
91 CWN 581

Calcutta High Court

Case No: Civil Revision Case No. 732 of 1983

Sukumar Sarkar and
Others

APPELLANT

Vs

Salil Kumar
Chakraverty

RESPONDENT

Date of Decision: May 31, 1984

Acts Referred:

- Transfer of Property Act, 1882 - Section 114

Citation: 91 CWN 581

Hon'ble Judges: Sachindra Nath Sanyal, J

Bench: Single Bench

Advocate: A.K. Sarkar, for the Appellant; P.K. das Gupta, for the Respondent

Final Decision: Allowed

Judgement

Sachindra Nath Sanyal, J.

In this revisional application the petitioners, who are plaintiffs in Title Suit No. 542 of 1981 pending before the learned Munsif, 3rd Court, Sealdah, have challenged the Order dated December, 20, 1982 passed by the Learned Munsif, rejecting the petitioners' application u/s 17(3) of the West Bengal Premises Tenancy Act (hereinafter referred to as the Act). The petitioners instituted the suit on September 24, 1981 for eviction of the opposite party on the ground that suit premise were reasonably required by the petitioners for own occupation and also for building and re-building, subletting and default. The summons were served upon the opposite party on October 2, 1981. The opposite party appeared on October 30, 1981 and deposited Rs.840/- as arrears of rent from July 1979 to October 1981 and also interest amounting to Rs.80/-. The total deposit thus made was Rs.920/-. The opposite party, thereafter, made certain deposits in Court which will be presently considered. The petitioners filed an application u/s 17(3) of the Act on October 13, 1982. The said application was heard by the learned Munsif and rejected by the Order dated December 20th, 1982. The learned Munsif held that the defendant deposited the rent on

30.10.81 and as such it cannot be held that the defendant has violated any provision of the Act.

2. The petitioners have challenged the said order in the present Rule.

3. Mr. Sarkar, Learned Advocate for the petitioners, has argued that the learned Munsif has failed to exercise jurisdiction and he has completely misdirected himself when he did not take into consideration that not only there was default in making deposit as rent of June 1979 was not included, but also rents on some subsequent occasions were not deposited in compliance with Section 17(1) of the Act. Mr. Sarkar argues that there was earlier suit viz. Title Suit No. 112 of 1971. The said suit was disposed of on 6th July, 1979 and the appeal against the same was disposed of on July 3, 1980. Mr. Sarkar thus argues that as the rent for June 1979 was not before the disposal of the earlier suit on July 6, 1979, the said rent was due and disposal of the earlier suit on July 6, 1979, the said rent was due and it should have been deposited within one month of service of the writ of summons upon the opposite party. The next contention of Mr. Sarkar is that the record shows that the opposite party deposited two months' rent at a time on some occasions and the said deposit is not in accordance with the provisions contained in the latter part of Section 17(1) of the Act. This application u/s 17(3) should thus have been allowed.

4. Mr. Das Gupta, learned Advocate for the opposite party has argued that the rent for June 1979 was deposited in Title Suit No. 112 of the Court of the Additional Munsif, Sealdah on July 14, 1976. The opposite party deposited the arrears of rent along with the statutory interest on October 30, 1981, that is within one month of service of the writ of summons upon him. As regard the deposit of rent for two months at a time Mr. Das Gupta argues that in no case the opposite party has contravened the provisions of latter part of Section 17(1) of the Act as all the deposits have been made by the 15th of each succeeding month. Mr. Das Gupta argues that the tenant is prohibited from making any deposit of the rent of a month beyond the 15th of the succeeding month. He is entitled to make advance deposit and the said deposit cannot be considered to be in contravention of Section 17(1) of the Act. In support of his contention Mr. Das Gupta has referred to the case of (1) [Gopal Banerjee Vs. Manindranath Dey](#), . Mr. Das Gupta has further argued that Section 17(1) of the Act does not override Section 4(2) of the Act which allows the tenant to pay the rent payable for any month at any time during such month before it falls due. Mr. Das Gupta has referred to the case of (2) [Prasanta Kumar De Chowdhury and Others Vs. Tapas Kumar Das](#), . Mr. Das Gupta thus argues that the provisions of S 17(3) of the Act are not attracted as the opposite party had deposited rent referred to in sub-section (1) within the time specified therein.

