(1969) 06 CAL CK 0033

Calcutta High Court

Case No: Civil Revision Case No. 2430 of 1968

Md. Yusuf		APPELLANT
	Vs	
Golam Jilani		RESPONDENT

Date of Decision: June 13, 1969

Acts Referred:

- West Bengal Premises Tenancy Act, 1956 - Section 1(2), 17, 17(3), 17A, 17A(1)

Citation: 73 CWN 736

Hon'ble Judges: Alak Gupta, J

Bench: Single Bench

Advocate: Mrinmay Bagchi, for the Appellant;Bhupendra Kumar Panda, for the Respondent

Judgement

Alak Gupta, J.

The maintainability of an application u/s 17A of the West Bengal Premises Tenancy Act, 1956, is in dispute between the parties in this Rule. The decision of the dispute depends upon the answers to two questions that arise in this connection; one of them concerns the date of commencement of the West Bengal Premises Tenancy (Amendment) Act, 1968 which introduces the present section 17A in the West Bengal Premises Tenancy Act, 1956, and the other relates to the scope of section 6 of the aforesaid Amendment Act of 1968. Hereinafter I shall refer to the parent Act of 1956 as the Act and the Act of 1968 as the Amendment Act. Before I proceed to state the facts giving rise to the dispute, it will be necessary for a correct appreciation of the questions that arise to trace the legislative history behind the enactment of the said section 17A and refer to the terms of the other relevant provisions. On August 26, 1967 an ordinance was promulgated called the West Bengal Premises (Amendment) Ordinance, 1967, West Bengal Ordinance No. VI of 1987. By paragraph 4 of this Ordinance (hereinafter referred to as the first Ordinance) a new section, namely, section 173, was inserted in the Act which for the first time entitled the courts on certain conditions being satisfied to set aside an order passed u/s 17 (3) of the Act

striking out the defence against delivery of possession. Section 17B permitted a tenant, if the suit for eviction was pending at the commencement of the said Ordinance and his defence against delivery of possession had been struck out before such date, to apply within 30 days from the commencement of the Ordinance to set aside the order. On receipt of such application the court was to determine the amount that the tenant was liable to deposit or pay under sub-section (1) or. (2) of section 17 of the Act and order the tenant to deposit the amount in court within 30 days from the date of the order. On the tenant depositing the amount within the time fixed the court was to allow the application and set aside the order striking out the defence. This Ordinance was repealed by another Ordinance, West Bengal Premises Tenancy (Amendment) Second Ordinance, 1968 West Bengal Ordinance II of 1968, (hereinafter referred to as the second Ordinance) which was published in the Calcutta Gazette Extra-Ordinary of January 8, 1968. Paragraph 7 of this Ordinance repealed the first Ordinance. Parapraph 4 of the second Ordinance also introduced a new section 17B in the Act. Section 17B as introduced by second Ordinance is exactly similar in terms to the section 17B inserted by the first Ordinance; the conditions of aplicability of the new section 17B are also the same, namely, the suit must be pending at the date of commencement of the first Ordinance and the defence against delivery of possession struck out before such date. Paragraph 7 of the second Ordinance while repealing the earlier Ordinance also provided that in spite of such repeal any order made, thing done, action taken or obligation or liability incurred under the first Ordinance would be deemed to have been validly made, done, taken or incurred under the second Ordinance. The second Ordinance in its turn was repealed by the amendment Act, President''s Act 4 of 1968, which was published in the Calcutta Gazette Extra-Ordinary of March 26, 1968. Section 1(2) of the amendment Act lays down that it shall be deemed to have come into force on August 26, 1967. A provision almost similar to section 17B introduced by the Ordinances was inserted in the Act by the Amendment Act, and that is section 17A, which is in the following terms:

17A. Power of Court to set aside order striking out defence against delivery of possession.- (1) Where in a suit pending at the date of commencement of the West Bengal Premises Tenancy (Amendment) Act, 1968 the defence against delivery of possession was struck out by an order made under subsection (3) of section 17 before such date, the tenant may, within a period of thirty days from such date make an application to the court which made such order to set aside such order. (2) On receipt of an application under subsection (1) the court shall determine, after giving credit for every deposit or payment made by the tenant in accordance with the provisions of sub-section (1) or sub-section (2) of section 17, the total amount which the tenant remained liable to deposit or pay in accordance with such provisions up to the end of the month previous to that in which the order under this sub-section is to be made and direct the tenant, by order, to deposit such amount in the court within a period of thirty days from the date of the order. (3) If the tenant

deposits such amount within such time, the court shall allow the application under sub-section (1) and set aside the order made under sub-section (3) of section 17 striking out the defence against delivery of possession, and permit the tenant to defend the claim for delivery of possession. (4) If the tenant fails to deposit such amount within such time, his application under sub-section (1) shall be dismissed with such costs as the court may award to the landlord.

