(1974) 08 CAL CK 0027

Calcutta High Court

Case No: Civil Revision No. 3031 of 1972

Jitendra Chandra Dey		APPELLANT
	Vs	
Tarak Nath Mullick and Others		RESPONDENT

Date of Decision: Aug. 13, 1974

Acts Referred:

- West Bengal Premises Tenancy Act, 1956 - Section 17(1), 17(2), 17(3)

Citation: 79 CWN 112

Hon'ble Judges: S.K. Mukherjee, J; M.N. Roy, J

Bench: Division Bench

Advocate: ;M.N. Ghosh, Monoranjan Das, G.C. Tandon, Biswajit Ghosh and Aloke Chakrabarty, for the Respondent

Judgement

S.K. Mukherjea, J.

The matter has come up before us on a reference by Amaresh Roy, J. In a suit for eviction, the defendant made an application for treating a petition u/s 17(1) of the West Bengal Premises Tenancy Act, 1953 as an application u/s 17(2) of the Act. The learned Chief Judge City Civil Court rejected the defendant''s prayer on the ground that neither the plaint nor the petition raised any dispute as regards rent nor was there any prayer in the petition for determination of rent u/s 17(2) of the Act. The learned Judge relied on the decision of this Court in G.T. Kamdar v. S. Jhunjunwalla, 75 CWN 372, to which we shall have to refer again in course of our judgment. Thereafter, the defendant came up on revision against the order of the learned Chief Judge.

2. At the hearing of the revision case Amaresh Roy, J, recorded in his order that it was contended before him that there are conflicting decisions of different Division Benches of this Court on the interpretation of section 17(2) of the Act. Reference was made before the learned Judge to an unreported decision in Civil Revision Case No. 2322 of 1963 Amiya Kumar Banerjee v Bimalendu Bose of a Bench presided over by

Chatterjee J., the decision in G.T. Kamdar v. Jhunjhunwalla, 75 CWN 372, of a Bench presided over by P.N. Mookerjee J. and a decision of a Division Bench consisting of Arun K. Mukherjea and M.M. Dutt, JJ. in Saroj Kumar Kundu v. Lina Saha, ILR 1972(2) Cal. 118 in which the learned Judges relied on the earlier decision reported in 75 CWN 372.

3. It was contended before Amaresh Roy, J. that in A.K. Banerjee v. Bimalendu Bose the Bench held that an application u/s 17(1) may be treated as one u/s 17(2) of the Act but in the subsequent reported decisions a contrary view has been taken. The learned Judge did not express any view of his own as to whether these decisions are really in conflict. He merely recorded the contentions and referred the case for disposal by a Division Bench.

4. We may now examine the cases decided by this Court on the question raised by the petitioner before us. The earliest in point of time is the case of Amiya Kumar Banerjee v. Bimalendu Bose. There the facts were as follows:

5. In an ejectment suit, the defendant-tenant made an application on April 3, 1962 for leave to deposit rents in compliance with section 17 (i) of the Act. He did not serve a copy of the petition on the plaintiff. No one contested the application. By an order made on the same day, leave was given to the defendant to deposit rent at his own risk. Subsequently, in an application made by the plaintiff-landlord u/s 17(3) of the Act for striking out the defence, the plaintiff-landlord contended that the deposits made by the tenant were not valid deposits. By an older dated May 2, 1963 the defence was struck out. Thereafter, on June 14, 1963 the defendant made an application in revision for setting aside that order.

6. Chatterjee, J. delivering the judgment of the Court observed as follows :

If the tenant had given a copy of the petition, the landlord would not have accepted the statements made in the petition dated the 3rd April, 1962 and there would be a dispute regarding the statements made therein, namely, whether the deposits of rents with the Rent Controller were valid or not. If that be the dispute, then section 17(3) would be attracted and the court would have to decide the dispute u/s 17 (2) of the West Bengal Premises Tenancy Act. But the court did not pass any order worth the name. The court left the matter there which amounted to saying that the court adjourned the petition without passing any final order therein.....The record now being before us, we must set aside that order and revive the petition dated the 3rd April 1962. The Court will consider the said petition. The defendant will serve a copy of the said petition on the plaintiff and thereafter the court will decide the matter in accordance with the provisions of section 17(2). If necessary, the court will hear the petition u/s 17 (3) along with the said petition u/s 17 (2) because if the defendant deposits the rent which the court finds u/s 17(2) to be due, the petition u/s 17(3) would fail and if on the other hand, he does not deposit the rent if ordered to deposit, the petition would succeed. The result, therefore, is that

we must set aside the order dated 3rd April, 1962 directing the defendant to deposit at his own risk. The court will now consider the dispute and pass appropriate orders on the two petitions, one dated the 3rd April. 1962 and the other filed by the plaintiff u/s 17(3).

