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(2007) 05 CAL CK 0048

Calcutta High Court

Case No: CO. No. 2154 of 2005

Swapan Dutta and Others	APPELLANT
Vs	
Ashim Kumar Dutta and Others	RESPONDENT

Date of Decision: May 17, 2007

Acts Referred:

- Constitution of India, 1950 - Article 227
- Limitation Act, 1963 - Section 5
- West Bengal Premises Tenancy Act, 1956 - Section 13, 17(1), 17(2), 17(2A), 17(3)

Citation: (2007) 2 ILR (Cal) 271

Hon'ble Judges: Prabuddha Sankar Banerjee, J

Bench: Single Bench

Advocate: S.P. Roychowdhury, G.S. De, Debawsish Roy and Indranil De, for the Appellant;Bidyut Kumar Banerjee and Shila Sarkar, for the Respondent

Final Decision: Allowed

Judgement

Prabuddha Sankar Banerjee, J.
This revisional application is one under Article 227 of the Constitution of India and is directed against order dated July 20, 2006 passed by the Learned Civil Judge, Junior Division, Purulia in Title Suit No. 328 of 1981.

2. The said suit was brought by the present Opposite Parties against the present Petitioners praying for eviction of Defendants on the ground of reasonable requirement. The Defendants after appearance filed application u/s 17(1), 17(2) & 17(2A) of the West Bengal Premises Tenancy Act.

3. The Plaintiff subsequently filed one application u/s 17(3) of the West Bengal Premises Tenancy Act on April 2006 praying for striking out the defence of the Defendants against

delivery of possession. In that application the Plaintiff took the specific plea that the Defendants are the tenant under them at a monthly rent of Rs. 100/- payable according to Bengali calendar month. The Plaintiffs also took the plea that the Defendants stopped depositing the rent from Kartick 1409 B.S. As there was willful laches and negligence on the part of the Defendants in depositing the rent within the stipulate period as per provision of Section 17(1) of West Bengal Premises Tenancy Act, they filed the application u/s 17(3) of the West Bengal Premises Tenancy Act.

4. The Defendants contested the said application by filing written objection. They took the specific plea that after they appeared they were depositing the admitted rent of Rs. 100/-month by month by challans and they have also deposited the arrears of rent. It is their specific case that as the record was not put up regularly, they did not pay current rent as per provision of Section 17(1) of the Act. It is the further case of the Defendants that inadvertently they did not pay the rent from the months Kartick 1409 B. S. They also took the specific plea that current rent was handed over to the clerk of the Learned Lawyer for the Defendants and they were of the opinion that rent was duly deposited by the clerk. However, the Defendants took the plea that they are willing to pay arrears of rent since Kartick 1409 B.S. to 1413 B.S. together with interest. The Defendants filed one application on June 12/13, 2006 praying for permission to deposit the arrears of rent from Kartick 1409 to 1413 B.S. after condoning the delay.

5. By the order impugned the Learned Trial Judge allowed the application u/s 17(3) of the West Bengal Premises Tenancy Act, filed by the Plaintiff. The petition filed on June 12, 2006 by the Defendants was rejected.

6. Being aggrieved by the order of the Learned Trial Judge, the instant revisional application has been preferred by the Defendants/Petitioners.

7. Mr. S.P. Roychowdhury, Learned Counsel appearing for the Petitioners challenged the order on the following grounds:

i) That there was error on the part of the Learned Trial Judge in rejecting the application filed by the present Petitioners on June 12, 2003 praying for permission to deposit the arrears of rent after condoning the delay.

ii) That the learned Trial Judge did not consider that the present petitions were depositing the current rent as per Section 17(1) of the West Bengal Premises Tenancy Act, since 1981 till Ashwin 1409 (i.e. October 2002).

iii) That the Court ignored the fact that the Petitioners took the specific plea that the current rent was paid to the clerk of the learned lawyer month by month.

iv) That the Court ignored the fact that the said clerk duly supported the case of the Petitioners by swearing an affidavit.

