(1958) 07 CAL CK 0015

Calcutta High Court

Case No: Civil Revision Case No. 3108 of 1957

Tarak Nath Gupta		APPELLANT
	Vs	
Lt. Col. Karuna Kumar Chatterjee and Others		RESPONDENT

Date of Decision: July 25, 1958

Citation: 62 CWN 830

Hon'ble Judges: Guha, J; Das Gupta, J

Bench: Division Bench

Advocate: Rajendra Bhusan Bakshi and Ashutosh Ganguly, for the Appellant;P.N. Mitra, Kalimohan Chakrabarty and Shib Krishna Dutta for Opposite Party No. 1, for the Respondent

Judgement

Das Gupta, J.

The first opposite party brought the present suit for recovery of khas possession of premises No. 39, Justice Chandra Madhab Road against the present petitioner and certain other persons on the allegation that the present petitioner was a monthly tenant under him at a rental of Rs. 500/- per month, that the tenancy had been duly determined by a notice to quit and that "he was a habitual defaulter in the matter of payment of rents in respect of the said premises and defaulted in paying rent to the plaintiff from the month of August, 1953." After service of summons on the petitioner but before he had filed his written statement in the suit, the plaintiff made an application praying that the defence of defendant No 1 against delivery of possession should be struck out and the hearing of the suit should be proceeded with ex parte. It was alleged in that application that in spite of due service of summons on the defendant No. 1 he had failed and neglected to deposit in Court the amount in default and also "failed and neglected to deposit or pay month by month by the 15th of each succeeding month a sum equivalent to the rent at the rate." It is reasonable to think that by the wordy "that rate" was meant rent at Rs. 500/- per month. The present petitioner objected to this prayer stating, inter alia, that though the rent had been paid by him at Rs. 500/- per month, it had been

decided in a money suit brought by the plaintiff against him for arrears of rent at that rate, that rent was realisable only at the lesser rate of Rs. 300/- from August, 1953. He also alleged that he was entitled to adjust and set off any rent due from him against certain amounts said to have been paid by him for repairs and improvements of the premises and for paying owner''s share of Corporation rates. The main contention urged for him at the hearing of the application was that as a dispute had been raised by him as regards the amount payable, sec. 17(1) had no application, and the Court had no jurisdiction to make any order striking out his defence under sec. 17(3) before dealing with the dispute and passing proper orders thereon as regards the amount payable. It was also urged that as no written statement has up to that date been filed, an order striking out the defence would be premature. The learned Judge was of opinion that he could in law strike out a defence even though no written statement had been filed. He stated as his opinion that "it would be merely piling unreason upon technicality to direct the defendant to file a written statement and then suffer its rejection when in law he is no longer entitled to raise any defence against his eviction". He was further of opinion that any dispute under sec. 17(2) had also to be raised by the tenant within the time limit prescribed by sec. 17(1), that is, a month from the date of the service of summons, and that if the tenant did neither deposit or pay the undisputed rent, nor raise a dispute as to the amount of rent which is stated or claimed in the plaint and invite a determination of the same by the Court within the time limit prescribed by sub-sec. (1), the landlord was entitled to have the defence struck out. I have no hesitation in agreeing with Mr. Bakshi who appears on behalf of the petitioner that it is absurd and unrealistic to strike out a defence before a written statement has been filed. The law does not, in my opinion, entitle the Court to anticipate a defence and strike out the defence in anticipation. If an application under sec. 17(3) is made by the landlord before the written statement raising a defence against ejectment has been filed, the proper course for the Court to take is to reject the application as premature; or taking the most favourable view to the landlord, he may perhaps keep such application pending till such a written statement is filed, and then if a written statement is filed and defence against ejectment raised, the Court could take up the application under sec. 17(8) and if on considering the fact he is of opinion that the defence should be struck out, he will make an order that the defence that has been made to be struck out.

2. This view on the first question raised before us however is of little assistance to the petitioner for as, since the order was made, a written statement raising a defence against ejectment has been filed. I would have no hesitation unless the other grounds taken by the petitioner succeed, either to make an order ourselves striking out the defence which has now been taken or to direct the trial Court to pass proper orders striking out the defence. The real question for our consideration therefore is whether the learned Judge is right in his view that unless a dispute is raised by a tenant within the time limit of one month from the date of service of

summons prescribed by sec. 17(1), there would be no need for the Court to deal with such dispute and the landlord would be entitled to an order under sec. 17(3) striking out the defence since it is found that the amount for rent which is stated or claimed in the plaint has not been disputed. For a proper understanding of the position, it is necessary to consider the first three clauses of sec. 17. They are set out below.

17(1). On a suit or proceeding being instituted by the landlord on any of the grounds referred to in sec. 13, the tenant shall, within one month of the service of the writ of summons on him, deposit in Court or pay to the landlord an amount calculated at the rate of rent at which it was last paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made together with interest, on such amount calculated at the rate of eight and one-third per cent, per annum from the date when any such amount was payable upto the date of deposit, and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate.

