(1976) 08 CAL CK 0029

Calcutta High Court

Case No: Second Appeal No. 523 of 1971

Nakul Chandra Roy Karmakar	APPELLANT
Vs	
Pankajini Biswas	RESPONDENT

Date of Decision: Aug. 18, 1976

Acts Referred:

- West Bengal Premises Tenancy Act, 1956 - Section 13(1), 17, 17(1), 17(4), 21

Citation: (1976) 2 ILR (Cal) 603

Hon'ble Judges: S.K. Bhattacharyya, J

Bench: Single Bench

Advocate: Asoke Kumar Sen Gupta, for the Appellant;B.C. Mitter and Aruna Mukherjee, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Bhattacharyya, J.
This appeal by the Defendant is directed against the concurrent decisions of the Courts below.

2. The suit out of which this appeal arises was for ejectment of a monthly tenant at will upon service of notice to quit initially instituted on the ground of reasonable requirement of the Plaintiff and also on the ground of default. The Defendant Appellant contested the suit, inter alia, disputing both the grounds and also challenged the notice to quit as legally invalid and insufficient.

3. The Courts below found against the Defendant on all the points. Hence, this second appeal against the decision of the Court of Appeal below.

4. During the pendency of the appeal the Plaintiff-Respondent applied for amendment of the plaint so as to bring his case of reasonable requirement in conformity with the amended provision of Clause (ff) of Section 13(1) of the West Bengal Premises Tenancy Act as amended by West Bengal Premises Tenancy

(Second Amendment) Act XXXIV of 1969 (to be hereinafter referred to as the Act) in accordance with the decision of the Supreme Court in the case of B. Banerjee Vs. Smt. Anita Pan, . The prayer for amendment being allowed, the Defendant filed an additional written statement and the matter was fixed for framing of additional issues when the Plaintiff-Respondent filed a petition supported by an affidavit stating that he would not proceed or press the ground of reasonable requirement under Clause (ff) of Section 13(1) of the Act. Upon the petition being accepted, the appeal -was taken up for hearing only on one point, namely, whether the Defendant was a defaulter within the meaning of Section 13(1)(i) of the Act, so as to disentitle him to any protection against eviction. The appeal had, therefore, been heard on this point only and Mr. Sen Gupta appearing for the Appellant did not press any other ground in this appeal. The Plaintiff''s case on the point of default as made out in para. 2 of the plaint was that the Defendant was a defaulter in the matter of payment of rent from Jaistha 1371 B.S. to Kartik 1372 B.S., the rent of the disputed premises being Rs. 33-25 P. per month payable in accordance with the Bengali calendar month. The Defendant disputed that he was a defaulter and maintained that he had deposited all the arrears with the Rent Controller and is still depositing the same in accordance with law. At the time of trial it transpired that the Defendant had been depositing rent with the Court ever since the filing of the suit and prior to the filing of the suit, he had deposited all the arrears with the Rent Controller, but the rent for the month of Jaistha to Bhadra 1371 B.S. was deposited with the Rent Controller on October 9, 1964, corresponding to Aswin 23, 1371 B.S. under one challan. There is little doubt that the deposit in so far it relates from Jaistha to Sravan 1371 B.S. was out of time. None of the Courts below addressed itself to the question as to whether the initial deposit before the Rent Controller was proceeded by a valid and legal tender to the landlord u/s 21(1) of the Act. In the absence of a finding as to whether the initial deposit with the Rent Controller was proceeded by a valid tender to the landlord, subsequent deposits cannot be regarded as valid deposits and Mr. Sen Gupta appearing for the Appellant in this case requested the Court to send this matter back for ascertaining as to whether the initial deposit with the Rent Controller was preceded by a valid tender to the landlord. This, however, would not be necessary in view of the fact that the tenant had failed to make the deposit of rent for the months from Jaistha to Sravan, 1371 B.S. in accordance with the provisions of Section 22 of the Act. Section 22 provides for the time limit for making deposit so as to constitute payment of rent to the landlord; in other words, a valid deposit of rent with the Rent Controller under Sub-section (3) of Section 22 of the Act amounts to a valid discharge in so far as the landlord is concerned. As the deposit of rent for the months of Jaistha to Sravan, 1371 B.S. with the Rent Controller was undoubtedly made beyond the time stipulated in Section 22 of the Act, these deposits must be regarded as invalid deposits and would, therefore, disentitle the tenant to any protection under any of the provisions of Section 13(1) of the Act. Section 13(1)(i) provides that where the tenant has made a default in the payment of rent for two mouths within a period of twelve months he would loose

the protection afforded by Sub-section (1). In the instant case, the tenant, it appears, has lost the protection afforded by Section 13(1)(i)and there would, therefore, be no bar to the Court passing a decree for recovery of possession in respect of the suit premises in the instant case.