8. Mr. Roychowdhury also challenged the order impugned on the ground that striking out the defence against delivery of possession as per Section 17(3) of West Bengal Premises Tenancy Act, is not mandatory provision but a discretion which should have been allowed by the Learned Trial Judge.

9. Mr. Roychowdhury, further challenged the 1. AIR 1967 SC 96 2. Beni Shankar Sharma and Others Vs. Surya Kant Sharma and Others, order on the ground that for more than 21 years, the present Petitioners duly deposited the current rent month by month and there was no allegation against them they have ever violated the provision of Section 17(1) of the West Bengal Premises Tenancy Act.

10. Mr. Roychowdhury, further contend that there was no fault on the part of the present Petitioners as they duly complied with the provision of Section 17(1) of the Act by handing over the current rent month by month to the clerk of the conducting lawyer who did not deposit the same to the Court. In other words, it was the contention of Mr. Roychowdhury that a litigant should not suffer for the laches or negligence on the part of the clerk or the conducting lawyer. It was the contention of Mr. Roychowdhury that on the basis of interpretation of statute, it has become the settled proposition of law that a Court should not allow a party to suffer for any wrong act done by his clerk or conducting lawyer. Mr. Roychowdhury, further drew attention of the Court to the fact that the clerk in question, by swearing an affidavit admitted that the Defendants duly, paid the current rent to him but the same could not be deposited before the Court on the grounds stated in the said affidavit.

11. Mr. Roychowdhury, further contended that the Court is to consider the circumstances regarding non-deposit of rent u/s 17(1) of the West Bengal Premises Tenancy Act and on the basis of materials on record the Court have the power to use its discretion in passing appropriate order with respect to an application u/s 17(3) of the West Bengal Premises Tenancy Act.

12. Mr. Roychowdhury, added further that law does not make it mandatory on the part of the Court to allow one application u/s 17(3) of the West Bengal Premises Tenancy Act, if it is found that the Defendants have violated the provision of 17(1) or 17(2) and 17(2A) of the West Bengal Premises Tenancy Act. At the same time, it was the contention of Mr. Roychowdhury that there is no express law that delay which may be for a long period cannot be condoned by a court if sufficient cause is shown.

13. The said pleas were strongly opposed by Mr. Bidyut Banerjee, Learned Counsel for the Opposite Parties who contended that it is not a case where the Court can use its discretion. It was the contention of Mr. Banerjee, that it is not a case where the Defendants has allotted the provision of 17(1) once or twice-in this case the Defendants did not deposit the amount since October 4, 2002. After the application u/s 17(3) of the West Bengal Premises Tenancy Act, was filed by the Plaintiffs/ landlords, the Defendants came up with an application u/s 5 of the Limitation Act on June 12, 2006 with prayer that

they be permitted to deposit the arrears along with interest after condoning the delay.

14. Mr. Banerjee, further pointed that in the objection to the application u/s 17(3) of he West Bengal Premises Tenancy Act, the Defendants did not say specifically that they paid the current rent month by month to the clerk of the conducting lawyer.

15. Mr. Banerjee, also challenged the plea of Mr. Roychowdhury on the ground that the Court below rightly disbelieved the story of registered clerk on the basis of his affidavit as in the said affidavit, the license number has not been mentioned-nor it has been mentioned under whom he is the registered clerk.

16. Mr. Banerjee, relied upon the page 29 of the application i.e. affidavit of the registered clerk. On the basis of the same, Mr. Banerjee contended that the averments in the said affidavit will not be sufficient for a Court to accept the said plea. In other words, it was the contention of Mr. Banerjee that the said averments would not be sufficient for a Court to condone the delay for about 4 years in depositing the current rent u/s 17(1) of the West Bengal Premises Tenancy Act.

17. Mr. Banerjee, further challenged the pleas as taken by the Learned Counsel for the Petitioners that the rent could not be deposited as the record was lying before the Hon"ble High Court and as the records were not put up on the date fixed.