2. The only difference between the said section 17B and section 17A appears to lie in the dates which determine the applicability of the two sections. In order to attract section 17A, the suit must be pending at the date of commencement of the Amendment Act and the defence against delivery of possession struck out before such date, not the date of commencement of the first Ordinance. In other respects the two sections are identical.

3. Section 6 of the Amendment Act while repealing the second Ordinance lays down in sub-section (2) that

(2). Notwithstanding such repeal, anything done or any action taken (including any order made, proceeding commenced, obligation or liability incurred), or deemed to have been done or taken, under the principal Act as amended by the said Ordinance shall continue to be in force and shall be deemed to have been done, taken, made, commenced or incurred, as the case may be, under the principal Act as amended by this Act.

4. The facts giving rise to the dispute in this case may now be stated. On December 20, 1966 the opposite party instituted a suit for eviction of the petitioner, who admittedly was a tenant under him, on the ground of default. On January 9, 1968 the tenant''s defence against delivery of possession was struck out u/s 17(3) of the Act. On January 29, 1968 when the second Ordinance was in force, the tenant applied for relief u/s 17B of the Act inserted by paragraph 4 of the said Ordinance. By its order dated March 11, 1968 the court below rejected the application on the ground that the order striking out the defence having been passed after the said Ordinance had come into force, the application did not lie. On April 16, 1968 the tenant applied u/s 17A of the Act as inserted by the amendment Act to have the order striking out the defence set aside. The learned Munsif has rejected this application as time-barred having been filed long after the period of 30 days from August 26, 1967 which according to him was the date of commencement of the amendment Act in view of section 1(2) thereof. The learned Munsif expressed the opinion "that the persons who did not come within the time stipulated in the Ordinance, 1967, cannot file a second petition under the Amendment Act." This Rule issued at the instance of the tenant is directed against the said order.

5. Having set out the relevant provisions of the two statutes and the Ordinance and the material facts, I now proceed to consider the first of the two questions that arise for decision. As stated already, the amendment Act was published in the Calcutta

Gazette Extra-Ordinary of March 26, 1968, Section 1(2) of the amendment Act says that the said Act "shall be deemed to have come into force on August 26, 1967" which is the date when the Ordinance of 1967 was promulgated. Section 17A introduced in the Act by section 3 of the amendment Act prescribes a period of thirty days from the date of commencement of the amendment Act to make an application to set aside an order striking out the defence against delivery of possession. The application in the instant case was made on April 16, 1968 which is in time from the date of publication of the amendment Act but beyond time if the section is taken to have come into force on August 26, 1967. Thus the question is, what is the date when the amendment Act should be taken to have commenced so far as section 17A is concerned, on March 26, 1968, when the Act was published ? Or should it be August 26, 1967, when the amendment Act is "deemed to have come into force ?" A similar question arose before Mr. Justice Bijayesh Mukherji in (l) Benu Roy Vs. Manindra Nath Chatterjee, where in connection with an application u/s 17B of the Act which empowers the Court to set aside a decree for recovery of possession in cases where the defence against delivery of possession has been struck out. Section 17B lays down that an application for relief under the section must be made within a period of sixty days of the commencement of the amendment Act. His Lordship held that the commencement of the Act for the purposes of section 17B would be the date of the publication of the amendment Act. The basis of the decision is two fold. His Lordship relied on a passage from Maxwell''s Interpretation of Statute, 10th Edition, at page 409 where it is said dealing with the topic of commencement of a statute that "where a particular day is named for its commencement, but the Royal assent is not given until a later day, the Act could come into operation only on the later day." Foot note (p) on the same page refers to the case of (2) Burn v. Carvalho (1834) 4 Nev. & M. 893 as the source of the principle stated. His Lordship also relied on the language of section 17B which being prospective only, he held that the section could not be made to apply from August 26, 1967.

6. On a regarding of the decision in Burn v. Carvalho, (supra) it does not, however, appear that the case lays down any such general principle as stated in the aforesaid passage from Maxwell to which Mukherji J. refers. The statute, 3 & 4 Will. 4, c. 42 which came to be considered by the Court in that case, received Royal assent on August 14, 1833 but section 44 of the said Act provided that it would take effect from June 1, 1833. All that was decided in Burn against Carvalho (supra) was that the terms of section 30 of the Act being prospective only were not applicable to any proceeding which took place before the Statute was passed and in this connection the court pointed out the difference in language between section 30 and section 31 of the statute, that the latter section was "sufficiently comprehensive to embrace all actions whether before or after the passing of the Act". In Craies'' Statute Law, (5th Edition) also, it is pointed out at page 356 in foot note (k) that the rule stated in the aforesaid passage in Maxwell "is not borne out by the case cited"