7. On an examination of the records, it appears that the learned Judges who decided the case were invited to set aside in revision the order dated May 2 1963, for striking out the defence u/s 17(3) of the Act. The order dated the 3rd April, 1962, which was made on the application of the tenant for leave to deposit rent u/s 17(1) of the Act was not questioned in any manner in the proceedings u/s 17(3) either in the original court or before the revision court. At all events, on June 14, 1963 when the revision application was filed against the order dated May 2, 1963 any revision application against the order dated the 3rd April, 1962 stood barred by limitation. The order dated the 3rd April, 1962 had become final and was not under challenge. The learned Judges were not invited to pronounce upon the validity or propriety of that order. The application before them was concerned with the order dated May 2, 1963 by which defence has been struck out under Sec. 17 (3). In their judgment, they did not expressly set aside the order dated May 2, 1963 which they were called upon to revise although it must be held that they did so by implication. The pan of the judgment and order by which the Court directed the application u/s 17 (1) to be dealt with in accordance with the provisions of section 17(2) of the Act and thereby, treat the application u/s 17 (1) as one u/s 17 (2), is clearly in the nature of obited dicta because it was given on a matter which lay outside the scope of the lis with which the learned Judges were concerned. In setting aside the order made on the application u/s 17(1), the learned Judges were not seeking to exercise any general or undefined jurisdiction in, revision. That being so, their judgment, even if it be held to be in conflict with subsequent Bench decisions, creates no difficulty because an obiter of one Division Bench is not binding on another. By that we do not intend to any that an obiter has no persuasive value. We only desire to point out that the judgment is not binding on us as a precedent.

8. We may now pass on to the judgment in G.T. Kamdar v. S. Jhunjhunwalla, reported in 75 CWN 372. In that case the defendant invited the Court to treat an application purported to have been made u/s 17(1) of the Act as one u/s 17 (2) of the Act and for passing appropriate orders thereon. The prayer having been rejected by the original court, the defendant came up in revision. In discharging the Rule P.N. Mookerjee, J., speaking for the Court, observed :

Section 17(2) of the West Bengal Premises Tenancy Act, as we read it, contains certain requirements, namely, (i) that there must be a dispute raised as to the amount of rent payable (ii) that the tenant must, for purposes of the said Section made deposit of all the admitted arrears within the statutory period, and (iii) and this is very important,--that the said deposit, if any, must be made along with an application, praying for determination of the (amount of) rent payable. In our view,

this third element is an integral and essential part of the Section and, unless this is present, either expressly or, at least impliedly which may be in the form of the usual omnibus prayer, indicated hereinbefore, the requirement of the section would not be satisfied.

9. The learned Judge pointed out that the view he was taking was supported by a decision of this Court in Adalut Singh v. T.P. Basu (Appeal from Original Decree No. 664 of 1962) decided fey P.N. Mookerjee and A.C. Sen, JJ. and by an earlier decision in Sm. Parameswari Devi and Org. v. Nandalal Sharaf and Ors. (Civil Revision Case No. 3340 of 1966 decided by A.C. Sen and A.N. Chakrabarti, JJ.). Attention of the learned Judges having been drawn to the unreported decision in A.K. Banerjee v. Bimalendu Bose, P.N. Mokerjee, J. observed as follows :

We have examined this last-mentioned decisions and we do not find, on a close reading of the same that this was really a firm decision on the point. As a matter of fact, their Lordships even did not find, on the materials before them that there was a dispute regarding the amount of rent payable between the parties, but they remitted the matter to the court below for the purpose of finding out that dispute from certain materials, to be placed on the record by the parties, and then considering the matter, if necessary, u/s 17 (2) of the above Act along with the plaintiff''s pending application u/s 17 (3). As a matter of fact, their Lordships were making observations in their judgment that when the matter would go back and a dispute would be raised, the court might have to decide the matter in accordance with the provisions of Section 17(2). As we have stated above, we do not treat this decision as a firm decision on the point that a mere application for deposit u/s 17(1) of the above Act would have to be treated by the Court, irrespective of other circumstances, as an application u/s 17 (2). That, in our opinion, would be ignoring the section altogether and making it infructuous and we do not think that their Lordships, in their above judgment, intended to go so far. We do not, therefore, feel oppressed in the instant case by the said decision.

10. Mr. Ghose submitted, not without some plausibility, that P.N. Mookerjee, J. was not justified in holding that the decision in A.K. Banerjee v. Bimalendu Bose is not a firm decision or is not a decision on the point that an application u/s 17 (1) may be treated as one u/s 17 (2).

11. Be that as it may, if the decision on the point is obiter, as in our opinion it is, we, do not feel oppressed by it either.

12. The decision in G.T. Kamdar v. S. Jhunjhunwalla and the ratio underlying it was followed in the case of S.K. Kundu v. Lina Saha, ILR 1972 (2) Cal. 118.

13. Mr. M.N. Ghosh, learned Advocate appearing on behalf of the petitioner, did not contend that any Bench decision other than the one in the case of A.K. Banerjee v. Bimalendu Bose is in conflict with the decision in Kamdar''s case which appears to have been followed by the other Bench in the later case.

14. In agreement with the views expressed in C.T. Kamdar''s case and the case reported in ILR 1972(2) Cal. 118, we hold that the application inviting the Court to treat a petition u/s 17(1) as one u/s 17(2) is misconceived and must be rejected.

15. In that view of the matter, the Rule is discharged but there will be no order for costs. Let the records go down expeditiously.

M.N. Roy, J.

I agree.