5. Mr. Sen Gupta appearing for the tenant Appellant, however, contended that although he has been a defaulter within the meaning of Section 13(1)(i) of the Act, he would still be entitled to the protection afforded by Section 17(4) read with Section 17(1) of the Act inasmuch as he is not required to re-deposit or pay the amount again for the months of Jaistha, Ashar and Sravan, 1371 B.S. The object of Section 17(1) of the Act, according to Mr. Sen Gupta, is to secure the payment of rent to the landlord once a suit for eviction has been instituted against the tenant and this object is fulfilled by deposits made with the Rent Controller previously. Consequently, Mr. Sen Gupta contends that the tenant is only required to deposit the current rent month by month in accordance with the second part of Section 17(1) and if he has complied with that provision of Section 17(1), he was not disentitled to the relief contemplated in Section 17(4) of the Act. Section 17(1) of the Act requires the tenant to deposit either in Court or with the Rent Controller or pay to the landlord within one month of the date of service of the writ of summons upon him an amount calculated at the rate of rent at which it was last paid for the period the tenant may have made default including the period subsequent thereto together with the interest on such amount calculated at the rate of 8 1/3% and he is also required to deposit or pay month by month by the 15th of each succeeding month an amount equivalent to the rent at that rate. Section 4(2) of the Act provides that rent is payable within the time fixed by the contract or in the absence of such contract by the 15th of the month next following that for which it is payable. Undoubtedly, no such contract has been alleged in the instant case and the rent, in the instant case, was, therefore, payable by the 15th day of the month next following the month for which it was payable. The term ''default'' has not been defined anywhere in the Act, but the word in its largest and most general sense means ''failing'' or ''failure''. In the context of the provision of Section 17(1) of the Act, the expression ''may have made default'' would mean omission or failure to do something which the person, the tenant Defendant in this case was legally bound to do. Undoubtedly, the tenant was under an obligation to pay rent to his landlord and failure or omission to discharge that obligation in due time would mean that he had been in default. In Section 13(1)(i) of the Act, the expression used is ''where the tenant has made a default''. The two expressions, in my view, clearly connotes that the tenant had not discharged his obligation to pay rent to the landlord in due time and the word ''default'' used in Section 13(1)(i) and Section 17(1) of the Act must be taken to have been used in the same sense. It is well-settled that in the absence of any context indicating a contrary intention, it may be presumed that the same words are used in the same meaning in the same statute. No such contrary indication, in my view, appears in the instant case. So the Legislature must be

intended to have attached the same meaning to the word ''default'' in both the sections. A similar view was also taken by a learned Single Judge of this Court in Ram Bagas Taparia v. Ram Chandra Pal S.A. No. 12 of 1969 decided by Chittatosh Mookerjee J. on February 22, 1974 and I am in respectful agreement with the views expressed therein. Therefore, a tenant would commit default either by not paying or depositing rent in the manner laid down in the Act and when the rent is not deposited in accordance with any of the provisions of the Act either in Court or with the Rent Controller, the same cannot constitute payment of rent within the meaning of Section13(1)(i) or Section 17(1) of the Act. It must, therefore, be held that Section 17(1) requires the tenant to deposit not only sums which are in arrears and remaining outstanding at the date of application but also sums which may have been invalidly deposited by him and the contention of Mr. Sen Gupta must as such be overruled.

