(1960) 06 CAL CK 0017

Calcutta High Court

Case No: Appeal from Original Decree No. 406 of 1959

Rampher Jaiswal		APPELLANT
	Vs	
Ram Subhag Shaw		RESPONDENT

Date of Decision: June 16, 1960

Acts Referred:

- West Bengal Premises Tenancy Act, 1956 - Section 13, 13(1)(i), 17, 17(1), 17(3)

Citation: 64 CWN 880

Hon'ble Judges: Renupada Mukherjee, J; Banerjee, J

Bench: Division Bench

Advocate: Hirendra Chandra Ghosh and Mritunjoy Palit, for the Appellant;Monmohan Mukherjee, for the Respondent

Judgement

Renupada Mukherjee, J.

This appeal arises out of a suit for ejectment instituted by the respondent against the appellant for eviction of the latter from a room in hut No. 27 of premises No. 77, Kailash Bose Street, Calcutta. For the purpose of the present litigation we take it that the monthly rent payable for the room at the time of the institution of the suit was Rs. 40/-. The plaintiff sought to evict the defendant from the disputed room on the ground of reasonable requirement. The suit was contested by the defendant on several grounds to which we need not refer at the present stage.

2. During the pendency of the suit the plaintiff filed an application u/s 17(3) of the West Bengal Premises Tenancy Act, 1956, for striking out the defence of the defendant against delivery of possession. This application was opposed by the defendant. The application was disposed of by the learned Judge of the City Civil Court on 6th July, 1959. It was allowed and the defence of the defendant against delivery of possession was struck out. Thereafter the suit was heard ex parte and decreed by the court below. So the defendant has preferred this appeal.

3. Mr. Ghosh, appearing on behalf of defendant appellant, submitted only one point for our consideration in this appeal. He contended that the defence of his client against delivery of possession was struck out by the court below by an erroneous construction of section 17 of the West Bengal Premises Tenancy Act. In order to appreciate whether there is any merit in this contention of Mr. Ghosh we need state the following facts about which there is no dispute.

4. The suit for eviction was started by the plaintiff respondent in the court below on 9th May, 1958. Thereafter the writ of summons in the suit was duly served upon the defendant on 4th June, 1958. A few days after service of the summons, namely on 10th June, 1958, the rent for the month of May. 1058, was deposited by the defendant appellant with the Rent Controller. It is an admitted fact that for some time prior to the deposit of this rent, the appellant had been depositing his rent with the Rent Controller, month by month, in a valid manner. All subsequent rents beginning from the rent of June, 1958, were deposited month by month in the trial court by the appellant with the permission of that court. The validity of those last-mentioned deposits were not questioned either in the court below or in this appeal.

5. Upon the above facts the trial court came to the conclusion that a suit for eviction having been instituted against the appellant and rent for the month of May, 1958, having been deposited with the Rent Controller after the institution of the suit and after service of summons, the deposit was not a deposit in court or a payment to the landlord within the meaning of section 17(1) of the West Bengal Premises Tenancy Act, 1956. Having come to this conclusion the court below held that the provision of section 17(1) not having been complied with by the tenant in so far as payment of rent for May, 1958, is concerned, the tenant was not entitled to any protection from eviction. Having taken this view of law the court below struck out the defence of the appellant against delivery of possession and decreed the suit ex parte.

6. Mr. Ghosh contended on behalf of the appellant that the above view of law taken by the lower court is erroneous. Mr. Ghosh at first attempted to attack the judgment of the court below on the ground that there had been a substantial compliance with the requirements of section 17(1) of the West Bengal Premises Tenancy Act, 1956. Later on he gave up that line of argument and he submitted that the rent for May, 1958, which had been deposited with the Rent Controller, was not required to be deposited in court or paid to the landlord under the provision of section 17(1) of the Act mentioned above and so his client did not come within the mischief of that section.

7. Section 17(1) of the West Bengal Premises Tenancy Act, 1956, which will be henceforth described as ''the Act'', runs in the following terms:

17. When a tenant can get the benefit of protection against eviction. --

(1) On a suit or proceeding being instituted by the landlord on any of the grounds referred to in section 13, the tenant shall, within one month of the service of the writ of summons on him, de posit 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 up to 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.

