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(1975) 03 CAL CK 0021

Calcutta High Court

Case No: L.P.A. No. 72 of 1972

Hindusthan Industrial Co.	APPELLANT
Vs	
Chandi Prosad More	RESPONDENT

Date of Decision: March 20, 1975

Acts Referred:

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

Citation: 79 CWN 1017

Hon'ble Judges: B.C. Ray, J; A.K. Sen, J

Bench: Division Bench

Advocate: B.C. Dutta and Alok Chakraborty, for the Appellant;Bankim Ch. Banerji and Sachindra Kumar Kar, for the Respondent

Final Decision: Dismissed

Judgement

Anil Kumar Sen, J.

This is an appeal under Clause 15 of the Letters Patent. It arises out of a second appeal and has been preferred on a certificate granted by the learned single judge whose judgment and decree dated June 23, 1971, is the subject matter of challenge in this appeal. The tenant-defendant is the appellant. But the judgment and decree under appeal a learned single judge of this court had affirmed a concurrent decree for eviction of the appellant from the suit premises on the ground of default passed by the two courts below. In instituting the suit out of which the present appeal arises the plaintiff-landlord who is the respondent in this appeal pleaded the appellant to be in default in payment of rent since September, 1963 and further pleaded that such default being for more than 4 months the appellant had forfeited the protection against eviction under the provisions of the West Bengal Premises Tenancy Act, 1956. Though such a claim was contested at the trial it was found that the rents for the months of September, October and November, 1963, were deposited with the Rent Controller on December 24, 1963 and that such deposit was made without any prior tender to the respondent, the plaintiff-landlord. Necessarily

it was held that such deposit of rent not being in accordance with law was invalid deposit and so also all subsequent deposits with the Rent Controller. In the result, the appellant was found to be in default since September, 1963. With reference to a postal receipt dated December 7, 1963 (Ext. A), a specific plea was raised by the appellant that when on that day the rent for the aforesaid three months was sent by money order to the plaintiff-respondent, the said offer must at least be considered to be a valid tender of rent for the month of November, 1963, so that deposit of rent made on December 24, 1963, should be accepted as valid deposit so far as it relates to the rent for the month of November, 1963. Such a plea, however, was rejected by the two courts below on the ground that in the absence of proof of the refused money order coupon, the postal receipt by itself would not establish any tender far less any tender in accordance with law when the plaintiff in his evidence had specifically denied that any such money order was even tendered to him. Such default in payment of rent having been established and the appellant not having availed himself of the protection u/s 17 of the Act the two courts below concurrently decreed the suit.

2. Against such concurrent decree, the appellant preferred second appeal No. 647 of 1967 out of which the present appeal arises. The learned single judge accepted and agreed with the concurrent findings of the two courts below to the effect that the appellant was in default in payment of rent since September, 1963. The specific plea of the appellant that at least the rent for the month of November 1963, was validly deposited after a lawful tender referred to hereinbefore was rejected by the learned single judge on a ground additional to the ground on which the courts below had rejected the same He held that even assuming that the appellant did tender by the money order dated December 7, 1963, the rents for the three months, namely, September, October and November, 1963, such tender would be no valid tender even for the month of November 1963, because rents for the three months were not being sent separately and when the same were being sent together, the plaintiff landlord could not have been made to accept such a money order resulting in waiver of the admitted defaults for the months of September and October, 1963. Before the learned single judge the point that was urged by the appellant was with reference to an application filed on behalf of the appellant in the trial court on March 12, 1965. It was contended that this application should have been considered as an application u/s 17 (2) of the Act and disposed of accordingly and that not having been done the resultant procedural regularity had led to the appellant being denied the protection u/s 17 of the Act. Such a point was not accepted by the learned single judge as according to him the application relied on was not an application u/s 17(2) of the Act. In this view, the learned single judge affirmed the judgment and decree of the courts below.

3. Mr. Dutt appearing on behalf of the appellant had raised three points in support of this appeal. In the first place he has contended that the application dated March 12, 1965, did raise a dispute as to the rent payable and as such should have been

considered as such by the trial court so that non-consideration thereof has resulted in material failure of justice. According to him the learned single judge has misread this application in not holding that in substance it was an application u/s 17 (2). Secondly relying on two unreported single Bench decisions of this Court Mr. Dutt has contended that rents deposied with the Rent Controller even if not deposited in accordance with law cannot be considered to be rents in default within the meaning of section 17 of the Act so that the appellant having deposited all current rents in accordance with second part of Section 17(1) is entitled to the protection against eviction u/s 17(4). Lastly, it has been contended by Mr. Dutt that an application u/s 17(3) of the Act having been dismissed, though on the ground that such an application had not been pressed, it must be held that the plaintiff is no longer entitled to claim the defendant to be in default in payment of rent.

