

Sikharani Debi and Others Vs Nibaran Kumar Das

Court: Calcutta High Court

Date of Decision: April 27, 1973

Acts Referred: West Bengal Premises Tenancy Act, 1956 " Section 17, 17(1), 17(2), 17(3)

Citation: 78 CWN 435

Hon'ble Judges: R.N. Bhattacharya, J

Bench: Single Bench

Advocate: Nirmal Kumar Ganguli, for the Appellant; Samaresh Banerjee, for the Respondent

Judgement

R. Bhattacharyya, J.

This Rule relates to an order, dated 18.11.1970 passed by the Fourth Court of the Munsif at Sealdah in Title Suit

No. 601 of 1967 rejecting an application u/s 17(3) of the West Bengal Premises Tenancy Act, hereinafter referred to as the Act, filed by the

petitioners, Sikha Rani Debi and Rathindra Mohan Goswami, the plaintiffs against their tenant, Nibaran Kumar Das, the opposite party defendant.

The title suit was filed in the Court of the Munsif for evicting the defendant-tenant from the suit premises and for mesne profits on several grounds

including default in payment of monthly rents. After appearance in the suit, the opposite party filed a petition under Sec. 17(2) of the Act for

determination of the dispute relating to the alleged default in payment of monthly rents. The court by its order dated 15.4.1968 directed the

opposite party to pay or deposit a sum of Rs. 1974.00 with due interest thereon under the Act within a month with liberty to him to pray for

extension of time for payment of the amount at proper time. Thereafter the opposite party deposited Rs. 500-00 and within a month from the date

of the order passed on 15.4.1968, prayed for extension of time for the deposit of the balance money. Time was granted up to 10.6.1968.

Subsequently, from time to time, the opposite party made part payment and before the expiry of the extended time granted by the Court, he again

prayed for extension of time and the court, after due consideration allowed the prayer. In this way, the opposite party deposited in all Rs. 1927.00

by 6.1.1969 within the time extended by Court. Admittedly, a sum of Rs. 47/-, the rent of a particular month included in the total sum of Rs.

1974.00 had already been deposited by the opposite party with the Rent Controller and the same was withdrawn by the landlords. Therefore

there was no arrear of rent due to be paid by the opposite party except the interest payable on the arrears calculated by the learned Munsif. On

6.1.1969, the opposite party prayed for recording the payment of the amount as deposited. On 5.7.1969 the learned Munsif directed the opposite

party to deposit Rs. 164.50 paise as interest on the sum of Rs. 1974.00 within a month and he complied with the order. Ultimately, the application

under Sec. 17(3) of the Act was heard and rejected on the ground that the opposite party had complied with the order passed under Sec. 17(2)

and that he had been depositing the amount at the rate of monthly rent every month. Against this order the petitioners have come up with the instant

revisional application.

2. The first point urged by Mr. Ganguly, the learned advocate for the petitioners is that the learned Munsif had no jurisdiction under Sec. 17(2A) of

the Act to extend time for payment or deposit of the due amount more than once after a month from the determination of the amount under Sec.

17(2). The Court below after fixing the amount under Sec. 17(2) directed the opposite party to pay or deposit the amount within one month from

15.4.1969, but on the prayer of the opposite party made within time, further time was allowed till 10.6.1968 for making the deposit. The argument

of Mr. Ganguly is that Sub-section (2A) read with sub-sec. (2B) of Sec. 17 does not allow any further prayer for extension of time for deposit and

as such in the present case, several extension of time granted by the court below were without jurisdiction. The part-deposits made on different

dates after time-to-time extensions of time amounting to the total sum due for arrears of rent were bad. The defence of the opposite party,

therefore, was liable to be struck off.

For the purpose of the present case, I quote below the relevant portions of sub secs. (2A) and (2B) of Sec. 17 of the Act:

(2A) Notwithstanding anything contained in sub-section (1) or subsection (2), on the application of the tenant, the Court may, by order,

(a) extend the time specified in sub-sec. (1) or sub-sec. (2) for the deposit or payment of any amount referred to therein:

(b).....