18. The said plea, as taken by Mr. ROY CHWDHURY cannot be considered by the Court as in a case of eviction, record is put up as soon as challan is placed for passing the same for the current rent u/s 17(1) of the West Bengal Premises Tenancy Act.

19. Even if it is found that the record was called for by the Hon"ble High Court, a part filed is kept before the Court below and if any rent is tendered u/s 17(1) of the West Bengal Premises Tenancy Act, the same is duly entered in the part file.

20. Mr. Roychowdhury, in course of his argument relied upon the following cases:

(i) B.P. Khemka Pvt. Ltd. Vs. Birendra Kumar Bhowmick and Another,

(ii) Gay a Prasad Kar v. Subrata Kumar Banerjee 2006 1 W.B.L.R. I (S.C)

(iii) Miss. Santosh Mehta Vs. Om Prakash and Others,

(iv) Rafiq and Another Vs. Munshilal and Another,

21. Let me now deal with the cases as referred by Learned Counsel for the parties.

22. In the case in between Miss Santosh Mehta v. Om Prakash and Ors. the Apex Court debit with the provision of Delhi Rent Control Act, 1958. There was provision for striking out the defence u/s 15(7) of the said Act if it is found that the tenant is deprived of the protection given by Section 14 and therefore, the power u/s 15(7) of the Act must be

exercised with due subscription. The Hon''ble Court came to the conclusion that if a tenant fails or refuses to pay or deposit rent and discerns a mode of defence or gross negligence the tenant may verify his right to be hard in defence. In that case, the tenant duly deposited the rent either by cash or by cheque to her conducting lawyer who did not deposit the same before the Court Accordingly, the Court came to the rescue of the tenant as a litigant should not suffer for the laches or negligence on the part of the conducting lawyer.]

23. In the case in between Gaya Prasad Kar v. Subrata Kumar Banerjee (Supra) the Hon''ble Court came to the conclusion that while it is no doubt true that Section 4 of the Act provides that rents are to be paid within the time fixed by the contract, or, in the absence of a contract, by the 15th day of the month next following the month for which it is payable, once a suit is filed on any of the grounds referred to in Section 13, the tenant would be entitled to the benefits of extension of time under Sub-section (1) and Sub-section (2) of Section 17 of the Act with reference to the amounts to be deposited within Sub-sections (1) and (2) thereof.

24. It was the intention of the Legislature that on a suit for eviction being filed under the provisions of this Act, the tenant was required to deposit rent either in Court or with the Rent Controller or pay to the landlord an amount equivalent to the rate of rent at which it was last paid, for the period for which the tenant may have made default, including the period subsequent thereto up to the end of the month previous to that in which the deposit of rent is made together with interest at the rate indicated therein. In the instant case, there is no willful default in tendering of the rents by the tenant to the landlord and it was only on account of the initial refusal of the landlord that the tenant was compelled to tender rents for the month of March 1994 for the second time which was according to the time prescribed u/s 4 of the Act.

25. The provisions of the Act vests the Court with ample authority to extend the time for making the deposit of rents in case of default and this is a fit case where the Learned Civil Judge (Junior Division) has on a true interpretation of the provisions of the Act and the circumstances of the case came to a finding that the Appellant-tenant was not a defaulter.

26. It is true that in this case we are not concerned with the non-compliance of Courts order so far Section 17(2A) is concerned-we are concerned with the non-compliance of the provision of Section 17(1) of the West Bengal Premises Tenancy Act. However, this Court is bound to accept the principle on the basis of interpretation of statute by the Apex Court.

27. In this regard I must refer to paragraph 14 of the said reported case which runs as follows:

14. Having regard to the fact that the West Bengal Premises Tenancy Act, 1956 is a benevolent piece of legislation we has carefully gone through the provisions of the Act

and the submissions made in connection therewith for the purpose of examining the correctness of the view taken by the Learned single Judge of the Calcutta High Court.

