

(1983) 12 CAL CK 0012

Calcutta High Court

Case No: A.O.D. No. 252 of 1977

Dwarka Prosad Sharma

APPELLANT

Vs

J.N. Neogi

RESPONDENT

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**Date of Decision:** Dec. 14, 1983**Acts Referred:**

- West Bengal Premises Tenancy Act, 1956 - Section 13(1), 13(1)(i), 13(6), 17, 17(2)

**Citation:** 88 CWN 331**Hon'ble Judges:** N.G. Chaudhuri, J; Mookerjee, J**Bench:** Division Bench**Advocate:** M.P. Chowdhury, J.R. Sigtia and Amalendu Mukherjee, for the Appellant; R.N. Mitter, Ranen Mitra, Sailendra Nath Roy (No. 2) and Subhas Chandra Bose, for the Respondent**Final Decision:** Dismissed

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**Judgement**

Mookerjee, J.

The defendant appellant had been a monthly tenant under the plaintiff respondent in respect of Flat No. 6 in the second floor of No. 74/6B, Bagbazar Street, Calcutta. On 21st December, 1965 the plaintiff respondent had instituted the suit out of which this appeal arises for evicting the defendant inter alia on the allegations that he had committed defaults in payment of rent since January, 1964. According to the plaintiff, the defendant had been paying rent at the rate of Rs. 100/- per month, Rs. 55/- being acknowledged as rent and Rs. 45/- being described as service charges. The plaintiff's further case was that in consideration of the betterment fees levied upon him, the rent payable by the defendant had been raised to Rs. 120/- per month from November, 1963. The defendant contested the said suit by filing a written statement. He had also filed an application u/s 17(2) of the West Bengal Premises Tenancy Act praying for determination of the rent payable by him. According to the defendant, Rs. 55/- was the rent per month and without obtaining any receipt he had amicably paid rent up to March, 1964. From April, 1964 to 1967 he had been

depositing rent at the rate of Rs. 55/- per month in the office of the Rent Controller. On the receipt of the summons the defendant had deposited in Court arrear rents from January to March, 1964 and had also continued to deposit current rent at the rate of Rs. 55/- per month. The trial court had originally made an order by consent of parties disposing the defendant tenant's application u/s 17(2) of the Act without determining the dispute as to whether the rent at the rate of Rs. 120/- per month as alleged by the plaintiff or Rs. 55/- per month as contended by the defendant. The trial court had dismissed the suit on the ground that the plaintiff had failed to comply with the section 13(6) of the West Bengal Premises Tenancy Act. His Lordship Mr. Justice M.M. Dutta by his judgment and decree dated 2nd August, 1973 allowed the appeal preferred by the plaintiff landlord and after setting aside the trial court's decision remanded the case for fresh disposal in accordance with the directions contained in his judgment. The learned Judge held the notice u/s 13(6) of the West Bengal Premises Tenancy Act was valid. The learned Judge, however, came to the finding that the trial court had failed to determine the dispute u/s 17(2) of the West Bengal Premises Tenancy Act raised by the defendant tenant, and, therefore, directed fresh disposal of the said application u/s 17(2) of the Act.

2. After remand the trial court recorded oral and documentary evidence adduced by the parties and u/s 17(2) of the West Bengal Premises Tenancy Act determined that Rs. 100/- was the rent payable by the defendant. It accordingly determined the sum of Rs. 9941.73 as the balance amount of the arrear and interest payable thereon. The trial court by a subsequent order u/s 17(3) of the West Bengal Premises Tenancy Act had struck off the defendant tenant's defence against delivery of possession on the ground that he had failed to comply" with the said order u/s 17(2) of the said Act. The defendant thereafter did not contest the suit. After recording the evidence adduced by the plaintiff's side, the trial court decreed the suit in plaintiff's favour. Being aggrieved thereby, the defendant tenant preferred the instant appeal.

3. We may shortly dispose of the first submission of M.P. Chowdhury, learned advocate for the appellant. According to the findings made at the stage of the disposal of the application u/s 17(2) of the West Bengal Premises Tenancy Act by the court below, the defendant had defaulted in payment of rent by failing to either pay or deposit at the rate of Rs. 100/- per month. At the final hearing the defendant did not give any evidence and the exparte evidence on the plaintiff's side was that the defendant had defaulted in paying rent for more than four months. Therefore, there was sufficient material on record to justify passing of a decree against the defendant in terms of section 13(1) (i) of the West Bengal Premises Tenancy Act. In case the order u/s 17(2) was validly made, there could be no escape from the conclusion that by failing to comply with the provisions of the order u/s 17(2) of the Act the defendant had disentitled himself from obtaining relief u/s 17(4) of the West Bengal Premises Tenancy Act.

4. Therefore, Mr. Chowdhury, learned advocate for the appellant, has tried to assail the correctness of the decision made by the trial court u/s 17(2) of the West Bengal Premises Tenancy Act. Having ourselves considered the pleadings and the evidence, we hold that there was no infirmity either in law or in fact in the said determination u/s 17(2) of the Act. The trial court had correctly assessed the evidence adduced by the parties in coming to its finding that the rent of the suit premises was Rs. 100/- per month. The plaintiff himself had testified that the rate of rent was Rs. 100/- per month. But he had been granting two receipts - one for a sum of Rs. 55/- and another for Rs. 45/- per month--Mr. Chowdhury has not disputed that in a case like the present one, if in fact a monthly service charge was payable by his client, same would be treated as a part of the rent for the use and occupation of the suit premises. But his submission was that the plaintiff had failed to prove that there was any agreement for payment of service charges by the defendant tenant. We have pointed out to Mr. Chowdhury that in course of the brief cross-examination of P. W, 1 there was no suggestion even on behalf of the defendant that he had made false statements in course of examination-in-chief regarding granting of two receipts and the arrangement for paying of service charges etc. It is also very significant that after the plaintiff had further examined himself the defendant did not even choose to further cross-examine the P. W, 1.

