

(1973) 09 CAL CK 0022

Calcutta High Court

Case No: C.R. No. 2011 of 1973

Anjali Pramanick and Another

APPELLANT

Vs

Rampyari Vadehra

RESPONDENT

Date of Decision: Sept. 13, 1973**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 151
- West Bengal Premises Tenancy Act, 1956 - Section 13, 17, 17(1), 17(3)

Citation: 78 CWN 208**Hon'ble Judges:** S.C. Deb, J; A.C. Gupta, J**Bench:** Division Bench**Advocate:** D.N. Trivedi, for the Appellant; A.C. Bhabra, B.L. Vyas and J.P. Srivastava, for the Respondent

Judgement

1. This Rule is directed against an order dated April 12, 1973 passed by a learned Judge of the City Civil Court at Calcutta striking out the petitioners' defence against delivery of possession u/s 17 (3) of the West Bengal Premises Tenancy Act. The only reason why the learned Judge held that the defendant had failed to comply with the provisions of sub-section (1) of section 17 of the Act is that the rent for the month of October, 1971 was deposited on December 14, 1971. The suit was Instituted some time in January 1961 against one A. Pramanick who died on October 9, 1971. The present defendants at whose instance this Rule was issued are respectively the widow and son of the original defendant. On November 8, 1971 they filed an application praying to be substituted in place of the deceased defendant. This application was allowed and they were substituted on December 22, 1971. In the meantime, before they were substituted, they were permitted by the Court to deposit the rent for the months of October and November, 1971 on December 14, 1971. The defendant subsequently filed an application u/s 5 of the Limitation Act read with section 151 of the CPC on March 27, 1973, for condoning the delay in depositing the rent for October, 1971. This application for condonation of delay

which was considered along with the landlord's application u/s 17(3) of the West Bengal Premises Tenancy Act was rejected by the court below. The question is whether the rent for the month of October, 1971 had been deposited beyond time and, if so, whether in the circumstances of the case the delay should be condoned. In their application for condonation of the delay the defendants stated that after the sudden death of the original defendant they came to know of the pending litigation from the learned Advocate who was in charge of the case on behalf of the original defendant. It was further stated that they deposited the rent for the months of October and November, 1971 in Court on December 14, 1971 "under legal advice" though they had not till then been substituted in place of the original defendant. Without considering whether it had been proper to allow the present defendants to deposit the rent in Court before they were brought on the record of the case," the court below addressed itself to the question, whether the circumstances stated in the defendants' application dated March 27, 1973, constitute sufficient explanation for the delay in depositing the rent for the month of October, 1971. The learned Judge was not inclined to rely on the statements made in the said application dated March 27, 1973, because of two reasons first, the discrepancy in paragraphs 3 and 5 of the application as regards the date of death of the original defendant; in paragraph 3 the date is stated as October 10, 1971 and in paragraph 5 it is October 9, 1971; secondly, it was stated in the application that the prayer for substitution was allowed sometime in January, 1973, whereas the correct date was December 22, 1971. As regards the first reason the discrepancy is clearly due to inadvertent drafting of the application on which no importance should have been attached, there being no dispute that the original defendant died on October 9, 1971. As to the date when the application for substitution was allowed, this is a matter of record and the mistake in stating the date seems to be due to the same cause; I do not see why an error on this point should be a ground for holding that the person who affirmed the affidavit in support of the petition dated March 27, 1973, was entirely unreliable and that none of the statements made in the petition could be accepted. I would have sent back the matter to the court below for reconsideration of the question as to whether the circumstances stated in the petition dated March 27, 1973, satisfactorily explain the delay in depositing the rent for the month in question but in the facts of this case no question of condonation of delay seems to arise because, in my view, there has been no delay to condone.

2. I have stated already that the petitioners were substituted in place of the original defendant on December 22, 1971, and the rent for the month of October, 1971 was deposited in court on December 14, 1971. It was argued on behalf of the opposite party that without waiting to be substituted the defendants could have deposited the rent for that month in the Office of the Rent Controller or paid the same to the landlord by the 15th of the next month. It was pointed out that sub-section (1) of section 17 of the West Bengal Premises Tenancy Act which requires the tenant to deposit or pay month by month a sum equivalent to monthly rent by the 15th of

each succeeding month permits him to deposit the sum in Court or with the Controller or pay the amount to the landlord. But the provisions of section 17 apply, as the opening words of subsection (1) indicate "on a suit or proceeding being instituted by the landlord on any of the grounds referred to in section 13" of the Act. Thus sub-section (1) clearly contemplates payment or deposit of rent by a tenant against whom a suit for eviction is pending. Therefore even if the petitioners had paid to the landlord or deposited in the Office of the Rent Controller the rent for the month in question before they were brought on the record of the case, such payment or deposit would not have been in compliance with the provisions of sub-section (1) of section 17 of the Act. The fact that the court permitted the petitioners to deposit the rent for the months of October and November, 1971 before they were substituted in the suit does not imply that the deposit was made u/s 17(1). It cannot therefore be said that the rent for the month of October was deposited beyond the time prescribed by sub-section (1) of section 17.

3. On behalf of the opposite party Mr. Bhabra sought to argue that the application u/s 5 of the Limitation Act was defective and should not have been entertained. But the point does not appear to have been raised in the court below. In any event, since I have held that no question of condonation of delay arises in this case, it is not necessary to pursue the point further. In the result this Rule is made absolute and the impugned order striking out the petitioners' defence against delivery of possession is set aside.

In the circumstances of the case, there will be no order as to costs.

Let the records go down as quickly as possible.