(2B) No application for extension of time for the deposit or payment of any amount under clause" (a) of sub-section (2A) shall be entertained

unless it is made before the expiry of the time specified there for in sub-section (1) or sub-section (2).....

3. The language of sub-sections (2A) and (2B) is quite simple and there is no ambiguity in it. According to Sec. 17(2), the court is to pass a

preliminary order for payment or deposit of the amount which will be determined on the question of the disputed arrears of rent and that amount

shall be paid or deposited by the tenant within a month from the date of order. Sub-section (2A) of section 17 gives power to the court to extend

the time for payment as indicated in sub-sections (1) and (2), if the circumstances of the case so demand for ends of justice, provided that the

tenant files and application for such extension of time before the expiry of the time as mentioned in sub-section (1) or (2) as the case may be. There

is not the slightest indication in any of the sub-sections of Section 17 of the Act to suggest that court cannot or shall not extend time on occasions

more than once or that the court can extend time for payment or deposit once only.

4. It has been contended from the side of the petitioners that as in sub-section (2B) it is stated that no extension of time shall be allowed unless

prayer is made before the expiry of time specified in sub-section (1) and (2) of Section 17 and as there is no mention about filing of any application

for further extension of time before expiry of the time granted by the court, it should be presumed that the legislature did not intend to give power

to the Court to allow extension of time more than once. Sub-section (2B) says that if any tenant wants any extension of time beyond the limit as

specified in sub-sections (1) and (2) of Section 17, then he must apply for the same within the said "limited" time, otherwise, he will not be able to

avail himself of the opportunity. If, on the other hand, the tenant files any application for the purpose as enjoined by law, the court will have judicial

discretion to pass necessary order for extension of time and in suitable cases orders as prayed for will be passed. Sub-section (2B) prohibits

enlargement of time for making deposit or payment unless application is filed by the tenant before the expiry of the time limited in sub-sections (1)

and (2). Once an order is passed under sub-section (2B) extending time up to a particular date for deposit or payment the court shall have

jurisdiction to modify the order regarding time limit by further extending the time or date for deposit or payment by the tenant if it is thought

expedient or necessary for ends of justice. In case, however, the tenant does not apply for further enlargement of time within the extended time and

the existing order extending time is not modified by the court by further extension of time, there cannot be any question of further extension of time

after the expiry of the time limit specified in the order and the tenant will be deemed to have not complied with the order under Sub-section (2A)

read with Sub-section (2) of Section 17 of the Act if he has not paid or deposited the entire amount within the date extended. There will be no

breach of sub-section (2A) of Section 17, if the court in suitable and fit cases allows several extensions of time to tenants for payment or deposit

required to be made under sub-sections (1) and (2) by modifications of the original order passed under sub-section (2A) of Section 17. There is

no restriction on prohibition against such extensions of time. In the present case, the tenant prayed for further" extension of time by virtually

modification of the original order passed under sub-section (2A) of Section 17 by making some deposits as part payments towards the amount

calculated by the court before the expiry of the time fixed and obtained relief. Ultimately, however, all arrears of rent, as admitted by the

petitioners, were deposited within the time extended by the court. This was not a case of payment by instalments, but the opposite party made part

payments to show his bonafides and the same were accepted. When all part payments made by way of deposits in courts came up to the entire

and full amount covering the arrears of rent, they were deemed to have been payment as directed minus the sum of Rs. 47/-which was admittedly

included in the amount erroneously.

