

(1975) 08 CAL CK 0021**Calcutta High Court****Case No:** C.R. No. 697 of 1975 with C.R. 972 or 1974

Sri Sri Iswar Mahadev Jiew Shib
Thakur

APPELLANT

Vs

Dilip Kumar Basu and Others

RESPONDENT**Date of Decision:** Aug. 13, 1975**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 115
- Limitation Act, 1963 - Section 12(1)
- West Bengal Premises Tenancy Act, 1956 - Section 17(1), 17(2), 17(3), 17(C), 17(D)

Citation: 80 CWN 163**Hon'ble Judges:** H.N. Sen, J**Bench:** Single Bench**Advocate:** Padmabindu Chatterjee, for the Appellant; Abja Keshab Chatterjee, for the Respondent**Judgement**

Harendra Nath Sen. J.

1. On an application u/s 115 of the CPC the petitioner obtained a rule which is directed against the order dated 20.11.73 passed by Sri N. Samaddar, Additional Munsif, Sealdah in Title Suit No. 225 of 1961. The petitioner brought the aforesaid suit against the opposite parties for eviction on grounds of default and reasonable requirement alleging that the opposite parties were tenants in respect of premises No. 26A, Nilmoni Row, at a monthly rental of Rs. 50/-payable according to English Calendar month and that they defaulted in payment of rents from February, 1957 to September, 1959 which disentitled them from any protection against eviction under the premises Tenancy Act 1956. The suit was contested by the defendant opposite parties on various defences and it was ultimately dismissed by the learned Munsif Additional Court at Sealdah. On an appeal, being Title Appeal No. 521 of 1964, the Lower Appellate Court set aside the judgment and decree of the Trial Court and

decreed the suit holding the opposite parties as habitual defaulters in payment of rent and as such not entitled to any protection against eviction. The opposite parties preferred a Second Appeal, being S.A. No. 1805 of 1966. The said second appeal was dismissed on 24.1.72 for non-prosecution with costs. In between the dates of disposal of the appeal before the Lower Appellate Court and the second appeal section 17(D) was inserted in the West Bengal Premises Tenancy Act by the Second Amendment Act 34 of 1969 on 14.11.69.

2. The opposite parties filed an application u/s 17(D) for setting aside the decree for eviction on deposit of the amounts in respect of which they were in default. The said application was opposed by the plaintiff petitioner on diverse grounds and amongst others, on the ground that the application was not maintainable and the same was barred by limitation and the previous application u/s 17(C) under the West Bengal Premises Tenancy Act (Amendment) ordinances, 1967 had been rejected as not maintainable.

3. By order dated 20.11.73 the learned Munsif Additional Court, Sealdah, allowed the application u/s 17(D) conditional upon defendants opposite parties depositing a specified sum within January 20, 1974 and directed that in default the said application would stand dismissed u/s 17(D) (5) of the Act. The Plaintiff petitioner obtained the main rule against the aforesaid order dated 20.11.73.

4. Later, a sub-rule was obtained in C. R. 972 (R) | 74 for stay of further proceedings in misc. appeal No. 52/74 pending in the Court of the learned District Judge, Alipore, 24-Pgs. till the disposal of the above rule. The aforesaid miscellaneous appeal was preferred by the opposite parties against the order allowing the review of the order dated 20.11.73 in part only.

5. In support of the main rule obtained in the Civil Revision case referred to above Mr. Padmabindu Chat-terjee, learned Advocate for the plaintiff petitioner urged in the first instance that the learned Munsif acted illegally and with material irregularity in allowing the application u/s 179(D) without considering whether the defendants opposite parties validly deposited the rents from January 1960 till the date of decree i.e. up to April, 1956 and the periods anterior thereto and in holding that deposit of rents from January 1960 to October 1973 month by month were in compliance of the requirements of section 17(1) of the Act.

In the next place, he urged that the learned Munsif acted illegally and with material irregularity in holding that the application u/s 17(D) was maintainable and not barred by limitation. No other point was canvassed before me.

6. On the factual position there is no dispute that the Trial Court dismissed the plaintiff-petitioner's suit for eviction of defendants-opposite parties on 31.3.64 and the Lower Appellate Court decreed the suit on 14.5.66 only on grounds of default negativing the other ground of reasonable requirement. It is also an undisputed fact that the plaintiff-petitioner after obtaining the decree in appeal before the Lower

Appellate Court put the decree into execution in T Execution Case No. 46/67 and it remained stayed under the second appeal preferred by defendants-opposite parties with the result that execution was till pending for possession and the plaintiff petitioner has not yet obtained possession of the premises in suit.

7. The learned Munsif negatived the landlord petitioner's contention that the application u/s 17 (D) was barred by limitation. In my view, the learned Munsif quite correctly held that the application was within time inasmuch the Amending Act of 1969 came into force on 14.11.1969 and the application u/s 17(D) was filed on 13.1.70 i.e. on the 60th day, excluding the day from which the period of time has to be computed for the purpose of limitation under the provisions of the Limitation Act, 1963. I am unable to agree with Mr. Chatterjee that limitation under the special statute governing cases between landlord and tenant shall have to be computed from the day the Amending Act of 1969 came into force because there was nothing in section 17(D) to indicate that the limitation provided for an application under that section was 60 days from the date the amending Act of 1969 came into force" notwithstanding anything to the contrary contained in any other Act. As such, computation of the period of limitation has to be made following the provisions laid down in section 12(1) of the Limitation Act, 1963. Mr. Chatterjees" contention that the application u/s 17(D) is barred by limitation, therefore, fails and was rightly negatived by the learned Munsiff.

