

(1987) 05 CAL CK 0016

Calcutta High Court

Case No: None

In Re: M/s. Dwarkadas Raghubir
Prosad Choudhuri and Another

APPELLANT

Vs

RESPONDENT

Date of Decision: May 20, 1987

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115, 151
- Constitution of India, 1950 - Article 227
- Limitation Act, 1963 - Section 29(2), 5
- West Bengal Premises Tenancy Act, 1956 - Section 17, 17(1), 17(2), 17(2)(B), 17(2A)

Citation: 92 CWN 287

Hon'ble Judges: Mitra, J

Bench: Single Bench

Advocate: Sadananda Ganguly and Ajay Kumar Nanda, for the Appellant; Ajit Kumar Ray and Goutam Dirghangi, for the Respondent

Final Decision: Dismissed

Judgement

Mitra, J.

In this revisional application under Article 227 of the Constitution of India, the petitioner (sic). challenged two orders, one being Order No. 134 dated September 18, 1986 by which his application u/s 17(2) and 17(2A) of the West Bengal Premises Tenancy Act, 1956 were disposed of by the learned Munsif determining the arrears of rent as Rs. 750.24 from April, 1976 to September, 1978 without taking into consideration the period of default subsequent to the filing of the said applications and also without determining the entire arrears of rent payable upto the date on which the said order was made together with interest and the Order No. 145 dated January 19, 1987 by which application filed by the petitioner u/s 17(1) of the aforesaid Act together with an application u/s 151 of the CPC read with Section 5 of

the Limitation Act, were rejected. The opposite party instituted Title Suit No. 83 of 1977 in the Court of the learned Munsif at Purulia, subsequently re-numbered as title Suit No. 78 of 1986 of the court of the learned Assistant District Judge, Purulia for eviction of the petitioner from the suit premises inter alia on the ground of default in payment of rent. The petitioner in the said suit filed applications u/s 17(2) and section 17(2A) of the West Bengal Premises tenancy Act. In his application u/s 17(2) the petitioner although had not disputed the amount of rent payable by him and admitted that rent fell due since April 1976 but claimed adjustment of Rs. 1156.15 which was due from the opposite party on account of the price" of 11 bags of tobacco stalk dusts supplies by the petitioner to the opposite party and invited the court to determine the amount of rent payable after such adjustment. In his application u/s 17(2A) the tenant prayed for extension of time and also for installments for paying the amount of rent payable by him after determining the said amount by the Court u/s 17(2). The learned runsif by his order No. 134 dated 18th September, 1986 disposed of the petitioner"s said applications by determining the arrears of rent at Rs. 750.24 due from April, 1976 to September, 1978 and granted three equal monthly installments of Rs. 250.08 each to the petitioner to pay off the said amount. In calculating the said arrears of rent the learned Munsif, however, observed inter alia that he found no reason to take into consideration the period of default subsequent to the filing the said applications by the petitioner. From the said order it also transpires that the petitioner did not press his case of adjustment of rent at the time of hearing of the said applications. Thereafter, on 29th September, 1986 the petitioner filed an application u/s 17(1) together with an application u/s 151 of the CPC read with Section 5 of the Limitation Act, praying for depositing the arrears of rent from October, 1978 upto the month of September, 1986 together with the statutory interest and further prayed for condonation of delay and also for extension of time in making such deposits inter alia on the allegations that he was under the impression that u/s 17(2) and 17(2A) the "court was to determine the amount due calculating upto the month previous to which such determination was made and till such determination the tenant was under no obligation to pay any amount u/s 17(1). The learned Munsif by his order No. 145 dated January 19, 1987 rejected the said applications holding inter alia that the application u/s 17(1) had no legs to stand upon and it was also barred by limitation. Undoubtedly, the petitioner did not move earlier this Court in revision against the aforesaid order No. 134 dated September 18, 1986. He now seeks to challenge the said order in the present revisional application invoking Article 227 of the Constitution of India. Mr. Ganguly, learned Advocate appearing on behalf of the petitioner contended that the learned Munsif in disposing of the petitioner"s applications u/s 17(2) and (2A) of the West Bengal Premises tenancy Act on September 18,"1986, should have calculated the entire amount of default upto the date on which the said applications were disposed of together with interest, and that not having been done, the Order No. 134 dated September 18, 1986 cannot be sustained in law being wholly illegal and further contends that till such

determination was made u/s 17(1) the petitioner was not required to pay any amount at all and if the said order goes, the subsequent order No, 145 dated January, 1987 also cannot stand.

