

**(1977) 12 CAL CK 0020**

**Calcutta High Court**

**Case No:** Civil Revision No. 864 of 1977

Sharashibala Roy Chowdhury

APPELLANT

Vs

Jewan Ram Sheoduttaraj

RESPONDENT

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**Date of Decision:** Dec. 8, 1977

**Acts Referred:**

- West Bengal Premises Tenancy Act, 1956 - Section 17(1), 17(2), 17(2A), 17(2B)

**Citation:** (1977) 2 ILR (Cal) 634

**Hon'ble Judges:** Chittatosh Mookerjee, J

**Bench:** Single Bench

**Advocate:** Bankim Chandra Banerjee and B.L. Kanodia, for the Appellant; Tapas Chandra Roy and Uma Prasad Mukherjee, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Chittatosh Mookerjee, J.

Sharashibala Roy Chowdhury, who is the Petitioner in C.R. No. 864 of 1977, has brought Title Suit No. 88 of 1972 against M/s. Jewan Ram Sheoduttaraj and Satyanarayan Prosad (who are the Petitioners in C.R. No. 1817 of 1977) for ejectment from the ground-floor of premises No. P-11/2, C.I.T. Road, now No. 92, Dr. Sundari Mohan Avenue, on the ground that the Defendants had stopped paying rent since January 1971, the tenants have damaged the premises and that they were using the premises for a purpose other than for which the same had been let out. The Defendant-tenants are contesting the said suit by filing a written statement.

2. On April 10, 1973, the Defendants filed an application u/s 17(2) of the West Bengal Premises Tenancy Act, inter alia, stating that they were tenants under the Plaintiff under a deed of lease at a rent of Rs. 500 per month. They alleged that on January 18, 1971, the Plaintiff had refused to allow the Defendants to keep their motor car in the space provided under the lease for parking of the Defendants' car. The Plaintiff had also refused the Defendants to use the servants' quarters as stipulated in the

said deed of lease. Since January 19, 1971, the Defendants were forced and compelled to keep their car in a garage and to take on rent accommodation for residence of their servants. The Defendants had been paying monthly rents of Rs. 40 for the garage and Rs. 60 for providing their servants with quarters. Therefore, they were entitled to deduction of Rs. 100 from the monthly rent of Rs. 500. The Defendants, further, alleged that the Plaintiff had failed to make necessary repairs to the suit premises and the Defendants with the consent of the Plaintiff had undertaken necessary repairs. The Defendants had incurred Rs. 2,500 for carrying out the said repairs and they claimed reimbursement of the said sum. Although the Defendants in their application u/s 17(2) expressed their willingness to deposit monthly rent, but they claimed abatement and/or suspension of the rent to the extent of Rs. 100 per month and also adjustment of Rs. 2,500 allegedly spent by them for repairs of the suit premises. They prayed that the dispute as to the amount of rent payable by the Defendant may be settled.

3. The Defendants simultaneously filed another application u/s 17(2A) of the West Bengal Premises Tenancy Act stating that they were in financial difficulties in carrying out their business and they were not in a position to pay the entire amount of arrears and current rent. They prayed that they may be allowed to pay the settled and ascertained amount of arrears of rent by way of easy instalments of Rs. 100. The Plaintiff landlord filed objections to the aforesaid two applications u/s 17(2) and (2A) of the West Bengal Premises Tenancy Act filed by the Defendant-tenants. She denied that the Defendant-tenants were entitled to abatement of the rent or to get reimbursement for the repairs of the suit premises allegedly carried out by the Defendants. The Defendants aforesaid applications under Sub-sections (2) and (2A) of Section 17 were dismissed for default but were subsequently restored. The Plaintiff had raised a preliminary objection to the maintainability of the said two applications. The Plaintiff had contended that the Defendants could not pray for granting instalments to pay arrear rent determined u/s 17(2). The learned Munsif relied upon the decision of Rule Bhattacharya J. in Kazi Abul Hossain v. Fazlur Rahaman and Bros. (1974) 78 C.W.N. 579 and upheld the maintainability of the two applications filed by the Defendants. The learned Munsif held that the Court after determination of arrears of rent can grant instalment. There-after, the learned Munsif after allowing the parties to adduce evidence disposed of the aforesaid two applications under Sub-sections (2) and (2A) of Section 17 of the West Bengal Premises Tenancy Act. The learned Munsif found that the Defendants were in arrears amounting to Rs. 10,740 up to October 1976 and the rate of rent from February 1971 would be Rs. 460 per month. The learned Munsif held that the Defendants were entitled to abatement of the contractual rent by Rs. 40 per month on the ground that the Defendants were deprived of the use of the parking space for their car since January 1971. The learned Munsif directed the Defendants to deposit Rs. 10,740 by monthly instalment of Rs. 1,000 each commencing from December 1976.