8. It appears to me that sub-section (1) of section 17 of the Act has proved to be a veritable thorny problem to the members of the profession and also to the learned Judges of this Court, who have interpreted this sub-section in different ways. In a case reported in 61 C.W.N., 890 (1) (Gokul Bala Ray v. Sarat Chandra Ghosal) I held that a deposit with the Rent Controller, following service of the writ of summons in an ejectment suit, is equivalent to payment to the landlord u/s 17(1) of the West Bengal Premises Tenancy Act, 1956. Quite an opposite view was taken by Guha Ray, J. in a case reported in the same volume of the Calcutta Weekly Notes at page 893 (2) (Ganesh Chandra Ganguly v. Mahabir Prosad). The matter came up for consideration before a Division Bench of this Court and that Court held that the deposit of rent in the Rent Controller''s office is not a legal compliance with the provisions of section 17 of the West Bengal Premises Tenancy Act, 1956, as it does not amount either to deposit in Court or to payment to landlord, as required by sub-section (1) of section 17. This decision of the Division Bench is reported in 62 C.W.N. 555 (3) (Abdul Majid v. Dr. Samiruddin). The learned Judges of the Division Bench (Das Gupta and Law, JJ.) practically overruled the view which had been taken by me in the case mentioned above and approved the decision of Guha Ray, J. The same learned Judges, who had decided the case reported in (3) 62 C.W.N., 555, had refused to give effect to the penal provision of section 17 of the Act in a case (4) (Civil Revision Case No. 3393 of 1957 -- Lakshmi Kanta Bhuiya v. Behari Lal Poddar & Ors., decided on 15th April, 1958) where rent had been deposited with the Rent Controller in so-called violation of the provision of section 17(1) of the Act. I must, however, mention that the fact that rent had been deposited with the Rent Controller and not in Court and that rent had not been paid to the landlord personally was not brought to the notice of the learned Judges in that case. However, the decision is there.

9. Another Division Bench of this Court has practically refused to give that stringent construction to sub-section (1) of section 17 of the Act as was given in the case reported in (3) 62 C.W.N. 555. The decision in that case was given in (5) Civil Revision Case No. 2735 of 1959 (Anil Chandra Ganguly v. Sati Prosanna Bhoumick, decided by Sen and N.K. Sen, JJ. on May 27, 1960) [Since reported in 64 C.W.N. 689-Ed.] and it has not yet been reported. In another recent case decided by Chatterjee, J. (Rajib Lochan Banerjee v. Anil Kumar Ghosh, (6) reported in 64 C.W.N. 685) he has

attempted to minimise the rigour of the provision of sub-section (1) of section 17 of the Act by holding that some deposits of advance rent with the Rent Controller would disentitle the landlord from getting the benefit of sub-section (3) of section 17 of the Act.

10. All these decisions would show that some Judges have taken a very stringent view of sub-section (1) of section 17 of the Act regarding the method of deposit or payment of any rent or money to the landlord after the institution of a suit. In this state of unsettled condition of law as embodied in sub-section (1) of section 17 there might have been a necessity for us to consider seriously whether the matter should be referred to the Full Bench but for one distinguishing fact which, in my opinion, takes out the present case from the purview of section 17(1) of the Act. That sub-section, as I understand it, requires a tenant to deposit or pay three kinds of money after the institution of a suit. The first kind consists of an amount which should be calculated at the rate of rent at which it was last paid and that amount should be payable "for the period for which the tenant may have made default". The second kind of money payable under the above subsection of section 17 is the amount in respect of which default had been made for the period subsequent to the period mentioned above. The third kind of money payable u/s 17(1) is monthly rent which should be paid by the 15th day of the succeeding month. Evidently the amount coming under the first category relates to pre-suit defaults, the amount coming under the second category relates to post-suit defaults and the amount coming under the third category represents monthly rent.

11. The present suit was instituted on 9th May, 1958. The writ of summons was served on the appellant on 4th June, 1958 and the rent for May, 1958 was deposited with the Rent Controller on 10th June, 1958. According to sub-section (2) of section 4 of the Act rent of a particular month is payable by the tenant by the 15th day of the next following month in the absence of a contract to the contrary. There was no contract to the contrary in the present case, at least none that was alleged by the respondent. So, we may take it that the rent for May, 1958 was payable by 15th June, 1958. It cannot, therefore, be said that the tenant was in default in respect of the rent of May, 1958 either at the date of the institution of the suit or at the date of service of summons or at the date of the deposit of this rent with the Rent Controller. That being so, I am unable to see how this amount comes within the purview of section 17(1) of the Act. Such an amount could be paid or deposited in the manner in which rent for previous months was being deposited. Even assuming that the decision in the case reported in (3) 62 C.W.N. 555 is correct, on which point I have great doubts, it must be held that the impugned deposit is not in any way affected by the provision of section 17(1).