2. Mr. Roy, learned Advocate appearing on behalf of the Caveator/Opposite party, has opposed the submissions of Mr. Ganguly by contending inter alia that since there was no dispute as regards the rate of rent or -the amount of arrears and since the petitioner himself in his application under Section. 17(2) had admitted inter alia, that the rent fell due from April. 1976 and as the petitioner at the time of hearing of his said application did not press his case of adjustment of rent, the petitioner was to deposit the arrears of rent admitted by him along with his application u/s 17(2) and also with his application under. Section 17(2) and also should have deposited the current rent month by month at the admitted rate as per the provisions of section 17(1) of the West Bengal Premises Tenancy Act, 1956 but that not having been done, the petitioner was not entitled to get any relief or equity in the matter and the court was also right in rejecting the petitioner's application u/s 17(1) of the West Bengal Premises Tenancy Act as not maintainable and also the application u/s 151 C.P.C. read with Section 5 of the Limitation Act by refusing to extend the time and or condoning the delay in making the deposits as prayed for u/s 17(1) Mr. Roy also contends that as the Petitioner did not challenge the Order No. 134 passed by the learned munsif on September 18, 1986 in revision in time, he cannot challenge the same after the period of limitation invoking Article 227 of the Constitution of India for overcoming the said difficulty and that the contentions of Mr. Ganguly made at the time of hearing were different than what were stated in the grounds of the revision application.

3. In reply, Mr. Ganguly, however, contends that the High Court is competent to see u/s 115 of the CPC that proper orders are made when a matter comes up in revision. The mere fact that the petitioner did not move in revision against a particular order within time, would not stand in the way of the High Court in making an order in accordance with law u/s 115 even by setting aside the earlier order and in support of his said contention referred to the Division Bench decision of this Court in the case of Jatindra Nath Nandy v. Krishnadhan Nandy, 56 CWN 858. Mr. Ganguly also referred to the decision of this Court" in the case of Mohendra Dutt & Co. (P) Ltd. v. Uma Charan Law & Ors., 68 C.W.N. 179 in which it was inter alia held by M.P.N. Mookherjee J. that when a Rule comes up for final hearing before the High Court, it is open to the court, if it finds that the rule should succeed on some ground, not initially taken, or on a ground, on which it was not issued, to consider the same and allow the application after giving the other party proper opportunities to meet the contentions of the petitioner. The High Court is not so powerless and its powers are not so limited to preclude it from doing justice between the parties in the exercise of its revisional powers, merely because Rule was not issued at the initial stage on the particular ground or grounds concerned.

4. Undoubtedly, if u/s 17(2) of the West Bengal Premises Tenancy Act, 1956 the tenant-defendant raises a dispute as to the relationship of landlord and tenant between the parties, then till the said dispute is determined under the said section 17(2), the tenant need not deposit anything either as arrears of rent or as current rent u/s 17(1) because by raising such dispute the tenant challenges the very authority of the landlord to collect rent from him. If the tenant also raises any dispute as to the amount of rent payable by him, then also till the determination of the said dispute, the tenant obviously is not liable to deposit the amount of rent in dispute, but at the same time sub-section (2) enjoins that together with an application u/s 17(2) the tenant shall deposit within the time specified in sub-section (1) of section 17 the amount admitted by him to be due from him. The time for making such deposit, however, can be extended u/s 17(2A) (a) but subject to the provisions of section 17(2B) and the provisions of section 5 of the Limitation Act can also be attracted in such a case. Reference may also be made the decision of the Supreme Court in the case of [Rajendra Nath Kar Vs. Gangadas and Others](#), about the applicability of section 5 of the Limitation Act to the provisions of section 17(2A) of the West Bengal Premises Tenancy Act, 1956.