28. in the case in between B.P. Khemka Pvt. Ltd. v. Birendra Kumar Bhowmick and Anr. (Supra) head note "A" runs as follows:

W.B. Premises Tenancy Act (12 of 1956) as amended by W. B. Premises Tenancy (Amendment) Ordinance (No. VI of 1967) Sections 17(1) and 17(2) A-Benefit of Section 17(2-A)-Available to all tenants notwithstanding bar of time limit u/s 17(1); (1978) 1 Cal LJ 456, Reserved.

Head note "C of the said reported case runs as follows:

W.B. Premises Tenancy Act (12 of 1956), Section 17(3)- Expression "Shall"- Provision for striking out defence-Directory and not mandatory provision. (1978) 1 Cal LJ 456, Reserved.

29. Relying the said judgment Mr. Roychowdhury, contended that the discretion is with the Court in granting relief u/s 17(3) of the West Bengal Premises Tenancy Act.

30. In the case in between Rafiq and Anr. v. Munshilal and Anr. the Hon"ble Court came to the conclusion that a party should not suffer for the laches or negligence on the part of the conducting lawyer.

31. I have already stated that Mr. Banerjee, Learned Counsel for the Opposite Parties challenged the pleas as raised by Mr. Roychowdhury on the ground that the cases as referred by Mr. Roychowdhury are not applicable in the instant case as the period which were the subject matter of those cases were not for 4 years but for few months only. As such, Mr. Benerjee contended that the said cases will not help Mr. Roychowdhury"s client.

32. I have considered the plea as raised by the Learned Counsel for the parties. I have also considered that in the affidavit of the registered clerk it has not been mentioned under whom he was a registered clerk. It is clear from the said affidavit that he got the rent from the Defendants but he could not deposit the same as the entries were not properly made in his diary. We must keep it in mind that the Defendants deposited the rent u/s 17(1) of the West Bengal Premises Tenancy Act uninterruptedly for a period of 21 years. It is clear from the pleas as taken by the Defendants that they paid the rent to the clerk of the conducting lawyer who did not deposit the same before the Court and the said fact came to their knowledge when the application u/s 17(3) of the West Bengal Premises Tenancy Act has been filed.

33. One information slip was filed before this Court stating the registration number of the Clerk and name of the Learned Lawyer under whom he is working. But the Court cannot take judicial notice to the same as it was not filed before the Court below.

34. On the basis of the cases as referred by Mr. Roychowdhury the principle as laid down by the Hon"ble High (Supreme-sk) Court to the extent that a litigant should not suffer for the laches or negligence on the part of his conducting lawyer or clerk should be followed. Accordingly, the order is required to be set aside.

35. Accordingly, the instant revisional application is allowed on contest with cost of Rs. 5,000/-

36. The impugned order passed by the Learned Trial Judge is hereby set aside. The prayer by the present Petitioners to deposit the arrear of rent u/s 17 (1) of the West Bengal Premises Tenancy Act after condoning the delay is hereby allowed. The present Petitioner is directed to deposit the entire arrears u/s 17(1) of the West Bengal Premises Tenancy Act, together with statutory interest by five equal monthly instalment and if there is any odd number that is to be paid with the last instalment.

37. The cost of Rs. 5,000/- as ordered by the Court is to be deposited before the Court below within a period of one month from the date of this order along with the first instalment.

37.1. If this order is not complied with within the stipulated period, the order of the Learned Trial Judge will be automatically affirmed.

38. It is needless to mention that I have not gone through the merit of the case and any observation made by me in the body of this order is tentative and not final and the Learned Trial Judge under no circumstances will be influenced by any such observation in disposing of the suit.

39. As the suit is of the year 1981, the Learned Trial Judge is hereby directed to dispose of the suit within a period of six months from this date and this order is peremptory.

40. Urgent Xerox certified copy of this order be given to the parties within 7 days from the date of this order on proper application.