(2) If any suit or proceeding referred to in sub-sec. (1) there is any dispute as to the amount of rent payable by the tenant, the Court shall determine, having regard to the provisions of this Act, the amount to be deposited or paid to the landlord by the tenant in accordance with the provisions of sub-sec. (1).

(3) If a tenant fails to deposit or pay any amount referred to in sub-sec. (1) or sub-sec. (2), the Court shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.

3. It is clear that when there is no dispute as regards the amount payable, whether it is the amount in default or the amount payable for subsequent months, the payments have to be made within the time limit as prescribed under sub-sec. (1). Thus the amount in default has to be paid or deposited within a month of service of the writ of summons with interest as calculated in the manner mentioned in the section and the amounts for subsequent months have to be paid or deposited month by month by the 15th of each succeeding month. It is equally clear that if a tenant fails to pay or deposit any of these undisputed amounts in accordance with the said previsions within the time limit, the Court shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit. When however there is a dispute as regards the amount of rent payable, the provisions of sub-sec. (2) would come into operation. They, as already stated, are that, if in any such suit there is any dispute as to the amount of rent payable by the tenant, the Court shall determine, having regard to the provisions of the Act, the amount to be deposited or paid to the landlord by the tenant in accordance with the provisions of sub-sec. (1). The first question for our consideration is whether the time limit of one month from the date of service of summons which is prescribed in sub-sec (1) of sec. 17 applies to sub-sec. (2). That question came up for consideration

recently in a case Dwijesh Chandra Maitra v. Kshitish Chandra Ghosh (1) reported in 61 C.W.N. 837. Mr. Justice Renupada Mukherjee sitting singly, held in that case that this time limit was not applicable to the cases under sub-sec. (2). He was of opinion that "the first two sub-sections of sec. 17 of the West Bengal Premises Rent Control Act, 1956 are independent of each other. Sub-sec. (1) requires a tenant to pay or deposit his arrears whether he does not question the amount of such arrears at all or at any stage of the suit and sub-sec. (2) requires the tenant to pay or deposit the arrears after determination of a dispute where there is a dispute about the extent of arrears". He points out that sub-sec. (2) does not lay down within what time of the determination of the dispute the tenant should pay or deposit the arrears determined by the Court and held that the Court should fix its own time limit for payment or deposit of such arrears as may be determined by it, regard being had to the tacts and circumstances of each particular case.

4. It has been urged before us on behalf of the opposite parties that the view taken by Renupada Mukherjee, J., is wrong and that the time limit prescribed in sub-sec. (1) is also applicable to cases arising under sub-sec. (2). Mr. Mitter has argued that if the mere raising of a dispute makes the time limit inapplicable, the practical effect would be that sub-sec. (1) of sec. 17 would be wholly frustrated, as in every case it will be open to the tenant to raise a dispute He contends therefore that in any case it would be proper to insist, as the learned trial Judge had insisted, that oven if the time limit of one month from the date of service of summons for making payments or deposits be not insisted upon in cases of disputes, the Court is bound to insist on such disputes being raised within this period of one month.

5. The question is not entirely free from difficulty. I should make it clear that I can see no force in Mr. Mitter''s apprehension that the provisions of sub-sec. (1) of sec. 17 would be frustrated in every case if the time limit is not insisted upon in case of dispute. Obviously, if the Court finds that the dispute raised is not a bona fide dispute, the case will not be under sub-sec. (2) at all There may be many cases where there is in fact no bona fide, dispute as regards the amount payable whether on account of arrears or for subsequent months. In all such cases the provisions of sec. 17(1) would have full play. The apprehension that the removal of the time limit prescribed in sub-sec. (1) from cases under sub-sec. (2) will result in frustrating sub-sec. (1) is therefore groundless. One cannot however ignore the concluding words of sub-sec. (2), namely, the amount to be deposited or paid to the landlord by the tenant "in accordance with the provisions of sub-sec. (1)". If, as may plausibly be argued, the words "in accordance with the provisions of sub-sec. (1)" be interpreted as in accordance with all the provisions of sub-sec. (1)., the result will be that though the Court will have to determine the amount about which there is dispute, the amounts will have nevertheless to be deposited or paid in the manner laid down in sub-sec. (1) and also within the time limits laid down in sub-sec. (1), namely, the amount in default within a month from the service of writ of summons and for the subsequent months, month by month, by the 15th of each succeeding month. The

question is whether in spite of the presence of these words "in accordance with the provisions of sub-sec. (1)", it is proper to hold, as urged for the petitioner, that there is no time limit for payment or deposit of the amounts found payable on determination of the dispute under sub-sec. (2).