4. All the three points so raised by Mr. Dutt have been seriously contested by Mr. Banerji, the learned advocate for the respondent. According to Mr. Banerji on the principles laid down by this court, the learned single judge is correct in his conclusion that the appellant''s application dated March 12, 1965, could not have been considered or even treated as an application u/s 17(2) of the Act. According to him, it was a simple application for permission to deposit the rent for one month being March, 1965. On the second point raised by Mr. Dutt, Mr. Banerji has challenged the correctness of the unreported single Bench decisions relied on by Mr. Dutt and on the other hand on Bench decisions of this court he has contended that the appellant was rightly considered to be in default in payment of rent even for the months for which rents were invalidly deposited with the Rent Controller. On the third point, Mr. Banerji''s reply has been that surrender of the application u/s 17(3) by the plaintiff-respondent amounted neither to an estoppel nor any bar under a previous decision of the court on the relevant issue.

5. We now proceed to consider the first point raised by Mr. Dutt. It is not in dispute that the summons of the suit was served on the appellant on February 20, 1965, the appellant appeared on February 27, 1965. The appellant filed an application on March 12, 1965, which had no particular reference to any particular provision of law. It was a short application wherein it was stated that the plaintiff-landlord having refused to accept amicably rent since September, 1963 he had been depositing the rents with the Rent Controller and that the suit had been filed on an untrue allegation that he is in default in payment of rent. Only prayer that was made in this application was that the rent for the month of March, 1965, may be permitted to be deposited in court. The court disposed of this application by giving the appellant necessary permission and no protest was raised during the course of the trial that this application had not been correctly disposed of. It appears that shortly thereafter on April 30, 1965, the plaintiff-respondent filed an application u/s 17(3) praying for an order striking out the defence on the ground of non-payment of the arrears but he was advised not to press this application at the hearing for reasons not disclosed. This application appears to have been dismissed on November 15, 1965, as an

application not pressed.

6. To support his contention Mr. Dutt has placed strong reliance on the statements made in this application dated March 12, 1965. He has submitted that when the appellant denied that he was in default and further pleaded that the plaintiff''s allegation of default was untrue, the appellant clearly raised a dispute over the issue. According to Mr. Dutt, therefore, such a dispute having been raised and when such dispute comes within the scope of section 17(2), the trial court should have considered this application as an application u/s 17(2) on its substance and disposed of accordingly. We are, however, unable to agree with Mr. Dutt on the construction of this application.

7. This Court in the case of Gurwantrai v. Satyanarayan Jhunjhunwala, 75 C.W.N. 372 had considered the true elements which go to make an application u/s 17(2) of the Act. It was laid down that such an application must have three elements, namely:--

a) that there must be a dispute raised as to the amount of rent payable;

b) that the tenant must, for the purposes of this section, make deposit of all the admitted arrears within the statutory period;

c) that the said deposits, if any, must be made along with an application praying for determination of the amount of rent payable.

The third element above referred to was considered to be an integral and essential part of the section and it was held that unless the said element is present the application cannot be considered to be an application u/s 17(2). That was the decision which again was based on two earlier unreported decisions of this court referred to and relied on therein. This decision again and the principles laid down therein have been approved and followed by two subsequent decisions of this court in the case of Saroj Kumar Kundu v. Leena Saha, ILR (1972) 2 Cal 118 and Jitendra Chandra Dey Vs. Tarak Nath Mullick and Others, . The principles so laid down and approved by so many Bench decisions of this court clearly appears to us to lay down the correct principles of law on the provisions of section 17 and on the terms of section 17(2) we are in respectful agreement with the principles so laid down. Tested on the principles as aforesaid, the application dated March 12, 1965, relied by Mr. Dutt can hardly be considered to be an application u/s 17(2). Even if we agree and accept Mr. Dutt''s suggestion that in this application the appellant raised a dispute as to the amount of rent payable but there is nothing In this application which can establish any invitation to the court to adjudicate on the dispute and determine the amount payable by the appellant. In clear terms it was an application for permission to deposit the rent for the month of March, 1965, though an assertion was made therein that he is not in default in payment of rent and the allegation of default is untrue. It was an application more or less of the same nature as was the application under consideration in 75 C.W.N. 372 and in any event the third element laid down by this court in the said decision being conspicuously absent this application could

neither have been considered nor treated as an application u/s 17(2). Therefore, we are clearly of the view that the learned single judge was right in his conclusion that this application could not have been considered as an application u/s 17(2). The first point raised by Mr. Dutt, therefore, fails and is overruled.

