

Kartick Chandra Paul and Another Vs Monorama Dassi and Another

Court: Calcutta High Court

Date of Decision: June 17, 1981

Acts Referred: Civil Procedure Code, 1908 (CPC) – Section 151
West Bengal Premises Tenancy Act, 1956 – Section 13(1)(i), 17, 17(2A), 17(4), 22

Citation: 86 CWN 495

Hon'ble Judges: Ram Krishna Sharma, J; Chittatosh Mookerjee, J

Bench: Division Bench

Advocate: Narayandas Das and Satyagopal Banerjee, for the Appellant; Rathindra Prosanna Sanyal and Rajlakshmi Dey, for the Respondent

Final Decision: Dismissed

Judgement

Chittatosh Mookerjee, J.

The appellants were admittedly tenants under the respondents in respect of the suit premises at a rent of Rs. 50/-

(fifty) per month. It is also undisputed that previously the landlord respondents had instituted an ejectment suit against them on the ground of

default in payment of rent. By complying with the relevant sub-section of section 17 of the West Bengal Premises Tenancy Act the defendant

appellants were given protection from eviction on the ground of default in payment of rent in terms of section 17(4) of the West Bengal Premises

Tenancy Act. The plaintiff respondent instituted the instant ejectment suit out of which this appeal arises on the allegation that the defendants had

again committed default since January 1970 and therefore, they were liable to be ejected u/s 13(1)(i) of the West Bengal Premises Tenancy Act.

The defendants had made an application u/s 17(2A) of the Act in the trial court. They had made also an application under sec 151 of the CPC for

directing correction of certain errors which had crept in some of the Rent Control challans by which the defendants had been depositing rent in the

office of the Rent Controller. While the Court below had ultimately allowed the application u/s 17(2A) it had rejected the said application of the

defendants u/s 151 of the Code. Ultimately, the trial court decreed the suit for ejectment against the defendant appellants u/s 13(1)(i) holding that

under proviso to sub-section 4 of section 17 of the Act in the instant second suit for ejectment the defendants were no longer entitled to the benefit

of protection against ejectment on the ground of default.

2. In our view, the learned Judge of the court below has rightly held that the deposits made by the defendant tenant, either with wrong surname of

the defendant No. 2 or with incorrect description of the tenancy held by them, were invalid and did not amount to valid payment of rent within the

meaning of section 22(2) of the West Bengal premises Tenancy Act. In view of the present proviso to sub-section 4 of section 17 of the Act the

defendant tenants had forfeited their right to obtain relief against ejectment on the ground of default in payment of rent. The application u/s 151 of

the Code made by the defendant before the trial court for correction of the errors made by them in making deposits in the office of the Rent

Controller was clearly misconceived and was rightly rejected, it is not within the scope of this appeal to decide whether the Rent Controller himself

could have allowed the defendant tenants application, if made, for correction of the errors in the rent control chalang because no such application

was made before the office of the Rent Controller. Our attention has been drawn to the decision of the Division Bench in Manikchand

Durgaprosad and ors. vs. Bulakidas Baheti, reported in AIR 1969 Cal. 104 which has inter alia laid down that neither the Deputy Registrar nor the

Controller can make corrections in the chalan and vary the appropriation of rent to a month other than what is mentioned in the application. This

Division Bench decision being binding upon us we respectfully follow the same.

3. We find no substance in the submission made on behalf of the appellants that only a mistake in the application by the tenant for making the

deposit for the initial month would be fatal to the validity of the deposits made in the office of the Rent Controller and that the error, if any, in

making the subsequent deposits in the office of the Rent Controller would be of no consequence. Sub-section 2 of section 22 of the Act has clearly

provided that no deposit shall be considered to have been validly deposited if the tenant wilfully or negligently makes any false statement in his

application for depositing rent unless the landlord has withdrawn the amount deposited before the institution of the suit for recovery of possession.

Therefore, any false statement made wilfully or negligently not only in the deposit for the initial month but also for any subsequent month of deposit

would entail forfeiture of the tenant's right of protection against ejectment on the ground of default. In the instant case, the tenant was clearly

negligent in making a false statement in some of the chalang about the surname of the defendant No. 2 and in some of the chalang about the correct

description of the tenancy. These particulars are required to be correctly given both in the application in Form I and in the chalan Form 2

prescribed by the West Bengal premises Tenancy Rules, 1956. Mr. Sanyal, learned Advocate for the respondents, has drawn out attention to the

fact that the defendants in tendering rent by Money Order for the month of January, 1970 had described themselves not in their individual names

but had collectively described themselves as ""Pal and Datta Enterprises"". Admittedly, the tenancy was held by the two defendants in their individual

names and not under the aforesaid assumed names. On this ground it can be plausibly argued that there was no valid tender in the name of the

tenants. Therefore, the corresponding deposit in the office of the Rent Controller for the month of January, 1970 was not valid. In the absence of

any fresh tender in the legal and correct way for subsequent months all subsequent deposits in the said office would be illegal.

For the foregoing reasons we dismiss this appeal without any order as to costs.

In the circumstances of the case we grant three months time to the appellants to vacate the suit premises.

Sharma, J.

I agree.