12. Mr. Mukherjee contended on behalf of the plaintiff respondent that whatever amount is paid by a tenant after service of summons after the institution of a suit must either be deposited in Court or paid to the landlord according to the provision

of section 17(1) of the Act and if that procedure in the matter of deposit or payment of rent is not followed, then the tenant brings himself within the mischief of sub-section (3) of section 17 of the Act. I am unable to give effect to this broad contention of Mr. Mukherjee. After having analysed sub-section (1) of section 17 I have shown that a sum of money which does not fall within the three categories mentioned in sub-section (1) of section 17 can be validly paid or deposited by a tenant in a mode not prescribed by the above provision of law. This being my view I am of opinion that the court below was not justified in striking out the defence of the appellant against delivery of possession. The case on which the learned Judge relied, namely the case of Gobardhan Chandra Mondal v. Jiban Bala Nandi, (7) reported in 63 C.W.N. 71 was apparently misunderstood and misinterpreted by the learned Judge.

13. In view of what has been stated above, I am of opinion that the appeal must be allowed. I accordingly direct that the appeal be allowed and the judgment and decree of the court below be set aside and the defence of the defendant appellant be restored and the suit be remanded to the court below for decision on the merits. A reasonable opportunity will be given to both parties to adduce evidence in the court below in support of their respective contentions.

14. In the circumstances of the case, parties will bear their own costs in this appeal. Costs of the court below will abide the final result of the suit.

15. Let the records be transmitted to the court below at an early date. That court will dispose of the suit as expeditiously as possible.

Banerjee, J.

16. I agree with My Lord that this appeal must be allowed but I have to add a few words of my own.

17. The following facts are not disputed. The plaintiff, by purchase; became owner of hut No. 27 appertaining to premises No. 77, Kailash Bose Street, Calcutta. The defendant appellant was a tenant in respect of one of the rooms in the hut. The tenancy of the defendant was in accordance with the English calendar month. By a notice to quit the plaintiff respondent sought to terminate the tenancy of the defendant with the expiry of the month of April, 1958.

18. Thereafter on May 9, 1958 the plaintiff instituted the suit, out of which this appeal arises, for eviction of the defendant. Summons in the suit was served on the defendant on June 4, 1958.

19. There is no dispute that even prior to the institution of the suit the tenant appellant was depositing rent with the Rent Controller. On June 10, 1958 the tenant defendant deposited the rent for the month of May, 1958, with the Rent Controller and thereafter on June 17, 1958 he filed his written statement in the suit. For the payment of the rent during the pendency of the suit, he applied before the trial

court for permission to deposit such rent in Court and obtained such permission.

20. On March 5, 1959 the plaintiff respondent filed an application praying that the defence of the defendant tenant be struck off on the ground that he had not deposited the rent for the month of May. 1958 in the trial court, even after the service of summons of the suit on him but had wrongfully deposited the same with the Rent Controller and had thus brought himself within the mischief of section 17(3) of the West Bengal Premises Tenancy Act, 1956.

21. That application was opposed by the tenant defendant on the ground that he was not liable, under the provisions of section 17(1) of the West Bengal Premises Tenancy Act, 1956 to deposit the rent for the month of May, 1958 in the trial court, because he was not a defaulter in respect of the rent for the said month.

22. The trial court overruled the contention and relying on a decision reported in 63 C.W.N. 71 (7) (Gobordhan Chandra Mondal v. Jiban Bala Nandi) came to the conclusion that even where there was no previous default a tenant was liable to deposit in Court an amount calculated at the rate of rent last paid for the period subsequent to the institution of the suit up to the end of the month previous to that in which the deposit or payment was required to be made. In the view that the trial court took it allowed the application u/s 17(3), filed on behalf of the plaintiff landlord, struck out the written statement filed by the tenant defendant, proceeded to hear and determine the suit ex parte and decreed the plaintiff''s claim for eviction.

23. The propriety of the decree is being disputed before us at the instance of the defendant tenant.

24. Sub-section (1) of section 17 of the West Bengal Premises Tenancy Act, 1956 is very unhappily worded. The unhappy situation has been aggravated by a number of decisions of this Court, which have not spoken in the same voice. I have to refer to some of those decisions in order to see whether any of those decisions will govern a case such as we have now to decide.

25. The earliest decision on the point is the one reported in 61 C.W.N., 890 (1) (Bakul Bala Roy v. Sarat Chandra Ghosal) in which Renupada Mukherjee, J. had to consider the question whether deposit of rent for two months, with the Rent Controller after the service of summons of the suit on the defendant, amounted to payment within the meaning of section 17(1) of the Act. it was contended in that case that section 17(3) recognised only two (sic) of payment or deposits, namely, "deposit in Court" or "payment landlord" and did not recognise a deposit made with the Rent Controller. His Lordship overruled the contention with the following observations :

In my judgment, this contention is without any substance. It may easily be imagined that after the institution of an ejectment suit feeling between the parties get strained and the landlord cannot be expected to be willing to accept rent amicably.