8. The second point raised by Mr. Dutt is somewhat ingenuous. He has relied upon two unreported decisions of R.N. Dutt, J., in the case of Gayadhar v. Omraolal Pansari (C.R. 1282/72, disposed of on 10.8.72) and Kishori Mohan Adhri v. Bankim Behari Ghose (C.R. 3688/71, disposed of on 26.5.72). In both these two decisions, the learned judge was considering whether section 17(1) imposes any legal obligation on a tenant defendant to deposit such rents as had already been deposited with the Rent Controller but were not valid deposits being not in accordance with law. It was held that section 17(1) entails no such obligation. The words ''may have made default'' were given a meaning different from the words ''made default'' as in section 13 (1) (i) and it was held that on the terms of section 17(1) the term ''default'' only meant such rent as had yet not been paid or deposited at all. Relying on these two decisions Mr. Dutt has very strongly contended that in the present case all the rents having been deposited with the Rent Controller even if such deposits were not valid deposits, the appellant had no legal obligation to make any further re-deposit of these rents and the current rents having been deposited with the court, the appellant must be considered to have discharged his obligation u/s 17(4) so that no decree could have been passed against him on ground of default in payment of rent. In contesting this point Mr. Banerji has strongly disputed the correctness of the decisions relied on by Mr. Dutt. Giving our anxious consideration to the issue we are of the opinion that the correctness of the decisions relied on by Mr. Dutt is open to serious doubts, for more than one reason. First of all it is no fair construction of the terms of the statute in giving two meanings to the same term used in the two sections unless of course the context otherwise impels such a construction. Though the learned judge has arrived at such a construction in the context of section 22 we will presently show that the said context nowhere impels such a construction. Secondly the learned judge was not considering the effect of section 17(4) and/or the import of the term ''default'' used therein. In his view the rents invalidly deposited would still remain rents in default for the purpose of section 13(1) (i) so that such rent would be in default also within the meaning of section 17 (4) but none-the-less it would not be considered as a default for the purpose of section 17 (1). An argument of the nature now under consideration by us did never arise for consideration before R.N. Dutt, J. and he did not consider whether a tenant without depositing the rent so in default could yet get the benefit of section 17(4). Thirdly, R.N. Dutt, J, relied on section 22(1) as the context for the conclusion arrived at by him. He held that when u/s 22(1) non-compliance with the statutory requirements for the deposits would lead to the conclusion that they would not be considered to be valid deposits for the purpose of section 13 (1) (i) he concluded that the effect of the invalidity was limited only to section 13 (1) (i) and not section 17 (1).

In our opinion, however, he overlooked section 22 (3) of the Act which in clear terms has laid down that only such deposit as would comply with subsections (1) and (2) shall constitute payment of rent and discharge of the obligation in law and not otherwise. Default in the legal sense means failure to perform the legal obligation. But for the provision of West Bengal Premises Tenancy Act, deposit with the Rent Controller would have been no discharge of such an obligation so that even on such deposit normally the rent would have been in default. To prevent this legal effect the statute by fiction had rendered the deposit to be a valid discharge of the legal obligation but limiting the same only to such deposits as are in consonance with section 22(1) and (2). This being the position, reading section 22 as a whole, it would be legitimate to hold that a deposit of rent with the Rent Controller but in consonance with section 22 (1) and (2) would not discharge a legal obligation for payment of rent to the landlord and as such the obligation stands outstanding and in default. At least, the context provides no justifiable ground for giving the words ''may have made default'' in section 17 (1) a different meaning than the similar words used in section 13(1) (i). Unfortunately, R.N. Dutt, J. had not considered the two earlier Bench decisions of this Court which lend support for a construction of the relevant words in section 17(1) contrary to the construction put by him. In the case of Ballabhdas Agarwal Private Limited, v. Dalhousie Properties Limited, reported in 65 C.W.N. 1021 this court held that in order that a deposit of rent with the Rent Controller may be valid for the purpose of section 13(1) (i) it must be so made within the month following that for which the rent was payable upon the refusal of the relative timely tender, if any, by the landlord and that follows as the combined effect of sections 21 and 22. It was further held that deposits not in conformity with the said sections 21 and 22 would be invalid deposits with the result that the tenant looses his statutory protection which might otherwise have been available to him. A similar argument as now advanced before us was negatived by Their Lordships observing as follows:--

