an application for permission to make a deposit. There was no other prayer, not even the usual omnibus prayer such other or further orders may be passed as to the Court may seem fit and proper.

Section 17(2) of the West Bengal Premises Tenancy Act, as we read it, 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 purposes of the said section,

make deposit all the admitted arrears within the statutory period; and (iii) this is very important, that the said deposit, if any, must be made along with an application, praying for determination of the (amount of) rent payable. In our view, this third element is an integral and essential part of the section and, unless this is present, either expressly or at least impliedly, which may be in the form of the usual omnibus prayer, indicated hereinbefore, the requirement of the section would not be satisfied. This view of ours would fully and directly be supported by the decision of this Court in the case of Adalat Singh v. T.P. Basu A.F.O.D. No. 664 of 1952 dated November 27, 1968, unreported. The same view would also be supported by the earlier decision of this Court in the case of Smt. Parameswari Debi and Ors. v. Nandalal Sharaf and Ors. C.R. No. 5340 of 1960 dated February 2, 1967, unreported as, on a close reading of the said decision, it is clear that the same was based on the above reasoning.

7. Our attention, however, has been drawn by Mr. Chakraborty, appearing on behalf of the Petitioner, and later on his said, submission was reiterated and supported by Mr. Bakshi, who argued the matter in reply, to the decision of this Court in the case of Amiya Kumar Banerjee v. Bimalendu Bose C.R. No. 2822 of 1968 dated January 7, 1965. unreported in which Chatterjee and Gupta JJ. were stated to have taken a different view.

8. We have examined this last-mentioned decision and we do not find, on a close reading of the same, that this was really a firm decision on the point. As a matter of fact, their Lordships even did not find, on the materials before them, that there was a dispute regarding the amount of rent payable between the parties, but they remitted the matter to the Court below for the purpose of finding out that dispute from certain materials, to be placed on the record by the parties, and then considering the matter, if necessary, u/s 17(2) of the above Act along with the Plaintiff's pending application u/s 17(3). As a matter of fact, their Lordships were making observations in their judgment that, when the matter would go back and a dispute would be raised, the Court might have to decide the matter in accordance with the provisions of Section 17(2). As we have stated above, we do not treat this decision as a firm decision on the point that a mere application for deposit u/s 17(1) of the above Act would have to be treated by the Court, irrespective of other circumstances, as an application u/s 17(2). That, in our opinion, would be ignoring the section altogether and making it infructuous and we do not think that their Lordships in their above judgment intended to go so far. We do not, therefore, feel oppressed in the instant case by the said decision.

9. We were also referred to certain decisions of this Court by learned Judges sitting singly. But, as we have considered the matter on the terms of the section itself, and as we have agreed with the view expressed by the Division Bench in Adalat Singh v. T.P. Basu (Supra), we would with respect differ from the contrary view, if any, expressed in the said Single Bench decisions.

10. In the premises, this Rule will fail and it will be discharged.

11. There will be no order for costs, either in this Court or in the Court below.

Amiya K. Mookerji, J.

12. I agree.