In these circumstances, the tenant may after the institution of a suit, deposit rent with the Rent Controller in the prescribed manner u/s 21 of the Act referred to above, and if such deposit is made in accordance with the provisions of the West Bengal Premises Tenancy Act, 1956, then under sub section (3) of section 22, a deposit of rent with the Rent Controller should be taken as equivalent to payment to the landlord. Under these circumstances, I hold that deposit of rent in this particular case for the months of Baisakh and Jaistha, 1363 B.S. must be regarded as equivalent to payment of rent to the landlord within the meaning of section 17(1) of the West Bengal Premises Tenancy Act, 1956.

26. The aforesaid decision has one virtue in it. It gives a beneficial construction to the rigorous provisions introduced by section 17 of the West Bengal Premises Tenancy Act and tries to minimise the difficulties created by a statute, which is professedly a remedial statute. It is, however, possible to dispute the reasons given in the decision. One of the reasons given, justifying a deposit with the Rent Controller, is the tenant''s apprehension that the landlord would not accept rent amicably, if tendered to him after the institution of a suit for eviction. The West Bengal Premises Tenancy Act provides for two contingencies only when a deposit of rent may be made with the Rent Controller, the first being when the landlord refuses to accept rent and the other being when the tenant is in doubt as to whom the rent is payable. The Statute does not provide for deposit of rent with the Rent Controller in the contingency that the landlord might not accept rent, if tendered.

27. The next decision on the point is the one reported in 61 C.W.N. 893 (2) (Ganesh Chandra Ganguly v. Mahabir Prosad) in which Guha Ray, J. dissented from the decision given by Renupada Mukherjee, J., above referred to. On a three fold ground his Lordship held that section 17(1) of the West Bengal Premises Tenancy Act did not contemplate a deposit of rent made with the Rent Controller, after service of summons in a suit for eviction. The reasons given by his Lordship are set out below:

In the first place, section 22 applies only to deposits of rent under that Chapter, namely, Chapter IV. The deposit required by section 17(1), however, is not deposit of rent. The amount to be deposited has been deliberately described as an amount calculated at the rate of rent at which it was last paid for the period for which the tenant made default and even the current rent has not been described as such in the last part of sub-section (1) of section 17. There also it has been described as a sum equivalent to the rent at that rate. Evidently, therefore, what is to be deposited u/s 17(1) is not rent but a sum equivalent to the rent at the rate at which it was last paid. That being so, the operation of Chapter IV of the Act would seem to be excluded by the provision in section 17(1) that what is to be deposited under that sub-section is to be deposited in court. Section 17 is obviously in the nature of a special provision applicable only to cases where there is a suit for ejectment on the grounds mentioned in section 13 and it must accordingly in such cases take precedence over the provisions in Chapter IV even when the conditions for the

application of that chapter exist. The provisions of Chapter IV which lay down the circumstances and the modes in which rent may be deposited with the Rent Controller are meant to cover all cases where there is no suit between the landlord and the tenant and where section 17 has no application. Consequently, when there is a suit to which section 17 applies, deposits or payments must be made according to the requirements of that section and not in accordance with the rules in Chapter IV, even if the deposits could otherwise be made under these rules.

28. The decision of Guha Ray, J., above referred to, found support in a decision reported in (3) 62 C.W.N., 555 (Abdul Majid v. Dr. Samiruddin) in which Das Gupta and Law, JJ. adopted the reasons given by Guha, Ray, J. and added thereto an additional reason of their Lordships'' own. The additional reason was : --

A closer examination of the provisions of section 17, however, makes it clear that the whole purpose and object of the provisions of that section will be frustrated if a deposit u/s 21 in view of the provisions of section 22(3), be held to amount to payment of rent to the landlord within the meaning of section 17. I have already set out the contents of section 17. It is important to notice that no distinction is made in these provisions between cases where there is a contract in writing fixing a date for payment of rent and cases where there is no such contract. Whether there is a contract for payment of rent by a particular date or there is not, the legislature requires that where a suit has been instituted by the landlord on any of the grounds referred to in section 13, the tenant shall, in addition to paying up the amount in default, ''continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate''. This will be so oven if there is a contract in writing fixing the date of payment say to be the 20th of the next succeeding month. The tenant will not be at liberty to pay in accordance with the contract but will have to pay, if he is to escape the penalty under sub-section (3), the rent of each month by the 15th of each succeeding month. This clearly shows the great importance the legislature attached to this fact of payment being made for each month by the 15th of each succeeding month. What happens to this requirement if instead of deposit in court by the 15th or payment to the landlord by the 15th, a deposit is made under the provisions of Chapter IV, sub-section (1) or section 22, which I have already set out, provides that in order to be a valid deposit, the amount has to be deposited within fifteen days of the time fixed by the contract in writing and in the absence of such contract in writing, within the last day of the month following that for which the rent was payable. Deposit in the Rent Controller''s office will be a valid deposit in a case where there is no contract in writing as regards the date of payment, if paid within the last day of the month following that for which the rent was payable, that is, 13 or 14 or 15 or 16 days after the 15th day of the succeeding month. In spite of this, the effect of sub-section (3) would be that the rent would be deemed to have been paid on the 15th day of the month next following that for which the rent is payable. Thus, a notional payment on the 15th of the succeeding month would have to be taken as sufficient