Mr. Dasgupta argued that his client could not be considered to be a defaulter at all, or, at least, for the purposes of section 17 when he had actually deposited the rents in question with the Rent Controller, even though there was no due tender of the same to the landlord in time, and he relies on the point upon the decision of Boxburgh, J., in B.K. Biswas and Others Vs. Phanindra Nath Bagchi, . All we need say upon this argument is that that decision was given under a statute, which was materially different in its relative provisions in that there was no specific requirement thereunder that in order to be valid, the deposit of rent with the Rent Controller must be preceded by a valid tender of it to the landlord in time, and, further that the defaults in question were expressly under the relevant statute, subject to relief by subsequent deposit in court within a particular time irrespective of the number of defaults, the claim to that relief being absolute and not liable to be lost or forfeited in case the default exceeded a particular number. The position here, however, is entirely different as, under the relevant statute (The West Bengal

Premises Tenancy Act, 1956), a valid timely tender (vide section 21 read with section 4) is a condition precedent to the validity of the relative or corresponding deposits and all subsequent deposits with the Rent Controller (vide the aforesaid section 21) and, further, defaults for 4 months within a period of twelve months would be an absolute bar to any claim of relief against the same.

9. Similar is the position with the other Bench decision in the case of Satya v. Suresh, 65 C.W.N. 239. Reference may be made to another Bench decision of this court in the case of Ganesh Chandra Nandi v. J.N. Chatterji, 70 C.W.N. 676. In paragraph 8 of this decision it was observed:

It is, however, contended by the appellant that, at the time of creation of the tenancy, two months'' rent was kept in deposit with the landlord. It is difficult to hold from the terms of document, Ext. A produced for the purpose, that the said deposit would be available for being credited against the above defaults but, even assuming that such credit could be given, the defendant would still be a defaulter for two months and as, with regard to these two defaults no step was taken u/s 17 of the above Act and no deposit was made under the said section, the defendant would loose the protection of the Act by reason of section 13 (1) (i) thereof.

Rents for those two months referred to above were in deposit with the Rent Controller but were considered to be invalid deposit. Thus the necessary conclusion which follows from the above observation is that in order to get the protection u/s 17 in its main part it is necessary for a tenant to re-deposit the rents so invalidly deposited with the Rent Controller or at least raise a dispute and have an adjudication u/s 17 (2) thereof. The two decisions of R. N. Dutt, J., taking a contrary view of section 17 (1) are, however, not based on consideration of these Bench decisions having their relevance to the point at issue.

10. Notwithstanding the serious doubt about the correctness of these two decisions relied on by Mr. Dutt, we do not feel it necessary to decide finally whether these decisions represent the correct law because of the particular issue now involved in the present case. The point at issue before us is as to whether non-deposit of rent invalidly deposited with the Rent Controller would result forfeiture the protection under the provisions of section 17(4). In our opinion, it would. R.N. Dutt, J., was not called upon to consider this issue and if the principles laid down by him he extended to support such a contention we would with great respect hold that the principles so laid down were not correct. But for reasons) already given it is quite established that R.N. Dutt, J., was not called upon to decide an issue as now under consideration by us and the two decisions of his relied on by Mr. Dutt, hardly support the contention put forward by Mr. Dutt. In this view, the second point raised by Mr. Dutt fails and is overruled.

11. So far as the third point raised by Mr. Dutt is concerned, in our view Mr. Banerji is right in his contention that dismissal of the application u/s 17(3), when the said

application was pressed by the plaintiff-respondent does not constitute a bar either by way of an estoppel or by the judgment of the court. An adjudication on the application u/s 17(3) would not have finished any opportunity to the tenant-appellant to secure any relief against eviction for the defaults committed. He looses that protection because of his own default to comply with section 17 (1) or to raise a dispute u/s 17(2). If the application u/s 17(3) had been pressed, at the worst his defence would have been struck off. By not pressing the application and by allowing him to contest the suit the respondent had not put the appellant to any prejudice. Then again, there having been no decision on the merits as to whether the appellant was in default or not on the application u/s 17(3), that decision would not constitute res judicata by interlocutory orders so far as the trial court is concerned and in any event that decision would not have barred the appellant court to go into that issue. In the circumstances, we find little merit in the third contention raised by Mr. Dutt. As all the contentions raised in support of this appeal fail, the appeal fails and is dismissed. The judgment and decree of the learned single judge of this court are affirmed. There will be no order as to costs.