(1993) 02 CAL CK 0023

Calcutta High Court

Case No: Suit No. 496 of 1992

Techno Shop Pvt. Ltd.		APPELLANT
	Vs	
Punjab and Sind Bank		RESPONDENT

Date of Decision: Feb. 2, 1993

Acts Referred:

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

Citation: (1993) 2 ILR (Cal) 120

Hon'ble Judges: Ajoy Nath Ray, J

Bench: Single Bench

Advocate: A.K. Mitra, for the Appellant;A. Chowdhury, for the Respondent

Judgement

Ajoy Nath Ray, J.
This is an application under 3.17(2) of the West Bengal Premises Tenancy Act, 1956, made by the tenant Defendant Punjab & Sind Bank regarding ascertainment of arrears of rent, if any, that is to be deposited by them and for orders regarding further subsequent payments.

2. There is no dispute that the application has been made within time.

3. The scheme of the West Bengal Premises Tenancy Act, 1956, is that within a month of service of the writ of summons the tenant is to deposit the arrears of rent with 8% interest and go on depositing the subsequent rent month by month.

4. In case "there is any dispute as to the amount of rent payable by the tenant" the tenant is to make an application u/s 17(2) of the Act for determination of such dispute.

5. Along with the said application the tenant must "deposit in Court the amount admitted by him to be due from him".

6. That is the first stage of payment by the tenant who applies u/s 17(2). At the second stage of Section 17(2) application. a preliminary order might be passed u/s 17(2)(a) for deposit in Court or payment to the landlord.

7. At the third stage a final order is passed u/s 17(2)(b) regarding the arrears of disputed rent and also regarding further rent.

8. It is submitted on behalf of the Plaintiff/Respondent that in the instant case the application of the tenant is unmaintainable because the tenant has not deposited along with the application the amounts admittedly due from it.

9. The rent reserved by the lease was the monthly amount of Rs. 24,487-50, that being the amount at the material time in 1992 after taking into account the agreed 15% increase at the five year periods.

10. The tenant had lent a sum of Rs. 9 lakh to the landlord with which the building (of which a part is occupied by the tenant) is said to have been built. The debit in the loan account was being reduced by adjustments out of the monthly rent at the rate of Rs. 15,000 per month.

11. In August, 1992 the tenant/Defendant forwarded a sum of Rs. 9,487-50 being the balance monthly rent for July.

12. The same was not accepted as disputes between the parties had already started by them.

13. The Plaintiff had forwarded on June 30, 1992, a cheque for Rs: 5,09,956 seeking to clear off the entire loan account. The stand of the Defendant, however, is that in spite of the said payment, the loan account was not entirely cleared off, and as on July 2, 1992, the said account still showed a debit of Rs. 1,42,227-78.

14. A further case of the tenant is that the Bank has been crediting the loan account of the Plaintiff with the entire amount of monthly rent of Rs. 24,487-50, since after return of the pay order for Rs. 9,487-50 mentioned above.

15. In para. 17 of the petition it is disputed in the tenant''s application that any amount was due or payable by the Petitioner tenant.

16. It is submitted on the basis of this by the Respondent, that the amount of Rs. 9,487-50 per month at least, for all months from July 1992 until the. application was made in November 1992, is admittedly payable by the tenant. There was no question of. any adjustment of the monthly rent as against the loan amount for any sum in excess of, Rs. 15,000 at any date. There is even no such pledging of agreement to adjust any sum in excess of Rs. 15,000 or any agreement to adjust the entire monthly rent against the loan account.

17. Thus, the Plaintiff submits, that on a whole reading of the petition the monthly sums of Rs. 9,487-50 were admittedly due for several months upto November 1992

and '' those sums not being deposited along with the application the application is unmaintainable.

