

(1960) 06 CAL CK 0015

Calcutta High Court

Case No: Civil Revision Case No. 355 of 1960

Dr. P. Bhattachryya

APPELLANT

Vs

Sm Lakhpati Devi

RESPONDENT

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**Date of Decision:** June 13, 1960**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 115
- West Bengal Premises Tenancy Act, 1956 - Section 17, 17(1), 17(3)

**Citation:** 64 CWN 763**Hon'ble Judges:** Chatterjee, J**Bench:** Single Bench**Advocate:** Susil Kumar Biswas, for the Appellant; Basanta Kumar Panda, for the Respondent

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**Judgement**

Chatterjee, J.

This is an application u/s 115 of the CPC against an order striking off the defence of the defendant in a suit for ejectment after applying the provisions of section 17(3) of the West Bengal Premises Tenancy Act of 1956. The first reason why the Court applied the provision of section 17(3) is that after the service of summons on the 1st of December, 1958, the tenant deposited rent with the Rent Controller on the 15th December, 1958, and, therefore, committed an act of default within the meaning of section 17(1) for which the defence was liable to be struck off u/s 17(3) of the said Act. Following the recent judgment in [Anil Chandra Ganguly and Others Vs. Sati Prosanna Bhowmick](#), I must hold that the deposit with the Rent Controller within one month of the service of summons is a good deposit and there is no default.

2. The second contention that has been raised is that after the defence was struck off ex parte, the rent was deposited not on the 15th in the Court, but on the 17th. The learned Advocate for the petitioner states that the chalan was filed on the 15th and 16th was a holiday and the money was therefore, deposited on the 17th

September. According to Mr. Biswas, the principle that no party should suffer because of the inaction of the Court is fairly established and was applied by Sir Ashutosh Mookerjee in a decision, *Mahomed v. Sukdeo* reported in 13 Calcutta Law Journal, page 467. The Court, therefore, would consider whether the petitioner is an innocent person, who made his attempts to deposit the money on the 15th, but could not deposit because of procedural complications. If, on consideration of the facts, the Court finds the said principle applicable, it will apply the same.

3. It has also been suggested that this default, even if any, would be at a time when the defence was itself struck off and there was no liability u/s 17 as long as the defence remained struck off. Hence, at that time it was not obligatory for the tenant to deposit within the 15th of the next month, the rent, but it became merely directory or section 17 would not apply at all. It has been suggested that, when the Court was proceeding to restore the defence after the defence was struck off ex parte, the Court should have considered this default as well and might have refused to restore the defence because of this subsequent default at a time when the ex parte order u/s 17(3) of the West Bengal Premises Tenancy Act, 195G was in force and that is a point which should have been raised at that stage of the proceeding. In spite of that, the Court restored it and it is suggested, therefore, that it must be deemed as if the Court had considered that default and had decided that there was no default and, therefore, that question of default cannot be raised at the present stage. On the other hand, it has been suggested that the doctrine of *res judicata* does not apply in the same suit and there is very grave doubt as to the doctrine of finality being extended to constructive finality. Besides, the further difficulty is that there is a judgment (3) of this High Court where it has been held by Das Gupta, J. presiding over a Division Bench that the second part of section 17(1) is mandatory. The idea is that it is mandatory under all circumstances. Therefore, this mandatory nature remained even after the order of striking off of the defence. However, this a matter, which has not been considered on facts and it is not necessary for me to express any opinion on this matter at this stage. As I have already held if there was no fault of the tenant in depositing the money on the 17th and if it was due to the procedural complications, the Court should not take such default into account under the decision in (2) 13 page 467. If the Court finds that the principle of (2) 13 Calcutta Law Journal applies, it would not be necessary to determine the other question just referred to above, but, if it is necessary and such arguments are advanced, the Court will consider that matter.

4. The Rule is, therefore, made absolute and the matter is sent back to the Trial Court for a decision on the question as to whether there was any default on the part of the tenant in depositing rent on the 17th September alone. The other deposit has now been held to be valid. There will be no order as to costs.