8. The next point urged by Mr. Padmabindu Chatterjee was that the application u/s 17 (D) was not maintainable in law inasmuch the decree of the Lower Appellate Court merged in the decree in second appeal passed on 24.1.72 the second appeal being dismissed for non-prosecution on that date and the effective decree for possession which was capable of being executed was the decree in second appeal. The said decree was passed long after the Amendment Act 4 of 1963 came into force. Consequently the application u/s 17(D) of the Act could not any more be held to be either entertainable or maintainable. In support of his above contention Mr. Chatterjee cited the Supreme Court decision, Gojer Bros. (Pvt.) Ltd. Vs. Shri Ratan Lal Singh, The Supreme Court had to consider the question in the context of the facts of that case. In that case the decree for possession of premises was passed by the Trial Court in 1958 but the decree was taken in first appeal where it was confirmed and then in second appeal the High Court after a contested hearing dismissed the appeal and confirmed the decree of the first appellate Court in 1969 i.e. after and no4: before the commencement of Act 4 of 1968. The High Court allowed the tenant time till end of January, 1970 for vacating the disputed premises. The tenant filed an application u/s 17(D) few days before he had undertaken to vacate the premises asking for setting aside the decree for possession passed against him. On such facts the Supreme Court held that as the decree of the Trial Court passed in 1958 merged in the decree of the High Court dated January 8. 1969 i.e. after commencement of the Act 4 of 1968, section 17(D) of the Act of 1956 can have no application and, therefore, the decree of the High Court which is the only decree to be executed

cannot be set aside under that section. In this connection I may point out that the landlord decree holder of that case never put the decree for possession into execution. But in the instant case before me the landlord petitioner put the decree for possession granted by the Lower Appellate Court into execution and execution of the decree remained stayed under the second appeal which ultimately was allowed to be dismissed for non-prosecution. The landlord petitioner carried the decree for dismissal by the Trial Court in appeal and it was the Lower Appellate Court which disposed of the appeal after a contested hearing. The decree for possession passed by the Lower Appellate Court was, therefore, a decree which was capable of being executed and put into execution as such. This decree was passed before 26.8.1967, the date of commencement of the West Bengal Premises Tenancy (Amendment) Act, 1968, and it was passed only on ground of reasonable requirement. Being so, the application u/s 17(D) of the Act made within the prescribed period was rightly held to be maintainable in the particular facts of the case before me and I am inclined to hold that the Supreme Court decision is clearly distinguishable on facts and it does not affect the maintainability of the application u/s 17(D) on the particular facts of the case before me.

9. Section 17(D) of the Act was inserted for the benefit of certain classes of defaulting tenants. As such the said section should be liberally construed to give effect to the intention of the legislature. Decree for possession whether passed by the Trial Court or by the Lower Appellate Court is quite capable of being executed. All that is necessary to state in the application for execution is as to the particulars of the decree sought to be executed. Then as and when the decree for possession is affirmed by any superior court, the decree holder is to amend the execution petition to incorporate further particulars about subsequent proceedings in connection with the decree put into execution. With regard to an application u/s 17(D) of the Act, the decree for possession first in point of time be it by the Trial Court or the Lower Appellate Court or the High Court in second appeal, is to be looked at and if such a decree is before 26.8.1967, i.e. the date of commencement of Act 4 of 1968 and is put into execution but possession has not been obtained there under, the tenant will be entitled to maintain an application u/s 17(D) of the Act for having the decree for possession set aside. To my mind, any other interpretation on the scope of section 17(D) of the Act would make this beneficial piece of legislation wholly nugatory.

10. In the instant case before me the decree for possession passed first in point of time was the decree granted by the Lower Appellate Court after a contested hearing. That decree was passed before 26.8.1967 and the decree was only ground of default. The particulars necessary for attracting the operation of section 17(D) of the Act were satisfied in the case before me and the learned Munsif was satisfied about it.

11. Coming now to the other point raised by Mr. Chatterji that the learned Munsif arbitrarily calculated the amount directed to be deposited by the tenant opposite party and he went wrong in not considering whether the deposits made by the tenant were in accordance with the law. To my mind this argument suffers from certain misconception. Under the procedure laid down in section 17 (D) (3) the court is to deposit or pay u/s 17(1) or 17(2) calculated upto the date of the decree and in doing so, credit is to be given for every deposit or payment made u/s 17(1) and 17(2) of the Act. The Court is then to determine the amount payable for the period between the date of decree and that the date of the order after giving credit for the amount paid to the landlord or deposited in Court or with the Controller. The tenant is then to be directed to deposit in Court the aggregate of the amounts together with such costs as may be allowed within such time to be fixed by the Court not exceeding sixty days from the date of the order. In calculating the aggregate of such amounts there is no question of any consideration of the validity or otherwise of the deposits because section 17(D) is attracted to cases whether there was no order striking out defence agiainst delivery of possession u/s 17(3) for noncompliance of the provisions laid down in section 17(1) and 17(2) of the Act. Under the circumstances the impugned order does not suffer from any illegality in the exercise of jurisdiction and with material irregularity necessitating any interference in revision. There is thus no substance in the rule issued in Civil Rule No. 972 (R)/74 and in Civil Revision Case No. 697/74. The aforesaid rules are accordingly discharged. No. order is made as to costs in these proceedings heard and disposed of together.