18. In support of the above contention Mr. Anindya Mitra and Mr. Pratap Chatterjee cited the case of Kharashibala Roy v. Jewan Ram 1977 C.L.J. 594 (598). The said case is indeed an authority for the proposition that if the application u/s 17(2) is unaccompanied by the admitted amounts due then the application becomes unmaintainable. The said decision of Chittatosh Mukherjee J. contains at para. 4 the following passage:

The Defendants having failed to deposit the amount of arrear rent which was admitted by them to be due, they contravened the mandatory provisions of Section 17(2) of the West Bengal Premises Tenancy Act. Accordingly, their application u/s 17(2) was not maintainable.

19. On a whole reading of the present petition, however, it is impossible to come to the conclusion that any amount had been admitted by the tenant Defendant to be due from them at the time of making of the application. The question whether some amount is admitted by somebody to be due is different from the question whether, on an adjudication and hearing of the case of both sides, some amount is actually found to be due in spite of the rival and contrary contentions.

20. In many a case a decree is passed in favour of the Plaintiff as against the Defendant, but in several such cases such decrees could never have been passed at a summary stage on applications for judgment upon admission. In respect to an application u/s 17(2), for showing that the said application is unmaintainable on the ground of non-deposit of admitted amounts, the landlord must satisfy the Court that such averments are made in the petition of the tenant, or such documents are annexed (hereto or are otherwise available to Court on the basis of which it must be said that there was an admission by the tenant of liability to pay moneys on his behalf to the landlord on the date of the making of the application. Such admission must also be so unconditional, so unreserved and so unequivocal, as would in a case of judgment upon admission entitle the Court to pass a summary decree without entering into the controversy or the disputes at all.

21. In the instant case, I find that there is no such unqualified admission-on the part of the tenant/Defendant.

22. Another case was relied upon on the part of the Plaintiff/Respondent, the same being a Division Bench decision of this Court in the case of M/s. Jula Ens. (2). That case, as I venture to read the same, is an authority inter alia for the proposition that even at the stage of passing of the preliminary order u/s 17(2)(a) of the West Bengal Premises Tenancy Act the Court would have power to resolve some of the controversy raised by the tenant, in case the Court is of opinion that even at the stage of the preliminary order such a dispute should be resolved and that preliminary orders for deposit should be made upon resolution of such disputes. A

dispute regarding the right to suspend payment of rent for withholding of electricity or water by the landlord might, in certain circumstances, as in the case of M/s. Jiia Ens Vs. Hindusthan ICE and Cold Storage Co. Ltd., be such a dispute which is reasonable even at the preliminary stage.

23. We are, however, concerned neither with the jurisdiction of the Court regarding passing of the preliminary order nor with the jurisdiction of the Court regarding the passing of the final order but with the jurisdiction of the Court in at all entertaining an application where some amount admittedly due is not deposited by the tenant.

24. As I have indicated above the tenant clears that hurdle easily, in that, on a whole reading of the petition, it is impossible to make out a case for admission of sums to be due by the tenant in November 1992,

25. The third case relied upon for the Plaintiff was with regard to municipal rates and taxes. This is the case of U. R. Bhattacharya v. Mahalakhi Thakur 79 C.W.N. 221 '' and para. 11 of the judgment was placed in regard to the exposition of the various principles which are considered by a Court in determining whether sums reserved to be paid in the lease are sums payable by way of rent or otherwise.

26. Though I find no real dispute, apart from the question of adjustability, regarding the monthly rent of Rs. 24,487-50, there are various unexplained facts in regard to municipal rates and taxes, half of which is payable according to Clause (c) of the lease, which clause would be found reproduced at p. 68 of the annexures to the petition. In my opinion, no amount can be directed to be paid or deposited in regard to municipal rates and taxes at this stage, even assuming, for the sake of argument, that the same is payable as rent. The reason, why I say so is twofold.

27. First, in regard to determination of the amount of municipal rates and taxes payable by the tenant two documents are relied upon by the landlord. The first is a letter from the Deputy Assessor Collector of the Calcutta Municipal Corporation to one certain Dipankar Sett, Advocate of 46E, Rafi Ahmed Kidwai Road, wherein the Defendant is described as the client of the said Sett. The occupier''s share of Punjab & Sind Bank is clearly spelt out in the said letter. But Punjab & Sind Bank has come forward and said that this Sett was never their Advocate.