compliance with the stringent requirement of section 17(1) that the payment must be made by the 15th of each succeeding month. I am unable to persude myself that the legislature, having in its section 17 laid down definitely that payments must be made month by month by the 15th of each succeeding month irrespective of whether there was a contract fixing a date of payment or not would lightly brush that aside and produce, by the words in sub-section (3) of section 22, the effect that payment even on the last day of the month succeeding that for which the rent was payable, would be sufficient.

29. The view taken both by Guha Ray, J. and by Das Gupta and Law, JJ. in interpreting section 17(1) read with section 17(3) of the West Bengal Premises Tenancy Act. 1956 inclines to a literal interpretation of the Act.

30. Law is, no doubt, an objective thing. In interpreting law consideration of hardship and inconvenience of persons affected by the law is of irrelevant consequence. But in interpreting a remedial Statute that construction should be adopted which would enhance the remedy rather than retard it. In the two decisions reported in (2) 61 C.W.N. 893 and (3) 62 C.W.N. 555, sub-sections (1) and (3) of section 17 of the West Bengal Premises Tenancy Act were given a somewhat literal and rigorous construction. That method of construction of Statute is no doubt, an elementary method of construction. If the language of sub-section (1) and sub-section (3) of section 17 had admitted of no other meaning than what was given in the aforesaid two decisions, then the interpretation as in the said two decisions must have been the only logical interpretation. But I find it difficult to read in the words, "an amount calculated at the rate of rent at which it was last paid", a meaning which is different from the meaning of the word "rent", which difference was, however, noticed by Guha Ray, J. in the case reported in (2) 61 C.W.N. 893 and by Das Gupta and Law. JJ. in the decision in (3) 62 C.W.N. 555.

31. Section 2(h) of the West Bengal Premises Tenancy Act, 1956, defines the word "tenant" in the following manner:

(h) "tenant" includes any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be, payable and also any person continuing in possession after the termination of his tenancy but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction.

32. Section 4 of the said Act contains provision for payment of rent by a tenant (including payment of rent by a tenant whose tenancy may have been terminated by a notice to quit) as herein below set out:

4(1) A tenant shall, subject to the provisions of this Act, pay to the landlord,

(a) in cases where fair rent has been fixed for any premises, such rent;

(b) in other cases, the rent agreed upon until fair rent is fixed.

(2) Rent shall be paid within the time fixed by contract or in the absence of such contract, by the fifteenth day as the month (sic)xt following the month for which it payable.

33. Regard being had to the aforesaid provisions of law it is difficult to conceive what is payable by a tenant, after service of summons on him in a suit for eviction, is something different than payment of rent.

34. Default in payment of rent for two months, within a period of 12 months or for two successive periods, in cases where rent is not payable monthly, takes away the protection against eviction under the provisions of section 13(1) (i) of the West Bengal Premises Tenancy Act. If what is payable u/s 17(1) is not rent and if deposit in court u/s 17(1) has not the effect of deposit of rent with the Rent Controller or of payment to the landlord, then if the pending suit fails against the tenant, either on technical ground or on merits, a tenant may ultimately fall within the mischief of section 13(1) (i) of the Act and lose his statutory protection from eviction. That must be the undesirable consequence, in spite of the fact that the tenant was compelled to deposit a sum of money equivalent to rent, month by month, in the court where a suit for eviction was pending against him, so as to save himself from the penal consequence of section 17(3). It is not to be expected that a tenant would go on depositing rent with the Rent Controller in order to save himself from the penal consequences of section 13(1) (i) and simultaneously go on depositing another sum of money, equivalent to the monthly rent in court in order to save himself from the penal consequences of section 17(3).

35. In my opinion, the words "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 defaulted 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 up to the date of deposit," do not exclude the deposit of the money in the sense of deposit of rent. The section had to be so worded, because what had to be deposited might not be merely one month''s rent in default but several months'' rent in default, together with interest at the statutory rate due thereon. Since the deposit of the total amount comprising of rent in default and interest thereon had to be meant, section 17(1) was worded in the manner as hereinbefore quoted. In the closing portion of section 17(1) the words "a sum equivalent to the rent" were not, in my opinion, used in a sense different from the sense as in the words '"'amount calculated at the rate of rent at which it was last paid" in the earlier part of the section.

