

(1978) 04 CAL CK 0052

Calcutta High Court

Case No: C.R. No. 4 of 1977

Jagannath Pal

APPELLANT

Vs

Kalipada Pal

RESPONDENT

Date of Decision: April 18, 1978**Acts Referred:**

- West Bengal Premises Tenancy Act, 1956 - Section 17, 17(2), 17(2)(a), 17(2)(b), 7

Citation: 82 CWN 933**Hon'ble Judges:** S.K. Datta, J**Bench:** Single Bench**Advocate:** Bidyut Banerjee, for the Appellant; Usha Datta, for the Respondent

Judgement

S.K. Datta, J.

This Rule has been obtained by the defendant against an order No. 14 dated September 9, 1976 passed by the learned Munsif, Raiganj whereby an application of the defendant u/s 17 (2) of the West Bengal Premises Tenancy Act, 1956 was rejected. It appears that the defendant was holding the suit premises under a monthly tenancy at a rent of Rs. 120/- per month payable according to English Calendar month and the suit for eviction was instituted by the plaintiff landlord inter alia on the ground of own use and occupation. The defendant who is contesting the suit, deposited the admitted amount of rent due from September, 1975 to April, 1976 with interest for Rs. 30/- in all Rs. 990/- on May 22, 1976 within a month of service of summons. The application u/s 17(2) was made on April 24, 1976 alleging that the plaintiff had taken a sum of Rs. 2001/- as advance with a promise to have the same adjusted against future rent but no such adjustment had been made. Accordingly it was necessary that the amount of future rent payable by the defendant should be determined though the defendant had been depositing current rent on due dates. It was accordingly prayed that the court should determine the future rent payable by him to the landlord with interest on adjustment of the said sum and issue necessary directions accordingly. This

application was opposed by the plaintiff and it was stated that the amount of Rs. 2001/- had been repaid already and nothing was due on that account. It was further stated that as there was no dispute in regard to the rate or quantum of rent the application in respect of future rent was not maintainable in law.

2. The learned Munsif was of opinion that the application u/s 17(2) was vague as it did not even mention the rate of rent nor the period during which the rent was to be adjusted. It was further held that as there was no dispute over the relationship of the landlord and tenant between the parties or the rate of rent it was obvious that there was no real dispute over the amount of rent payable within the meaning of section 17 (2) while the suit was on ground of own use and occupation. The application was held by the impugned order to be not maintainable and it was accordingly rejected.

3. Mr. Bidyut Banerjee appearing for the defendant in support of the Rule, has referred to section 17 (2) (b) which provides that in passing a final order the court will direct the adjustment of amount already deposited in court or paid to the landlord in such manner and within such time as may be specified in the order. According to him in such cases it is not necessary that there should be any present arrear of rent but the sub-section extends to cases of payment of future rents and for appropriate direction in respect thereof as well. He accordingly submitted that the learned Munsif was wrong in holding that the application was not maintainable either on the ground that the suit was one for own use and occupation of the landlord or on the ground that there was no existing dispute in regard to the rate or quantum of rent.

Mrs. Dutta appearing for the plaintiff-opposite party submitted that the provisions of section 17 (2) (b) have reference to the earlier portion of the same sub-section as also clause (a) of Section 17 (2) of the Act. It has nothing to do with any adjustment of future rents against the possible money claimed by the tenant against the landlord. Accordingly in the context of the attending circumstances when there is no rent in arrear, the arrear rent having been already deposited as aforesaid nor any dispute about rate of rent or arrear there was no scope for making any final order under clause (b) of sub-section (2) of Section 17. Reference as made to clauses (2A) and (2B) of section 17 which provides for payment of any amount referred to therein within the extended date or by instalments and have nothing to do with any adjustment of future rent against an independent claim by the defendant tenant against the plaintiff landlord even if the claim was true which was also disputed.

4. On a consideration of the respective contentions advanced by the learned counsel as also the other provisions of the Act it seems that a special procedure has been laid down under clause (b) of section 17(2) for adjustment of rents already deposited in court or paid to the landlord under its sub-clause (a). This right of adjustment has been provided not under the ordinary laws of the land but under the provision of the Act itself. Accordingly in interpreting the sections it is to be held that the remedy

available to the defendant under the Act is to be on the basis of the provisions made in the Act. As is wellknown, under the provisions of section 7 the Controller can direct the landlord to refund any consideration paid by a tenant to him in contravention of the provisions of the Act. If the remedy as provided is sought to be availed of by the tenant it must be in accordance with the said provisions of the Act. If therefore it is the case of the defendant that there has been a payment by him to the plaintiff by way of loan on the promise of adjustment against the rent, the tenant to avail of the same has to take recourse to the ordinary laws of the land and not by any procedure laid down under the provision of this Act which precludes and makes illegal, the acceptance of any amount in contravention of its provisions.

5. Section 17(2) (a) provides for an interim order pending final decision of the dispute specifying the amount, if any due from the tenant and the tenant is to deposit in court or pay to the landlord the amount so specified in the preliminary order. This order under clause (a) is to be followed by a final order determining the rate of rent as also the amount to be deposited in the court or paid to the landlord within such time as the court may fix. In giving such direction the court will take in consideration the amount already deposited or paid in terms of clause (a) to be adjusted in such manner and within such time as may be specified in the order. The amount so deposited or paid which is liable to be adjusted obviously means as expressly provided, the amount the tenant was directed to deposit in court or to pay to the landlord under clause (a) and it cannot and does not mean any amount which the tenant might have advanced or paid to the landlord on the basis of a contract which had nothing to do with the order of court as may be passed under clause (a) or Clause (b) of Sub-section (2) of Section 17. In this view of the matter I do not think that it is possible for a tenant to claim adjustment of any amount or advance purported to be given to the landlord in contravention or outside the provisions of this Act and there is no question of such adjustment being given by an order under clause (b) of Section 17(2). Accordingly the defendant is not entitled in this proceeding to claim a determination of the amount due to him from the landlord under a loan or any other separate transaction as alleged and recovery of such due to him payable by the landlord, if established, by way of adjustment against future rent. In fact these types of contracts or transactions de hors the Act, cannot be taken into consideration by the court in dealing with an application u/s 17(2) of the Act. The application in the premises in my opinion, was rightly rejected. The Rule accordingly fails and is discharged. This order is obviously without prejudice to any right of the defendant to enforce performance of the contract as alleged by him and/or for recovery of the amount alleged as due to him from the landlord by separate proceedings in accordance with laws relevant for the purpose. There will be no order for costs.

Let the records be sent down at once and the hearing of the suit be expedited.