28. The second document with regard to municipal rates is a presentation copy of a consolidated rate/supplementary bill in respect of premises No. 12/1, Nellie Sengupta Sarani which houses the scheduled premises in question. But the said presentation copy is addressed to one Naresh Nath Mukherjee of 43, Old Ballygunge Road, though the landlord-owner of the premises is the Plaintiff and not Naresh Nath Mukherjee.

29. Moreover (and secondly), the Defendant is the tenant on the first floor of the back portion of the said entire premises at 12/1, Nellie Sengupta Sarani. Even if the Corporation rates are ascertained as to the whole building the question of

apportionment of the Defendant''s share as occupier''s share would still remain an outstanding question. I called upon the Respondent/Plaintiff to produce receipts of any payments that might have been made by owner to the municipal authorities in satisfaction of any assessments regarding the owner''s share, or even the whole rates, according to the current law. But no such receipts were forthcoming. Under these circumstances it is impossible to direct the tenant Defendant to deposit on account of municipal rates any sum of money even in Court, let alone pay to the landlord, when the owner himself cannot show, on the basis of any cogent material, what the tenant''s share is to be, in respect of the demised premises, either for payment under the lease, or for reimbursement to the landlord as ''rent'' on the basis of the present municipal law.

30. On the question of determination of the amount of rent, I come to the conclusion, on a consideration of the facts set out by the parties in their interlocutory pleadings, that the entire monthly rent of Rs. 24,487-50 became payable as rent, for the premises, as soon as the loan account adjustment arrangement fell through, provided the tenant Defendant is ultimately able to establish at trial that its tenancy should subsist and continue. If, however, it is established at trial that the tenancy is not so to continue, then rand in that event, the landlord might be entitled to the said sum or some other sum on some count other than rent.

31. However, so far as the monthly deposit in Court is concerned the same must be @ Rs. 24,487-50 for all months from July 1992 onwards.

32. There are two further observations to be made. The first is, that though u/s 17(1), for a deposit by the tenant on its own without an application to Court 8-1/3% interest p.a. is payable on the arrears of rent yet such interest is not expressly directed to be made a part of the order of Court either of a preliminary order, or of the final order which arc to be passed under s Section 17(2)(a) and 17(2)(b) of the Act. The second observation is, that even after a final order u/s 17(2) whether made with regard to rent or such other sums as municipal taxes, which might or might not class as rent, the Court hearing the suit would retain jurisdiction to adjust the rights between the parties on a final hearing and no order u/s 17(2) could then be raised as a final adjudication estopping the Court from entering into the matter once again at the time of passing of decree finally on the suit. These observations are necessary because I propose to direct deposit only of the rent amount without any interest and because I wish to clarify that in case municipal rates and taxes or other sums are found to be due from the tenant, either as rent or otherwise, at the time of the hearing of the suit, this order shall in no way be construed to be a bar as against the recovery of such sums on such final hearing.

33. The Defendant Applicant shall within a fortnight from date hereof deposit with the learned Registrar, Original Side, arrears of rent for the seven months from July 1992 to January 1993 both months inclusive (a Rs. 24,487-50 and shall thereafter

continue to deposit with the learned Registrar the said monthly sum of Rs. 24,487-50 p. by the 15th of each English successive calendar month commencing March 15, 1993, until further orders of Court or until determination of the suit.

34. This order is passed without prejudice to the rights and contentions of the parties in the suit and without prejudice to the rights and contentions of the parties in the application for summary judgment under Chap. 13A which has already been made on the part of the Plaintiff.

35. The Defendant Bank, after payment of the arrear sums as directed above by way of deposit with the learned Registrar, would be entitled to reverse (he credit entries, if any made in that regard in the loan (LAP) Account of the Plaintiff, so as to prevent double credit.

36. The parties, the Registrar, Original Side, and all others concerned are to act on a signed copy of this dictated order on the usual undertaking.