

(1970) 09 CAL CK 0035

Calcutta High Court

Case No: C.R. No. 1932 of 1970

Mrs. Gouri Bose

APPELLANT

Vs

Sukumar Ghosh

RESPONDENT

Date of Decision: Sept. 24, 1970

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1, 148, 151
- Limitation Act, 1963 - Section 5
- West Bengal Premises Tenancy Act, 1956 - Section 17, 17(2), 17(2A), 17(2A)(b), 17(3)

Citation: 75 CWN 342

Hon'ble Judges: Salil Kumar Datta, J

Bench: Single Bench

Advocate: R.K. Sinha, for the Appellant; S.K. Mitra, N.C. De and S.K. Deb, for the Respondent

Judgement

Salil Kumar Datta, J.

This rule was obtained by the tenant defendant against an order passed by the learned Munsif rejecting her application for extension of the date of payment ordered u/s 17 (2A) (b) of the West Bengal Premises Tenancy Act, 1956. The opposite party instituted on 21.11.69 a suit for recovery of possession of the suit premises which the defendant held as a monthly tenant at a monthly rent of Rs. 3751- payable according to English calendar month. The ground for eviction was default in payment of rent since June, 1969. There was also claim for recovery of rent from June to October, 1969. The petitioner entered appearance on 9.12.69 and filed a petition for permission to deposit rent for November, 1969. By another petition u/s 17(2) she raised a dispute contending that Rs. 250/- was the rent for suit premises while Rs. 125/- was the hire for fans and bath room fittings. A third application was filed on the same date u/s 17 (2A) for leave to deposit arrear rent by instalments.

2. The learned Munsif by his order dated 11.3.70 determined the arrear rent for July and August, 1969, aggregating Rs. 750/- and he directed that the petitioner should deposit the same by monthly instalments of Rs. 150/- the first deposit to be made by March, 1970.

3. The deposit was however not made within March, 1970 and on 8.4.70 the petitioner filed an application under Order 47 Rule 1 of the CPC whereon Mis. Case No. 18 of 1970 was started. In her application she stated that her karmachari Gobinda Chandra Dey used to look after her case and she was not aware of the order of 11.3.70. She had asked him to take a certified copy of the order from the Court but he went to his native village and fell ill and was even ailing at the time. She got the certified copy of the order on 2.4.70 from her lawyer's clerk through another person and thereupon came to know of the said order, which in the circumstances could not be complied with. The petitioner while depositing amount of instalment for March and April, 1970, applied by the application filed on 8.4.70 for review of the order and praying for enlargement of time and acceptance of the deposit. An affidavit in support was also filed by Gobinda Chandra Dey. The application was opposed by the opposite party who contended that the application was not maintainable in law, particularly after the expiry of the time limit. The other allegations about the alleged reasons of delay were denied.

4. This application came up for hearing on 30.5.70 when on hearing the parties, the learned Munsif was of opinion that the real grounds for noncompliance of the order was hardship and ignorance and those were no ground for review. The learned Munsif took the view that the Court has no power or jurisdiction to grant extension of time for payment of instalment if the application for extension is filed after the expiry of the date of payment. Accordingly it was held that the application was misconceived and liable to be dismissed. The Misc. Case was accordingly dismissed. Against the said order the petitioner obtained this rule.

5. Mr. R.K. Sinha the learned counsel appearing for the tenant petitioner in support of the rule contended that the West Bengal Premises Tenancy Act, 1956 are remedial measures intended to protect tenant from eviction. The provisions thereof should be liberally construed in favour of the tenant. In the instant case the petitioner was ignorant of the order passed by the Court on 11.3.70 and in the circumstances the time limit for the deposit should be extended and the deposit accepted as compliance of the order of the Court for such deposit. Mr. Sukumar Mitra the learned counsel appearing for the landlord opposite party has contended that in view of the specific provisions of the Act, the provisions of the CPC under Order 47(1) or Section 151 had no application. Further the provisions of Section 17 (3) had already taken effect and there was no further scope of retrieving the position.

