

(1977) 12 CAL CK 0022

Calcutta High Court

Case No: None

Sudhir Kumar Sarkar

APPELLANT

Vs

P. C. Gupta

RESPONDENT

Date of Decision: Dec. 16, 1977

Acts Referred:

- Limitation Act, 1963 - Section 5

Citation: 82 CWN 515

Hon'ble Judges: Salil Kumar Datta, J

Bench: Single Bench

Advocate: Amarnath Roy Chowdhury and Barindra Nath Roy, for the Appellant; P. K. Sengupta and Samarjit Gupta, for the Respondent

Judgement

Mr. Justice Salil Kumar Datta

1. This Rule is directed against an order of the trial court allowing an application u/s 5 of the Limitation Act condoning the delay in filing an application u/s 17(2A) of the West Bengal Premises Tenancy Act, 1956.

2. The petitioner in this rule, who is the plaintiff landlord, instituted a suit for recovery of possession of a portion of premises No. 49/11/D, Hindusthan Park, Ballygunge, Calcutta-29 which the opposite party herein, being the tenant defendant in the suit held as a monthly tenant. The rate of monthly rent has been in dispute as according to the petitioner it was Rs. 125/- and according to the opposite party it was Rs. 50/- on the basis of the compromise decree in L.P.A. No.1 of 1963. The reason was that the landlord petitioner, according to the tenant opposite party, failed to effect necessary additions, alterations and repairs in respect of the premises in terms of the said compromise decree, while according to the petitioner all steps were taken by him as required. The opposite party entered appearance in the suit on July 7, 1965 and filed an application u/s 17(2) of the Act on the same day raising a dispute about the rate of rent and the amount of rent payable by him in

the context of the position taken by him referred to above, while depositing rent at the rate of Rs.50/- per month. The opposite party submitted that as there was a bona fide dispute as to the rate of rent as also the amount of rent payable by him, he prayed for determination of the rent payable by him if at all in respect of the suit premises.

3. This application was disposed of by the trial court determining the rate of rent at Rs.50/- per month and it was held that no amount accordingly was due to the landlord petitioner. The landlord moved this Court in revision in Civil Revision Case No.1168 of 1973 which was made absolute by Laik, J. on December 4, 1973 disallowing the application u/s 17(2), holding further that the application was not bona fide and the tenant defendant was liable to pay rent at the rate of Rs.125/- per month.

4. The tenant thereupon moved an application before the Supreme Court against the said order for special leave to appeal and the application was disposed of on September 9, 1974 by the following order:-

Mr. Chatterjee (learned Counsel for the opposite party herein in the Supreme Court) says that the Court below had no jurisdiction to dismiss the petition, because the dismissal of the petition precludes him from depositing the arrears of rent at the rate of Rs.125/- per month, which he is willing to pay. No order has been passed disentitling him from depositing the rent, and accordingly he can apply for directions to the court concerned, if so advised. This petition, however, has no substance and is accordingly dismissed.

5. Thereafter the tenant opposite party filed an application in the trial court in the said suit on September 30, 1974 u/s 17(2A)(b) of the Act, stating that, in view of the above order, the balance rent at the rate of Rs.75/- per month for 10 years 7 months from February, 1964 to August, 1974 amounting to Rs.9525/- with statutory interests thereon for Rs.4231.64 paise totaling Rs.13,756.64 should be allowed to be paid by installments at the rate of Rs.150/- per month. Again on January 17, 1975 the tenant opposite party filed an application stating that as he had filed an application u/s 17(2) for determination of the rate of rent and amount of rent payable by him, there was no necessity for filing any application u/s 17(2A)(b) until such determination. Further in any event as against the order of Laik J., he had preferred an appeal to the Supreme Court, he was entitled to the benefit of time taken in proceeding with the matter before the Supreme Court. The said application was u/s 5 of the Limitation Act for condonation of delay if any in filing the application u/s 17(2A) (b) by way of abundant caution.

It was accordingly prayed that the delay in filing the application should be condoned if it was held that there was such delay.

6. The learned Munsif by his order dated July 17, 1975 held that though the application u/s 17(2A)(b) of the Act is to be filed within one month from the date of

service of summons or from the date of appearance, an application u/s 5 of the Limitation Act is maintainable for condoning the delay in filing such application. The learned Munsif accepted the explanation of the opposite party and allowed the application u/s 5 of the Limitation Act condoning the delay in filing the application u/s 17(2A)(b) of the Act. On this finding the said application u/s 17(2A)(b) was set down for hearing on 2, 1975.