36. I have already given my own reasons why such words should not be given a meaning other than the meaning of payment of rent and have also emphasised on the undesirable consequence which the meaning given to the words in the two decisions. (2) 61 C.W.N. 893 and (3) 62 C.W.N. 555, may entail. I need not lay stress

on the same any more.

37. Das Gupta and Law, JJ., who delivered the decision reported in (3) 62 C.W.N. 555, had also delivered another unreported decision on the same point, in which their Lordships had taken a completely different view. That decision is to be found in the records of Civil Revision Case No, 3393 of 1957 (4) (Lakshmi Kanta Bhuiya v. Behari Lal Poddar & Ors.) and I set cut the relevant portion of the judgment here in below:

We are satisfied, on examination of the seven challans annexed to the supplementary affidavit sworn by the petitioner on the 12th December 1957, that all these seven challans were actually filed in the trial court on the 25th July, 1957. These challans show deposit of rent in the Rent Controller''s office for the period November, 1956 to May. 1957. The learned Judge, is, therefore, wrong in thinking that the challans for the months of November 1956 to May. 1957 had not been filed. It appears that somehow they escaped the attention of the learned Judge and were not taken into consideration. As these were filed in proper time, the learned Judge ought to have taken them into consideration, and if he had, he could not but have held that all rents had been paid "within one month from the date of service of the writ of summons as required by sub-section (1) of section 17 of the West Bengal Premises Tenancy Act of 1956 and that there was no ground for striking out the defence.

38. The aforesaid unreported judgment was delivered on April 15, 1958. About a month thereafter, on May 18, 1958, the same learned Judges delivered the judgment which is reported in (3) 62 C.W.N. 555. but no reference to the unreported judgment was made in the reported judgment and I find no indication, in the reported judgment, of what pleased their Lordships to change the view that they had taken in the unreported judgment, above referred to.

39. In the decision reported in (7) 63 C.W.N. 71 (Gobordhan Chandra Mondal v. Jiban Bala Nandi) P.K. Sarkar, J. went a step beyond the decision reported in (2) 61 C.W.N. 863 and (3) 62 C.W.N: 555 and observed:

But whether there was any previous default or not, after the service of summons the defendant was entitled to deposit in court or pay to the plaintiff, within one month from the date of such service, an amount calculated at the rate of rent last paid for the period subsequent to the institution of the suit up to the end of the month previous to that in which the deposit or payment was required to be made.

40. The words used in the section are "for the period for which the tenant may have made default including the period subsequent thereto" and not "for the period subsequent to the institution of the suit" as his Lordship was pleased to read in the section.

41. In interpreting the language of section 17 of the Act, in more recent times, some sort of liberal interpretation appears to have been made.

42. In a decision reported in (8) 64 C.W.N. 438 (Subhas Chandra Bhattacharjee v. Panchu Rani Dutta) Sen, J. introduced the doctrine of "de minimis non curat lex" and condoned a deposit made in court u/s 17(1), which was short by 3 nP. Again in an unreported decision to, be found in the records of Civil Revision Cases Nos. 884 to 886 of 1957 (9) (Apurba Kumar Sinha v. Surendra Narayan Sinha) Sen, J., observed as follows:

I must agree with the learned Judge in holding that strictly speaking, there was non-compliance with the provisions of section 17(1) of the West Bengal Premises Tenancy Act, 1956, inasmuch as the rent due for July, 1956, was deposited not in Court but in the office of the Rent Controller. It is now definitely settled that deposit in the Rent Controller''s office is not compliance with the provisions of sect on 17(1) -- vide Abdul Majid v. Dr. Samirruddin, 62 C.W.N. 555. Before the above decision of a Division Bench of this Court, however, the position was somewhat uncertain, because two single Benches of this Court had taken two contradictory views in Gokul Bala Roy v. Sarat Chandra Ghosal. 61 C.W.N. 890 and Ganesh Chandra Ganguly v. Mahabir Prosad, 61 C.W.N. 893. The deposit of rent for the month of July, 1956, was made long before the law on the point was definitely, settled by the Division Bench ruling. It is no doubt true that in view of the terms of section 17(1) the tenants ought not to have deposited rent in the Rent Controller''s office after receipt of the summons. But this wrong deposit in the Rent Controller''s office was made for only one month and from subsequent months the rents were correctly deposited in the Court. This is a case in which a bona fide mistake appears to have been made by the tenants and, in my opinion, the tenants are entitled to the privilege of the maxim de minimis non curat lex.
43. The, application of the principle of "de minimis non curat lex" to one month''s non-compliance of statutory provision may be difficult to accept.