6. On a consideration of the relevant provisions of the connected statutes and the submissions of the parties, I am of opinion that the provisions of the West Bengal

Premises Tenancy Act, 1956 in respect of Section 17, with which we are concerned here, are mandatory and the Court has no power to extend the time limits thereby fixed. The time limits have been provided for in sub-section (1) and (2) of Section 17 for purposes mentioned therein. Again in sub-section (2A) of Section 17 provisions have been made for payment or deposit of rent in clause (a) within the time as may be extended by court and in clause (b) by such instalments and on such dates as may be fixed by Court, both on the applications of the tenant provided again such applications are filed within the time provided in sub-section (2B) of Section 17 of the Act. In default of deposit or payment of any amount as may be directed by sub-Sections (1) or (2) within time specified therein or extended time as provided in clause (a) of sub-Section (2A) or by such instalments on such dates as may be permitted under clause (b) of sub-Section (2A), the Court shall order the defence against delivery of possession to be struck out and proceed with the hearing of the suit. By its terms the Section 17, under its various sub-Sections referred to above, defines the power and jurisdiction of the Court to pass appropriate orders and in dealing with such matters the Court has no powers or jurisdiction to travel beyond the same. These are not the general or inherent powers of Court to fix a period for doing of any act prescribed under the Code of Civil Procedure, but are specific powers invested in Court by the Act for specific purposes. The Court accordingly cannot enlarge the period even after its expiry as provided in Section 148 of the Code which thus is not applicable and provisions of Section 151 or Order 47 cannot be invoked to bypass any provision of Section 17 for enlargement of time provided in the said various sub-Sections of Section 17.

7. The application for enlargement of time, as rightly held by the learned Munsif, is thus not maintainable, but the application at the same time contains a prayer to accept the delayed deposit as compliance of the order for deposit by instalment in so far as the first deposit is concerned. This is in effect a prayer for condonation of the delay in the deposit of the first instalment. u/s 39 of the Act, the Indian Limitation Act applies to all proceedings under the Act including proceedings under sub-Section (2) and (2A) of Section 17 as also under some other sections. A tenant is entitled to represent for an enlargement of time in respect of applications to be filed in proceedings under sub-sections referred if he can satisfy the Court that he was prevented by sufficient cause for not making the application in time u/s 5 of the Limitation Act. Though the section does not in terms apply to the making of deposits enjoined by the above Section, on the principles of the Section, I am inclined to think that it is permissible for a tenant to represent to the Court to condone for cogent reasons the delay in making the deposit before his defence against delivery of possession is struck out and the Court may consider such application on merits exercising jurisdiction u/s 151 of the Code. Considering all aspects of the matter, I am of opinion that an application for condonation of delay in making payment or deposit of rent pursuant to order under provisions of Section 17 (2A) would be maintainable in law. The Court, on such application, may condone the delay in

deposit of the amount if satisfied on materials before it that there was sufficient cause on the part of tenant in making the deposit after the date fixed on the day so done and not earlier.

8. It appears that after the impugned order was passed on 30.5.70, the opposite party filed an application on 8.6.70 for striking out the defence against delivery of possession and the application was directed to be put up for hearing on 27.6.70. In the meantime the tenant petitioner obtained this rule on 15.6.70 and further proceeding in suit was stayed. In the view I have taken the rule must be made absolute. The impugned order is set aside and the learned Munsif will consider, on materials on record, the application filed by the petitioner tenant on 8.4.70. If the Court is satisfied that the tenant was prevented by sufficient cause from making the deposit directed to be made and the deposit in the circumstances could only be made on the date the deposit is alleged to have been made and not earlier the delayed deposit will be accepted as compliance of the order for deposit passed on 11.3.60. If otherwise, the Court will reject the said application and proceed with the hearing of the application of the landlord and pass appropriate order u/s 17(3) and thereafter proceed with the hearing of the suit. There will be no order for costs in this rule which, as already stated, is made absolute.