5. It has been argued by Mr. Ganguly that the deposit was bad inasmuch as the opposite party did not deposit or pay the interest on the arrears of

rent as directed by the Court within the extended time. The learned Munsif in his order dated 15.4.68 calculated a sum on account of arrears of

rent and directed the opposite party to pay legal interest on the ascertained sum calculated at the rate and in the manner as provided u/s 17(1) of

the Act. He did not in fact, mention any sum of money as interest payable. In this connexion the duties of the court relating to an application under

subsection (2) of Section 17 of the Act for determination of the amount due from the tenant should be looked into as stated in clauses (a) and (b)

of sub-section (2) of Section 17. I quote below the relevant portions of sub-section (2) :

(2).....On receipt of such application, the court shall --

(a) having regard to the rate at which rent was last paid, and the period for which default may have been made, by the tenant, make, as soon as

possible within a period not exceeding one year, a preliminary order, pending final decision of the dispute, specifying the amount, if any due from

the tenant and thereupon the tenant shall, within one month of the date of such preliminary order, deposit in court or pay to the landlord the amount

so specified in the preliminary order; and

(b) having regard to the provisions of this Act, make, as soon after the preliminary order as possible, a final order determining the rate of rent and

the amount to be deposited in court or paid to the landlord and either fixing the time within which the amount shall be deposited or paid or, as the

case may be, directing that the amount already deposited or paid be adjusted in such manner and within such time as may be specified in the order.

The clauses referred to above clearly cast upon the court, both in preliminary and final orders, the duty to determine and also to specify the amount

due from and payable by the tenant. Mr. Ganguly's contention that it was the duty of the tenant to calculate and determine the amount of interest at

the rate mentioned in sub-section referred by the court is unacceptable. It was the duty of the court to specify the amount due from the tenant and

to determine the amount to be deposited or paid by the tenant as mentioned in both the clauses. It was not the duty of the tenant to determine for

himself the amount payable as interest. When no amount payable as interest was mentioned in the order dated 15.4.1968, the opposite party could

not and did not make any deposit towards interest. The opposite party was not, therefore, in fault for non-deposit of any amount towards interest.

On 5.7.1969, when the records of the case were placed before the court for orders under Sec. 17(3) of the Act, the learned lawyer for the

defendant drew the attention of the court that no order was passed as to the amount of interest on the arrears of rent, the learned Munsif persued

the order dated 15.4.1968 and found the defect of the court's order and immediately directed to deposit Rs. 164.50 paise as interest on the

arrears of rent within a month. The opposite party, however, deposited the amount in time. In the circumstances of this case, due to the omissions

of the court in not specifying the amount of interest payable, the opposite party could not deposit the amount earlier. Due to the court's error or

omission, no litigant should suffer. The court can in suitable cases rectify its own error. In this case, as soon as the learned Munsif directed the

opposite party to deposit; a specified amount towards interest, the order was complied with within time. The opposite party cannot, therefore, be

alleged to have violated the order passed u/s 17(2) read with sub-section (2A) of the Act. The second contention urged from the side of the

petitioners fails like the first one.

The last point of attack from the side of the petitioners is that the amount of interest payable by the opposite party should have been Rs. 294.72 P.

in place of Rs. 164.50 determined by the learned Munsif by his order dated 5.7.1969. That order, dated 5.7.1969 or the impugned order dated

18.11.1970 does not indicate that the petitioners ever challenged the correctness of the amount of Rs. 164.50 P. The petitioners did not come up

challenging the correctness of the order dated 18.11.1970. Also at the time of argument before this Court, no calculation showing correctness of

the amount of Rs. 294.72 P. as interest was made; nor was any attempt made to show that the amount of Rs. 164.50 P. was wrongly arrived at.

In the circumstances, it cannot be held in this revisional application that the interest has been wrongly calculated. There is no scope for correction

of the amount in the instant proceedings. Assuming that the amount of interest fixed by the learned Munsif is wrongly calculated, it cannot be held

that the deposit made by the opposite party within the time extended by the court was bad. The Third and last ground put forward from the side

of the petitioners has no substance. The court below rightly rejected the application u/s 17(3) of the Act filed by the plaintiffs.

I, therefore, reject the petitioners' revisional application and discharge the Rule. In the facts and circumstances, I pass no order as to cost in this

Court. The suit for ejectment has been pending since 1967 and for a long time. Let the lower court records go down quickly. The Court below

shall dispose of the suit according to law as expeditiously as possible.