5. Section 17(1) of the West Bengal Premises Tenancy Act, 1956 contains two parts. The first part speaks of the deposit of the amount calculated at the rate of rent at which it was last paid, for the period, for which the tenant may have made default calculated upto the end of the month previous to that in which the deposit or payment is made together with the interest on such amount calculated at the rate of 8-1/3 per cent per annum from the date such amount was payable upto the date of the deposit, while the second part speaks of the deposit of the sum equivalent to the monthly rent, month by month, by the 15th of each succeeding month. So far as the first part of section 17(1) i.e., the amount for which the tenant may have made default is concerned, the tenant although u/s 17(1) is to deposit or pay the said amount within one month from the date of service of summons or where no summons has been served, within one month from the date of his appearance in the suit as laid down in section 17(1), the time for making such deposit can be extended u/s 17(2A) (a) of the said Act subject of course to the provisions of section 17(2B) thereof. Regarding the question as to whether extension of time may be claimed for the deposits as contemplated under both the parts of section 17(1) because of the non-abstante clause of section 17(2A), taking together the provisions of sections 17(1) and 17(2B), it can be said that the extension of time mentioned in 17(2A) relates only to the payment of the amount as referred in the first part of section 17(1) and also the amount required to be deposited along with the application under, section 17(2) and not in respect of any current rent as required to be paid or deposited under the second part of section 17(1). The application for extension of time, however, has to be made within the time specified u/s 17(2 B). Section 151 of the CPC cannot be invoked in such a case of extension of time in paying the amount either under the first part of section 17(1) of the admitted

arrears u/s 17(2) because of the specific period of limitation provided u/s 17(2B) and it is well settled that by invoking section 151 of the Code of Civil Procedure, court can not override the express provisions of law or grant exemption from the law of limitation. When the CPC provides specific remedy in a particular case or where the Limitation Act or a particular statute provides a specific period of limitation for doing a particular act, there is no inherent power u/s 151 of the CPC in a court of law running parallel to or overlapping the period of limitation or for relieving a party from the provisions of the Limitation Act. So far as the payment of current rent under the second part of section 17(1) is concerned, there is also a time limit specified therein and that period cannot also be extended u/s of the Code, in my view. Nonetheless, the delay in making such deposit of arrears of amount under the first part of section 17(1) or u/s 17(2) as well as in paying the installments u/s 17(2A)(b) or in depositing the current rent under the second part of section 17(1), however, can be condoned u/s 5 of the Limitation Act by extending the time, provided sufficient grounds are made out in the application for condonation of such delay because of the specific provisions of section 39 of the West Bengal Premises Tenancy Act, 1956 read with section 29(2) of the Limitation Act.

6. Although the Division Bench of this Court in the case of *Sitala Debi v. Man Bahadur*, 76 C.W.N. 435 and also the Single Bench decision of this court in the case of *Sk. Sajahan v. Sm. Shama Debi*, (1977) 2 C.L.J. 545 approved about the applicability of the provisions of section 151 of the CPC in extending the time for depositing current rents fallen due for particular months, yet the Division Bench in *Sitala Debi's* case (supra) applied the provisions of section 151 of the CPC only under exceptional circumstances and that too without deciding the scope, of the applicability of section 151 of the CPC in the context of the applicability of section 5 of the Limitation Act in the matter. In the case of *Sk. Sajahan* (supra) Barooah J. while applying the provision of section 151 of the CPC in the case of delayed deposit of current rent also did not consider the specific provisions of section 17(1) or the provisions of section 17(2A.) or 17(2)(B) of the West Bengal Premises Tenancy Act, 1956 and also the applicability of section 5 of the Limitation Act in such a case.