6. If it was reasonably possible to give effect to the provisions of sub-sec. (2) by interpreting the words "the provisions of sub-sec. (1)" as "all the provisions of sub-sec. (1)", I would have thought it proper to accept the construction that the time limit prescribed under sub-sec. (1), being one of the provisions, will also apply to all cases of dispute under sub-sec. (2). It is easy to sec however that in practice it will often be impossible to adhere to the time limit when such a dispute is raised. Mr. Justice Mukherjee has said that there may be cases where the tenants may honestly think that there is no amount in default, so that he will not think of raising any such dispute before the landlord has in fact said that the tenant is in default. I agree with Mukherjee, J., that such a position may well arise in many cases which come within sec. 17. Assuming however that there is a bona fide dispute within the knowledge of the tenant, as regards the amount payable, either as regards the amount in default or as regards the amount to be paid month by month the earliest point of time on which the tenant can raise the dispute will be on the date on which he receives the writ of summons. In most cases, it is reasonable to think, it: would be impracticable for him to raise such a dispute by an application in Court before sometime, say a week or ten days had elapsed but even whether he raises the dispute by an application to the Court immediately on receiving the writ of summons, it will in many cases-and if we are to be guided by our experience of the progress in such matters in the subordinate Courts, in most cases-be impossible for the Court to dispose of the dispute and to determine the amount to be paid, before the month from the service of the writ of summons has elapsed. In all these cases, therefore, it will be in actual practice impossible for the tenant to make the deposit or payment within the time limit prescribed by sub-sec. (1). Therefore an interpretation chat the words "in accordance with the provisions of sub-sec. (1)" means "in accordance with all the provisions of sub-sec. (1) including the provision as regards time limit" would therefore be extremely inconvenient, if not unjust.

7. It is helpful to remember in this connection an observation made about these questions a century age in The Tiverton and North Devon Railway Company v. Robert Francis Loosemore (2) (9 A.C. 480 at page 497), by Lord Blackburn. That great Judge said: "But it was said, and I think justly, that in construing an Act of Parliament, we ought not to put a construction on it that would work injustice, or even hardship, or inconvenience, unless it is clear that such was the intention of the legislature". The correctness of the principle thus laid down has not, so far as I am aware, been ever doubted during all these years. On the contrary the principle has been applied in many cases in the Courts of this country. Applying that principle to the interpretation of section 17, I am of opinion that it is by no means clear that such an inconvenient and unjust result, as would follow if the time limit of one

month prescribed in sub-section (1) is made applicable to disputes under subsection (2), was the intention of the legislature. It is, in my opinion, possible and reasonable to interpret the words "in accordance with the provisions of sub-section (1)" as "in accordance with such provisions of sub-section (1) as may be applicable". There can be no doubt that the provision that the payment is to be made to the landlord or the deposit has to be made in Court would be applicable. It is also clear that the provision that as regards the subsequent months, the payments must be made, month by month, by the 15th, of each succeeding month, can also be conveniently applied. The only provision which cannot be conveniently applied is the provision as regards time limit of one month from the service of the writ of summons for the payment or the deposit of the amount found to be in default. It is quite clear that the legislature foresaw the difficulty that would arise in payments and deposits being made within the rigorous limits of all the provisions of sub-section (1) where the amount of rent payable was itself disputed. It was to solve that difficulty that the provisions of sub-section (2) were enacted. To say that the legislature intended still to insist on the one month''s time limit and thus to frustrate its own purpose would be wholly unfair to the legislature itself.

8. Nor can I see any justification for the view taken by the learned trial Court that in any case the dispute must be raised within a month. The legislature has said nothing about it and there is no justification for the Court to read into 1he section the words which are not there.

9. For all these reasons, I have come to the conclusion that the view taken by Mr. Justice Renupada Mukherjee in the case of Dwijesh Chandra Maitra v. Kshitish Chandra Ghosh (1) (61 C.W.N. 837) is right and that the time limit prescribed in sub-section (1) does not apply to cases where a dispute is raised under sub-section (2) and that dispute has to be determined. As I have already made it clear, only cases of bona fide dispute will come under sub-section (2) and the mere raising of a dispute will not attract these provisions.

10. In the present case we find on the materials on record that there was a bona fide dispute both as regards the amount in respect of which default is said to have been made and also as regards the amount which would be payable for the subsequent months, month by month. The learned Judge acted illegally in the exercise of his jurisdiction by refusing to determine this dispute in the view that such disputes had to be raised within the month and by striking out the defence.

11. We would, therefore, make this Rule absolute, set aside the order passed by the learned Subordinate Judge and order that the disputes raised as regards the amount of rent payable, both as regards the amount said to be in default and as regards the amount to be paid for the subsequent months, month by month, be determined by the learned Subordinate Judge and the application u/s 17, be disposed of in accordance with law.

12. There will be no order as to costs.

Guha, J.

I agree.