3. Mr. Banerjee, learned Advocate for the Plaintiff-Petitioner in C.R. No. 864 of 1977, has submitted that the learned Munsif should have dismissed the application of the Defendant-tenants u/s 17(2) of the West Bengal Premises Tenancy Act because of their failure to deposit admitted arrears at the rate of Rs. 400 per month in terms of Section 17(2) of the West Bengal Premises Tenancy Act. The Defendant-tenants failed to comply with the said provisions which required that the tenant should within the time specified in Sub-section (1) deposit in Court the amount admitted by him to be due from him together with an application to the Court for the determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. In the instant case, the Defendants had admitted in their application u/s 17(2) that the contractual rate of rent was Rs. 500 per month and that rent since January 1971 was in arrear. The Defendants' case u/s 17(2) was that since January 1971 they were entitled to abatement of rent and to pay at the rate of Rs. 400 per month because of landlord wrongfully depriving the Defendants of the use of the parking space and of the accommodation in the servants' quarters. The Defendants also claimed reimbursement of a sum of Rs. 2,500 on account of repairs carried out by them. But the Defendants did not deposit the balance amount of arrear rent calculated at the rate claimed by them for the period from January 1971 upto the date of their appearance in the trial Court. The Defendants having failed to deposit the amount of arrear rent which was admitted by them to be due, they contravened the mandatory provisions of Section 17(2) of the West Bengal Premises Tenancy Act. Accordingly, their application u/s 17(2) was not maintainable. Only in case they had deposited the amount admitted by them to be due together with their application u/s 17(2) of the Act, the disputes raised by them regarding abatement of rent and adjustment of costs of repairs could be adjudicated by the trial Court. The Defendants not having deposited the admitted arrears, their application u/s 17(2) of the Act was liable to be summarily dismissed.

4. The Defendants also made a separate application for granting instalment to pay the arrear rent. It is significant to note that Clause (b) of Sub-section (2A) empowers the Court to pass an order permitting the tenant to deposit or pay the sum to be deposited or paid under Sub-section (1) of Section 17 of the Act. Whereas Clause (a) of Section 17(2A) empowers the Court to extend the time specified in Sub-section (1) or Sub-section (2) for deposit or payment of any amount, Clause (b) mentions only Sub-section (1). In other words, Court's power under Clause (b) of Section 17(2A) is confined to granting instalments to pay or deposit the 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.

The Court u/s 17(2A)(b) can also grant instalments to pay amounts stipulated in the second part of Section 17(1). But in either case such application for granting

instalments must be made before the time specified in Sub-section (1) for depositing or payment of the amount in question [vide Section 17(2B) of the Act].

5. Section 17(2A) which starts with a non obstante clause empowers the Court under Clause (a) to extend the time specified in Sub-section (1) or Sub-section (2) and under Clause (b) to permit the tenant to deposit the amount to be paid or deposited under Sub-section (1) by such instalments as the Court may fix. Sub-section (2A) makes no provision for determination of any dispute of the nature covered by Sub-section (2) of Section 17. When a tenant does not dispute his liability to pay or deposit the total amount, he is required to deposit or pay u/s 17(1), but if he is unable to make such deposit or payment within the time prescribed by Sub-section (1), he may pray to Court for permitting him to deposit or pay the said amount by suitable instalments. The proviso to Section 17(2A) is referable to Clause (b) only and the said proviso specifies that the sum would include all amounts calculated at the rate of rent for the period of default including the period subsequent thereto up to the end of the month previous to that in which the order u/s 17(2A)(b) is made.

6. In the instant case, the Defendants having failed to deposit the admitted arrears together with their application u/s 17(2), the said application must fail. The Court below, however, was required to dispose of the application of the Defendants u/s 17(2A)(b) and to permit the Defendants to pay by instalments of amount calculated at the rate of Rs. 500 per month for the period of default including the period subsequent thereto in terms of powers to Clause (b). Both Clause (b) and the proviso thereunder stipulate that the Defendant-tenants would be required to pay interest upon the arrear rents. In the instant case, the trial Court committed an error of jurisdiction by not awarding any interest on the arrear rents. As the application u/s 17(2) was not maintainable, the claim of the Defendants for abatement on account of alleged deprivation of the use of the parking space and of the accommodation in the servants' quarters must be necessarily left open. Similarly, their claim for reimbursement for alleged repairs could not be gone into at this stage. The Defendant-tenants' application u/s 17(2) should be summarily dismissed and the Court should again hear and dispose of their application u/s 17(2A)(b) in accordance with law and in the light of the observations contained in this judgment. It would be open to the Defendants to deposit the arrear rent, if any, subject to the decision in the suit. At the time of the final hearing of the suit it would be open also to the Defendants to raise the above question of abatement of rent and reimbursement of costs of alleged repairs.

7. In view of the above legal position it is not necessary to consider whether the delay on the part of the Defendant-Petitioners in C.R. No. 1817 of 1977 in moving this Court in revision should be condoned or not. As already stated their application u/s 17(2) was not maintainable and therefore, they cannot move this Court against any part of the order made u/s 17(2) by the trial Court. Their application u/s 17(2A) should be reheard and the arrear rents should be again calculated at the rate of Rs.

500 per month and the interest payable should be determined. The Court will grant instalments to pay balance amount, if any, of the arrear rents.

8. Accordingly, I make C.R. No. 864 of 1977 absolute and set aside the order complained of. The Defendants' application u/s 17(2) is dismissed on the ground that the same is not maintainable. The trial Court is directed to again hear and dispose of the Defendants application u/s 17(2A) of the West Bengal Premises Tenancy Act in accordance with law and in the light of the observations contained in this judgment. No separate order is necessary in C.R. No. 1817 of 1977 and the same is also disposed of without any order as to costs.