7. Regarding the question as to whether after the applications under sections 17(2) and 17(2A) are disposed of, the tenant-defendant can take recourse to section 17(1) so far as payments under the said section are concerned, invoking either section 151 of the CPC or section 5 of the, Limitation Act, the answer in my view, is. "No". The cumulative effect of section 17(1), 17(2) and 17(2A) is that so far as the arrears of rent is concerned, the entire amount for which the tenant may be in default, if no dispute as to the amount of rent, or the rate of rent payable by the tenant is raised u/s 17(2), is to be deposited by the tenant-defendant within the time specified under the section 17(1) and if such a dispute is raised u/s 17(2) then the admitted arrears are to be deposited within the time specified u/s 17(2), the time in either case, however, can be enlarged u/s 17(2A) subject to the provisions of section 17(2B). The provisions of section 5 of the Limitation Act also do apply in such cases but not the

provisions of section 151 of the CPC as discussed above, and once the applications u/s 17(2) and 17(2A) are disposed of, the tenant can not take recourse to section 17(1) in paying the arrears of rent accruing prior to the institution of the suit or fallen due subsequent to the filing of the ejectment suit till the date of such payment is made even invoking section 5 of the Limitation Act as the scope of invoking section 17(1) in such a case is no longer available to the tenant. The subsequent Order No. 145 dated January 19, 1987 passed by the learned Munsif rejecting the tenant-defendant's application u/s 17(1) filed subsequent to the disposal of his applications u/s 17(2) and 17(2A)(b) is thus quite legal and valid and merits no interference by me in revision.

8. It has, however, been held by Chittatosh Mookerjee J. (as the Hon'ble Chief Justice then was) in the case of Nripendra Mohan Ghosh Chowdhury v. Tripti Rani Chakraborty, ILR (1976) 2 Cal 359 that the expression "amount" in section 17(2A)(b) comprises all sums which the tenant would be otherwise required to deposit or pay under sub-section (1) of section 17 but for raising a dispute under sub-section (2) thereof. Once the dispute u/s 17(2) is finally determined by an order u/s 17(2A) (b) the court is required to call upon the defendant-tenant to deposit" or pay the outstanding arrears rent together with the interest due thereon calculated upto the month previous to that in which the order under the said sub-section is made as the "Amount" mentioned in the different clauses of sub-section 17(2 A) and its proviso clearly means the composite sum consisting of arrear rent together with the rent due for the period subsequent thereto upto the end of the month previous to that in which the order u/s 17(2) is made together with the interest calculated in the manner as laid down in sub-section (1) of section 17. His Lordship in the subsequent decision in the case of Pulin Kumar Chowdhury v. Sachindra Mohan Bose & Anr., (1978) 1 C.L.J. 645 also reiterated the same view.

9. Under sub-section (2) of section 17 a tenant may raise a dispute within the prescribed time as to the amount of rent payable by him and until the determination of the said dispute a tenant obviously is not liable to deposit the amount of rent in dispute.

10. In the present case the tenant-defendant had not disputed the amount of arrears of rent payable by him rather admitted that the rent fell due from April, 1976 in his application u/s 17(2) but merely claimed adjustment of rent against the amount alleged to be due from the landlord-plaintiff on account of goods sold to him in course of a separate transaction and the said plea, in my view does not amount to a dispute which the tenant is entitled to raise u/s 17(2). Nonetheless when the tenant-defendant makes applications both u/s 17(2) and u/s 17(2A), no matter whether the application u/s 17(2) is dismissed on merit or for default, the court is bound to dispose of the application u/s 17(2A) separately in accordance with law. Sub-section (2A) starts with the non-obstante clause "notwithstanding anything contained in sub-section (1) or sub-section (2)....". In other words, sub-section (2 A)

engrafts an exception to the provisions of sub-section (1) and sub-section (2) to the extent contained in sub-section (2 A). In such view of the matter relying upon the decisions in Nripendra Mohan Ghosh Chowdhury's case (supra) and Pulin Kumar Chowdhury's case (supra) and also relying upon the Division Bench decision of this court in Jitendra Nath Nandy's case (supra) 1 set aside the Order No. 134 dated September 18, 1986 passed by the learned Munsif although the said order was not challenged before me in revision in time. The revisional application is thus disposed of accordingly. Instead of remanding the matter back to the trial court for rehearing of the application u/s 17(2A) of the West Bengal Premises Tenancy Act, I am, however, disposing of the matter here and now by granting one month's time from date to the petitioner to pay up the entire arrears of rent together with interest calculated upto May, 1987 from April, 1986 at Rs. 3,723.26p. In default, this order will stand recalled and the revisional application will stand rejected.