6. This apart, the scope of Section 17 which occurs in chap. Ill of the Act, is altogether different from those of Sections 21 and 22, which occur in chap. IV of the Act. As was observed by the Supreme Court in the case of Kaluram Onkarmal and Another Vs. Baidyanath Gorain, , Section 17makes provision for the payment of the amount mentioned by it after a suit or a proceeding has been instituted by the landlord against a tenant and the basis on which the two sections operated was different. Section 17, the Supreme Court observed, was the result of a statutory obligation imposed by the Act, whilst the deposit of rent made u/s 21 before the Controller was based on the contractual obligation of the tenant to pay rent. The Supreme Court, further, observed in para. 23 of the said decision that on the whole the scheme evidenced by the section indicates that the Legislature wanted Section 17(1) to control the relationship of landlord and tenant as prescribed by it once a suit or proceeding was instituted and the writ of summons on the Defendant had been served. It is true that the words ''or with the Rent Controller'' in Section 17(1) were not in the statute at the time when the Supreme Court gave its decision in the case of Kaluram (3), but following the Supreme Court decision the sub-section was amended by the West Bengal Premises Tenancy (Amendment) Act (39 of 1969) and Mr. Sen Gupta contends that following this amendment, he is now entitled to take advantage of any pre-existing deposit with the Rent Controller for the purpose of calculating default contemplated in Section 17(1) of the Act. As held above, the tenant Defendant would be required to deposit not only sums which are in arrear and remaining outstanding, but also the sums which may have been invalidly deposited by him unless the landlord had in the meantime acted u/s 22(2)of the Act by withdrawing the amount deposited with the Rent Controller before the institution of the suit or proceeding. Mr. Sen Gupta relied on another decision of this Court in the case of Ganesh Chandra Dutta Vs. Chunilal Mondal and Another, for the purpose of contending that where the tenant complies with the requirement of Section 17(1) he was entitled to the relief contemplated under Sub-section (4) of that section. In that case, the tenant Defendant within one month of the date of service of

summons in the suit filed a petition in the trial Court u/s 17(1) and had prayed for permission to deposit rent for the period of default and he was permitted to deposit the amount at his risk. That was regarded as sufficient compliance with the provisions of Section 17(1) of the Act so as to entitle the tenant to the relief under Sub-section (4) of Section 17of the Act. The case, in my view, does not assist Mr. Sen Gupta, in that, in the instant case, what Mr. Sen Gupta seeks to contend is that certain invalid deposits made with the Rent Controller should be treated as valid deposit for the purpose of calculating default within the meaning of Section 17(1) of the Act. I am unable to accept this contention of Mr. Sen Gupta. Mr. Sen Gupta also sought to contend relying on certain observations of Division Bench of this Court in the case of M/s. Shree Nursing Timber Works and Shree Nursing Electric Stores v. Amala Bala Dassi (1967) 73 C.W.N. 522 that the word ''default'' must connote a ''blame-worthy conduct'' on the part of the Defendant, but since the Defendant, in the instant case, had actually deposited the amount with the Rent Controller, it can hardly be contended that the Defendant was guilty of any blame-worthy conduct. A similar contention was sought to be canvassed in Shree Nursing Timber''s case (vide para. 9) where the tenant had paid the rent by a cheque that was retained by the landlord, but was not encashed. Their Lordships refused to accept the contention holding that the expression ''default'' had not been used in Section 17 in the sense suggested by the learned Advocate for the Defendant and the expression ''default'' had been intended by the framers of the Act to mean the fact of non-payment of rent for any particular period.

7. For the aforesaid reasons, I am of the opinion that the Defendant is required to deposit or pay u/s 17(1) all sums equivalent to rent for the period for which he had made default and the expression ''may have made default'' would in the circumstances of the case include all sums which the tenant failed to deposit in accordance with the provisions of law either in the Court or with the Rent Controller. Mr. Sen Gupta also contended that it would be unjust to force the tenant Defendant to make double payment or re-deposit such amounts u/s 17(1) and it would indeed be an idle formality, particularly when the landlord''s interest is fully secured by the earlier deposit with the Rent Controller and the Legislature cannot, therefore, be said to have intended such a consequence. This contention, in my view, cannot be accepted for the reasons already discussed and the deposits for the months from Jaistha to Sravan, 1371 B.S., with the Rent Controller cannot be regarded as valid deposit within the meaning of Section 17(1) of the Act. That being the position the tenant Defendant, in ray view, is not entitled to any relief u/s 17(4) if the Act and the instant appeal as such must fail. The appeal is, accordingly, dismissed. The judgment and decree of the lower appellate Court is hereby affirmed., In the circumstances of the case, I make no Order as to costs in this appeal.

8. Leave under Clause 15 of the Letters Patent is prayed for and is granted.