7. A principle analogous to that sought to be deduced from Burn against Carvalho (supra) was laid down by our Supreme Court in the case of (3) Harla Vs. The State of Rajasthan, where Bose J. delivering the judgment of the Court says "natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast on some recognisable way so that all men may know what it is; or, at the very least there must be some special rule or regulation of the customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence". The decision in Harla v. State of Rajasthan, (Supra), however, does not answer the question before us. Harla''s case does not lay down that the provisions of a statute can never take effect from any day prior to the day of its publication. A statute may come into operation from the date on which it is published but nothing bars the legislature from enacting that the provisions of the statute would take effect from a date prior to the date of its publication. In the instant case, the amendment Act was published in the Calcutta Gazette, Extra-ordinary on March 26, 1968 but section 1(2) of the amendment Act provides that it shall be deemed to have come into force on August 26, 1967. This only means that the provisions of the Act are sought to be given a retrospective operation. Having regard to section 1(2) of the amendment Act, section 17A of the Act would have been effective from August 26, 1967 if there were nothing in section 17A which made its operation from a date prior to March 26, 1968 impossible or absurd. Sub-section (1) of section 17A, which I have quoted above, permits a tenant to apply under that provision within a period of thirty days from the date of commencement of the amendment Act, sub-section (2) of the section requires the court on receipt of such an application to determine the amount that the tenant is liable to deposit or pay under sub-section (1) or (2) of section 17 and order the tenant to deposit the amount in court within a period of thirty days from the date of the order. Sub-sections (3) and (4) of section 17A provide the consequences following from the tenant depositing or failing to deposit the amount ordered within the time specified. The language of section 17A is clearly prospective and it is not possible to give effect to this provision from any date prior to March 26, 1968, when the amendment Act which introduces section 17A in the Act was published. Thus there would appear to be a conflict between the provisions of section 1 (2) of the amendment Act and section 17A, if section 17A is to take effect from the date of publication of the amendment Act. It is clear that in order to give any effect to the provisions of section 17A and save the section from being entirely nugatory, the commencement of the amendment Act for the purpose of this section must be taken to be the date on which the said Act was published. It is well-settled that in case of such conflict the principle generalia specialibus non derogant will apply. In (4) Pretty v. Solly, (1859) 26 Beav. 606 (610) Romilly, M.R., stated the Rule of Construction in such cases: "the rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the

other parts of the statute to which it may properly apply". I hold, therefore, that for the purpose of section 17A the West Bengal Premises Tenancy (Amendment) Act, 1968 must be taken to have commenced from the date on which the said Act was published, namely, March 26, 1968. In the instant case, the application u/s 17A(1) made on April 16, 1968 was thus in time and the court below was wrong in rejecting the application on the view that it had been filed beyond the prescribed time limit.

8. The other question for decision is whether in view of the fact that a previous application of the tenant made u/s 17B of the Act when the Ordinance of 1968 was in force had been rejected by the court below, the instant application u/s 17A praying for similar relief is barred. Mr. Panda appearing for the landlord opposite party contended that the rejection of the earlier application would be a bar to the maintainability of the application u/s 17A. Presumably Mr. Panda had in mind section 6(2) of the amendment Act which I have quoted above. Before I turn to this question, it is necessary to point out that the statement appearing in the impugned order that the tenant had previously applied u/s 17B when the first Ordinance was in force and that the said application was rejected as time-barred seems to be a mistake. The record of the case does not support this statement. In fact, as stated already, the earlier application u/s 17B was made when the second Ordinance was in operation and that it was rejected because the order striking out the defence u/s 17B of the Act was passed after the promulgation of the second Ordinance, and not before the commencement of the first Ordinance as required by section 17B.

9. Turning now to the question before me, section 6(2) of the amendment Act lays down that any order made under either of the two preceding Ordinances shall continue to be in force as if they were made under the amendment Act. This implies that if a tenant had applied claiming relief under any of the provisions of either of the two Ordinances and the merits of his claim were considered and decided, the decision will be deemed to be one made under the amendment Act so that a second application asking for similar relief under a corresponding provision of the said Act would possibly be barred. In the instant case, the tenant''s application u/s 17B made when the second Ordinance was in force was rejected on the ground that having regard to the date of the order striking out the defence against delivery of possession, section 17B was not attracted, and there was no adjudication on the tenant''s claim for relief. Even taking this order as one made under the amendment Act, it cannot operate as a bar to the maintainability of the present application u/s 17A of the Act. Section 17A of the Act is attracted if the defence against delivery of possession was struck out before the commencement of the amendment Act. I have held that for purpose of section 17A the said Act must be taken to have commenced from March 26, 1968. The petitioner''s defence against delivery of possession was struck out on January 9, 1968 and he made his application u/s 17A on April 4, 1968. Section 17A being prospective in operation the petitioner in the instant case had a right to apply for relief under the said section within the prescribed time limit, and this the tenant has done. There is no provision taking away this right even if the

tenant did not choose to avail of similar relief provided under the Ordinances. The order rejecting the application u/s 17B does not affect the maintainability of the application u/s 17A of the Act and the contention that section 6(2) of the amendment Act bars the said application being entertained and considered cannot, therefore, be accepted.

10. The Rule is made absolute. The order complained of is set aside. The learned munsif is directed to dispose of the application filed by the tenant u/s 17A(1) according to law as early as possible. There will be no order as to costs.