44. I need in the next place refer to another unreported decision (5) by Sen and N.K. Sen, JJ. in Civil Revision Case No. 2735 of 1959 (Anil Chandra Ganguly v. Sati Prosanna Bhowmick). [Since reported in 6-1 C.W.N. 689-Ed.] in which their Lordships made the following observations:

The first part of sub-section (1) contains no reference to payment or deposit by the 15th of each succeeding month. It provides chiefly for payment to the landlord or deposit in Court of all the arrears of rent i.e., rent for the period in default, together with interest calculated at eight and one-third per cent. from the date when the rent fell due to the date of the payment or deposit; although it is also provided that such deposit shall include the dues for the period subsequent to the period for which the tenant may have made default up to the end of the month previous to that in which the payment or deposit is made. Under this part the tenant gets one month''s time to pay or deposit in Court his dues for the period in default together with interest thereon. In a case where there is no arrear due on the date when the writ of summons is served on the tenant, it would appear from the wording of sub-section

(1) that the liability to deposit or pay month by month accrues after one month of the service of the writ of summons on the defendant; otherwise the word "thereafter" in the second part of sub-section (1) would have no meaning. Some rent may fall due within that one month. The tenant may no doubt deposit such rent in Court as it falls due; but if he deposits the rent thus falling due in the Rent Controller''s office, it would be difficult to hold that he thereby incurs the liability under sub-section (3). In Narayan Chandra Chandra v. Amala Rani Saha (C.R. 1304 of 1959 decided on 4th September, 1959) Renupada Mukherjee. J. held that the tenant does not incur the liability under sub-section (3) in such a case. In the case before him the summons were served on 2nd October, 1958; the rent for September, 1958, was deposited in the Rent Controller''s office by the 15th October 1958; dues for subsequent months were deposited in Court by the appropriate dates. Renupada Mukherjee, J. held that the language of sub-section (1) was not very clear and appeared to give the impression that the liability to pay or deposit current rent month by month arose only after the payment of the arrear for which the tenant was allowed one month; and if in that month the tenant continued depositing current rent falling due in the Rent Controller''s office, it could not be said that his defence was liable to be struck out. In a Division Bench case decided by my learned brother and myself recently we happened to take the same view.

The question is whether the position would be different when there is some arrear of rent due on the date when the writ of summons was served on the defendant. It might be said that along with the amount due for the period in default the tenant has to include the rent due for the period subsequent thereto upto the end of the month just before that in which the deposit is made, and that therefore the current rent falling due within one month after the service of the writ of summons should also be deposited along with arrears of rent which are deposited. It is no doubt true that in view of the wording of the first part of sub-section (1) of section 17 such a course would appear to be quite correct. On the other hand, rent for the period subsequent to the period in default has to be deposited only if such rent is due; and if the tenant has already paid the rent for such subsequent period, clearly the rent for such subsequent period cannot he included in the amount to be deposited under the first part of subsection (1) of section 17.

45. I shall hereinafter give my own reasons why I need not differ from the conclusions of their Lordships herein-before quoted.

46. I need now refer to one more decision on the interpretation of sub-section (1) and sub-section (3) of section 17, reported in (6) 64 C.W.N. 685 (Rajib Lochan Banerjee v. Ami Kumar Ghosh). In that case Chatterjee, J. held as follows:

The plaintiff landlord instituted a suit for ejectment- against the defendant. The suit was instituted on the 29th of April, 1959. On May 1, 1959, the defendant deposited with the Rent Controller the rent for the period from Chaitra 1365 (14th of March. 1959) to Shravan, 1366 B.S. Summons were served on the defendant on the 20th

May, 1959 and nothing was deposited in Court till 7th August, 1959, which will be about Shravan, 1366 B.S. The question in this case is whether in spite of such deposit in advance with the Kent Controller the tenant is to be considered a defaulter within the meaning of section 17(1) of the West Bengal Premises Tenancy Act, 1956. * * and whether his defence would be struck off.

In the present case we find that the tenant deposited rent for the months in questions before the Rent Controller. The Rent Controller was authorised to accept such rent and it was on his permission that rent was so deposited. Section 5(b) of the Act may be referred to, which provides that no person shall, in consideration of the grant, renewal or continuation of a tenancy of any premises, except with the previous permission of the Controller, can (sic.) pay or receive the payment of any sum exceeding one month''s rent. Hence the payment of rent in advance is recognised by the Act. But so far as the direct payment of rent is concerned, it cannot be for more than a month except with the previous permission of the Controller. Therefore, the landlord could have accepted the rent for all the months with the previous permission of the Rent Controller. Supposing that the landlord had accepted rent for a whole year with the permission of the Rent Controller and the landlord after such acceptance instituted a suit for ejectment and the tenant on the basis of advance payment did not make further payments, u/s 17 of the Act, he would still be liable to penalty, u/s 17(3) of the Act, the defence would be struck off for not depositing the rent, even though the rent had been actually paid to the landlord. The second part of section 17, relating to current rent, is unconditional and compulsory for tenant and he is to pay in Court within the 15th of every succeeding month, without reference to default. Therefore, even though the landlord had accepted rent with the permission of the Controller and even though the tenants had paid rent with the permission of the Controller, the defence of the defendants must be struck-off on plain meaning of the section.
Such plain meaning of the section is absurd.