5. It is also not disputed that since February/March, 1957 the defendant had been a monthly tenant. It is also in evidence that previously Amarendra, P.W. 3, used to occupy four rooms out of which in February, 1957 he had surrendered two rooms retaining the remaining two rooms. His rent was reduced accordingly from Rs. 170/- to Rs. 85/- per month. Two rooms surrendered by Amarendra were let out to the defendant. It is not probable that the rent payable for the Flat No. 6 would be even less than the proportionate rent previously paid by Amarendra.

6. The plaintiff had examined his another tenant, Phani Bhusan Banerjee, P.W. 2, and Amarendra, P.W. 3, to corroborate his case that he had all along been granting two separate receipts for rent and for payment of service charges. Both Phani Bhusan and Amerendra, P.W. 2 and 3, appeared to be truthful witnesses. Unless he had been actually paying the two sums, it was improbable that Phani Bhusan would make any admission that he used to get separate rent receipts for payment of service charges thereby admitting his liability to pay a higher amount of rent. We have also perused the evidence given by the defendant which appeared to be on the other hand, unconvincing and not credible. For the foregoing reasons, we hold that the trial court rightly found in its determination u/s 17(2) of the Act that the defendant used to pay rent at the rate of Rs. 100/- per month in the manner claimed by the plaintiff. There was no substance in the contention of Mr. Chowdhury that when the court below did not accept the plaintiff's case that the rent was Rs. 120/- per month, it was not justified in determining that the rent would be Rs. 100/- per month. We have perused the averments made in the plaint and the evidence which indicate that the plaintiff's case was that since induction of the defendant in the

year 1957 the rent payable was Rs. 100/- per month (Rs.55/- + Rs. 45/- per month). His case of enhancement of rent with effect from November, 1963 was not accepted by the trial court. Therefore, there was no impediment in the way of directing the defendant to pay rent at the rate he had last paid, i.e. Rs. 100/- per month.

7. We are unable to accept the submission of Mr. Chowdhury that the court u/s 17(2) of the West Bengal Premises Tenancy Act cannot direct payment of interest in addition to the amount of arrears of rent determined by it. In making a final order u/s 17(2) of the Act, the court is required to have regard to the other provisions of the Act which would obviously include the provisions of sub-section (1) of section 17 of the Act. Secondly, the scheme of sub-sections (1), (2) and (2A) of section 17 of the Act appears to be identical. The defendant in every ejectment suit governed by the West Bengal Premises Tenancy Act is required to deposit or pay the amounts specified in the said sub-sections in order to avail of the right to contest the plaintiff's claim for recovery of possession under any of the sub-clauses of section 13(1) of the Act. No doubt, sub-section (1) of section 17 of the Act has expressly mentioned about payment of interest at the statutory rate upon the arrear rent deposited or paid under the said sub-section. Even if the sub-section (2) has not expressly mentioned the words "interest payable", it is implicit that after determination u/s 17(2) of the Act the tenant would be required to not only deposit the amount of rent still due and outstanding but also the interest payable thereon as statutorily prescribed. In order to avoid repetition the legislature has briefly used the expression "amount" in sub-section (2) of section 17 of the Act. The said amount must be identical with the amount which will be payable in case no dispute had been raised by a tenant. It would be unreasonable to hold that a tenant who does not raise any dispute but deposits or pays under subsection (1) of section 17 of the Act, arrear rent would be liable to pay interest upon such arrear rent, whereas a defaulting tenant who raises dispute u/s 17(2) of the Act but is unsuccessful shall be relieved of the obligation to pay interest on the arrear rent determined to be due from him. We accordingly, hold that the court below had acted in accordance with law by directing the defendant to pay interest upon the amount determined u/s 17(2) of the Act.

8. For the foregoing reasons, the defendant is not entitled to any protection under the law and decree u/s 13(1) (i) of the Act passed by the court below to be upheld.

9. We accordingly dismiss this appeal. There will be no order as to costs. At the first instance the appellant will be granted one month's time to vacate the suit premises. In case within one month from this date, he files an undertaking to this court supported by an affidavit to deliver up peaceful and vacant possession, he would be granted time till 31st December, 1984 subject to the further condition that within two months he will either deposit in the trial court or pay to the plaintiff respondent the arrear mesne profits, if any, calculated at the rate of Rs. 100/- per month and would also go on remitting by money order a sum of Rs. 100/- per month, month by

month, within the 15th day of each succeeding month according to English Calendar--first such remittance shall be made on or before the 15th January, 1984. In case of default of deposit for any one month, the decree for ejectment shall become executable. We restrain the defendant appellant from subletting the said suit premises or from parting with possession in any manner of the same till he delivers the possession to the plaintiff respondent. If the above amounts be deposited or paid, the plaintiff respondent would be entitled to withdraw or receive the same without prejudice and without security.

N.G. Chaudhuri, J.

I agree.