The present Rule is against the order.

7. Section 17(2A) runs as follows:-

17(2A):- Notwithstanding anything contained in sub-section (1) or sub-section (2), on the application of the tenant, the Court may, by order,

(a) extend the time specified in sub-section (1) or sub-section (2) for the deposit or payment of

any amount referred to therein;

(b) having regard to the circumstances of the tenant as also of the landlord and the total sum inclusive of interest required to be deposited or paid under sub-section (1) on account of default in the payment of rent, permit the tenant to deposit or pay such sum in such installments and by such dates as the Court may fix:

Provided that where payment is permitted by installments such sum shall include all amounts calculated at the rate of rent for the period of default including period subsequent thereto up to the end of the month previous to that in which the order under this Sub-section is to be made with interest on any such amount calculated at the rate specified in sub-section (1) from the date when such amount was payable upto the date of such order.

(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 therefore in sub-section (1) or sub-section (2), and no application for permission to pay in installment under clause (b) of sub-section (2A) shall be entertained unless it is made before the expiry of the time specified in sub-section (1) for the deposit or payment of the amount due on account of default in the payment of rent.

8. It appears that the combined effect of the above provisions is that the application u/s 17(2A)(b) of the Act is to be made within the same time as is provided for filing an application u/s 17(1) of the Act for the deposit or payment of the amount due on account of default in payment of rent, that is, within one month from service of summons on him or where no summons is served, within one month from the time for filing either of the applications under the section can be extended u/s 5 of the Limitation Act by virtue of section 39 of the Premises Tenancy Act, provided sufficient cause in respect thereof is shown to the satisfaction of the Court. It has

been held in (1) *Gujrat Printing Press v. Naraindas*, 64 C.W.N. 159 followed in (2) *Nazrul Islam v. Manna Singh*, ILR 1968 Cal 170 that the tenant has no absolute right to raise a dispute however false and if the court finds that the dispute is a sham one raised malafide simply for gaining time under sub-section (2) the court has ample power to hold that there is no dispute which would take the case out of sub-section (1) and bring it within sub-section (2) of Section 17. When the court dismisses an application u/s 17(2) as not being bonafide, there is no scope for any further order u/s 17(2) as the tenant by raising a dispute not bonafide has made himself disentitled to the benefits of that provision. If the application u/s 17(2) of the Act is not maintainable, the maintainability of an application u/s 17(2A) (b) of the Act does not arise.

9. As to the time limit for filing such application, it appears to me that in view of the clear provisions of section 17(2B), there is no scope for contending that no application u/s 17(2A) of the Act, clause (a) or (b), need be filed till the disposal of the application u/s 17(2) of the Act determining the rate of rent and amount payable by the tenant defendant. The prayer for extension of time for deposit or payment at a time or for payment by installments u/s 17(2A) of the Act has to be made within the same time as provided in section 17(1) by virtue of section 17(2B) and the pendency of an application u/s 17(2) of the Act cannot be accepted as a sufficient cause for non-filing of application u/s 17(2A) in time and for condoning the delay in making the application.

10. The attention of the Supreme Court was not drawn to these provisions when the above order was passed. In view, however, of the directions made by the Supreme Court, the learned Munsif considered the application u/s 5 of the Limitation Act. However as already indicated mere pendency of an application u/s 17(2) of the Act is no ground for not filing the application u/s 17(2A)(b) of the Act in time and the delay thereby caused is not a sufficient cause for condoning the delay. The application u/s 5 of the Limitation Act must accordingly be dismissed.

The Rule accordingly succeeds and is made absolute. The impugned order is set aside.

11. In view of the above order, the learned Musif now has to dismiss the application u/s 17(2A)(b) of the Act and in view of the directions of the Supreme Court, he has to pass appropriate orders u/s 17(2) of the Act in accordance with law with regard to the amount of rent due together with accrued interest and fixing a time limit for depositing the said amount in court or for payment to the landlord.

12. There will be no order for costs.

Mr. Roy Chowdhury, learned Advocate for the petitioner prays that his client may be permitted to withdraw the deposits already made or as may be made by the tenant-defendant. He is granted leave to withdraw the said deposits from court without prejudice to his rights and contentions.

The order may be communicated to the trial court at an early date.