Section 5 contains provision by which rent can be paid in advance or deposited in advance. If such deposit is a legal discharge of the tenant''s duties, then any other construction by which that deposit is affected, must be contradictory to section 5 of the Act. The provision relating to current rent in section 17(1) is an absolute provision where the deposit must be made whether the tenant defaulted or not. Even if it be held that the tenant had not defaulted, current rent must be deposited. This, as I have already shown, is an absurdity. Hence section 17 may be construed in two ways -- one by including the cases of advance payment or advance deposit and another by excluding the cases of advance payment or advance de posit.

Two constructions being possible, we would not take that construction which would obstruct the harmonious working of the Act and of section 17 and section 5 in particular. Therefore, section 17 must be construed as not to include the cases of advance payment, payment in advance of the suit or at least, in advance of the

service of summons.

However, I may just note that, if section 17 is complied with by sending the money by money order, which means, if section 17 can be complied with by the agency of the Central Government and, if again provision of section 17 can be complied with by payment of a cheque i.e. by the agency of a third person, I do not find any reason why the agency of the West Bengal Government through the Rent Controller would not be a sufficient discharge of the tenant''s duty.

47. I have my own doubts as to whether a tenant may at all take advantage of section 5 of the Act and deposit in advance rent for considerable periods with the Rent Controller. Again, supposing a tenant, with a long purse, deposits five years'' rent in advance with the Rent Controller, with the Rent Controller''s permission, can the landlord terminate his tenancy during that period by serving a notice to quit? Will not such deposits in advance be in conflict with the scheme of the Act? But I need not go into that question, because I am not concerned with that aspect of the matter in this appeal. I desire only to add that I do not express my opinion on the equation made in the aforesaid judgment of sending money by money order with payment of money by the agency of the West Bengal Government through the Rent Controller.

48. I have referred to a long line of decisions in order to emphasise on the unsatisfactory state of affairs brought about by decisions, which have not spoken in one voice. In this case, however, I am not concerned with any one of the decisions, above referred to, because in the particular facts of this case none of the decisions, above referred to, are strictly applicable.

49. In the present case the deposit of rent for the month of May, 1958 was made on June 10, 1958. Rent for the month of May. 1958, in the admitted absence of any special contract for payment of rent, was payable by the 15th 1958. On June 10, 1958, therefore, the tenant was not a defaulter in payment of rent for the month of May, 1958.

50. Section 17(1) contemplates two kinds of payment or deposit: -- (i) deposit or payment of 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, and (ii) and thereafter deposit or payment month by month by the 15th day of each succeeding month of a sum equivalent to the rent at that rate.

51. The tenant is not certainly called upon to make any deposit under the first part of section 17(1) unless he is in default in payment of rent for any month or months. The words "including a period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made," in my opinion, do not introduce any liability for payment in cases where there was no default. The words

"including" and "thereto" link up such payment with payment of rent in default.

52. The word "including" is used in the sense of extending the meaning of the word to which it attaches. In the case of Dilworth v. The Commissioner of Stamps (10) (1899 A.C., 99) Lord Watson observed:

The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word "include" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to shew that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to "mean and include", and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.

53. The dictionary meaning of the word "thereto" is "in addition".

54. Therefore, if there was no default nothing could be added thereto and nothing could be included therein. If, however, there was a default then at the time of payment of such rent in default a tenant must add thereto or include therein such further sum of money being the rent which may have fallen due after the period of default, but not in default as yet.

55. That being my reading of the section the tenant appellant, in the present case, was at liberty to deposit rent for the month of May. 1958 with the Rent Controller until such time as he became a defaulter in respect of the pay merit of rent for that month and he was not, until then, liable to deposit the rent for that month in the court, in which the suit for eviction against him was pending, under the first part of section 17 of the West Bengal Premises Tenancy Act, 1956. The court below was, therefore, wrong in penalising the tenant for his failure to deposit the rent for May. 1958 in court. It is not disputed that the tenant has been depositing rent since the month of June. 1958 in court under the provisions of the second part of section 17(1) and he has not made himself liable to the penalty u/s 17 (3) for non-observance of the second part of section 17(1) of the Act. Therefore, the tenant has in no way contravened the provisions of sub-section (1) of section 17 and is not, therefore, liable to be visited with any penalty provided for in sub-section (3) of section 17 of the West Bengal Premises Tenancy Act, 1956.