5. There is no dispute that the rate of rent is Rs.30/- according to English calendar month. The summons was served upon the defendant on October 2, 1981 and he appeared on October 30, 1981 and deposited Rs.920/- as the amount in default along with statutory interest. The contention of Mr. Sarkar is that the rent for June 1979 was also in arrears

and should have been deposited within one month of the service of summons along with the interest. Mr. Sarkar argues that the said deposit in Title Suit No. 112 of 1971 after the disposal of the said suit is not valid and the rent was in arrears and as it had not been deposited, the provisions of section 17(3) are attracted.

6. Section 17(1) of the Act runs as follows :-

On a suit or proceeding being instituted by the landlord on any of the grounds referred to in Section 13, the tenant shall subject to the provisions of sub-section (2), within one month of the service of the writ of summons on him or where he appears in the suit or proceeding without the writ of summons being served on him within one month of his appearance deposit in Court or with the Controller or pay to the landlord an amount calculated at 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 or payment is made together with interest on such amount calculated at the rate of eight and one-third per cent, per annum from the date when any such amount was payable upto the date of deposit, and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum of equivalent to the rent at the rate".

7. It appears that Section 17(1) requires that apart from the amount in arrears, the tenant shall continue to deposit or pay month by month by the 15th of each succeeding month a sum equivalent to the rent at the rate at which it was last paid. The record shows that the rent for November and December 1981 was deposited on December 12, 1981. The rent for January and February 1982 was deposited on February 4, 1982. The rent for March and April 1982 was deposited on April 1, 1982. The rent for August and September 1982 was deposited on September 1, 1982 and rent for October and November 1982 was deposited on October 13, 1982. The rent for May 1982 was deposited on 7.5.82 and the rent for June 1982 was deposited on 17.6.82 and rent for July was deposited on 6.7.82. It appears thus that on some occasions rents for two months have been deposited at a time. The question is whether the same is in compliance with latter part of Section 17(1) of the Act which requires deposit month by month.

8. In Gopal Banerjee's case there was a question whether the rent already paid in advance and lying with the landlord should be adjusted against the rent of the month for which default was alleged. This case was dealing with the question of default for the period for which the tenant may have made default. It was held that to strike off the defence u/s 17(3) for non-compliance with Section 17(1) on such a contention of default must have to await the trial, would be illegal. It has further been held that Section 17(3) of the Act is a penal section in the sense that because of the tenant's failure to deposit or pay the amount mentioned in sub-section (1) or sub-section (2), the Court shall order the defence against delivery of possession to be struck out. To impose such a penalty on the tenant the plaintiff landlord must bring him clearly within the language of failure to deposit or pay the amount under sub-section (1) or (2) of Section 17 of the Act.

9. Mr. Sarkar has referred to the case of (3) Ganesh C. Nandy v. M/s. J.N. Chatterjee & Bros, 70 CWN 676. In this case the rents from January to March 1960 were deposited with the Rent Controller beyond time. The rent for April 1960 was deposited with the same authority in time. But it was not proceeded by the requisite tender and all these deposits were thus held to be invalid. This case also dealt with the question of relief against forfeiture u/s 114 Transfer of Property Act.

10. In Prasanta Kumar's case (AIR 1961 Cal 332) the tenant deposited rent for the month of Ashar, Sravan and Bhadra 1383 B.S. on October 25, 1976 corresponding to 8th Kartick, 1383 B.S. and the deposited rent of Aswin 1383 B.S. on 2.11.76 corresponding to Kartick 15, 1383 B.S. It was held that Section 17(1) of the Act does not override general rules to payment of rent contained in Section 4(2) of the Act. It has further held that where the tenant deposited arrears of rent but did not deposit the rent of the previous month on the ground that the same was not due, the deposit made by the tenant would not be held to be invalid on the ground of non compliance with Section 17(1) of the Act. This decision was dealing with the deposit of amount in respect of which the tenant may have made default. This decision does not, however, deal with the deposit of rent month by month in accordance with the latter part of Section 17(1) of the Act.

11. The question thus raised is whether the deposit of two month's rent at a time is in compliance with Section 17(1) of the Act. In the latter part of Section 17(1) there is no question of any default. The tenant under the statute is obliged to deposit or pay month by month each succeeding month a sum equivalent to the rate of rent at which it was last paid. The obligation is a statutory one the breach of which it was last paid. The obligation is a statutory one the breach of which will bring the case within Section 17(3) of the Act. If the tenant fails to deposit or pay any amount referred to in sub-s (1) within the time specified therein, the provisions of Section 17(3) of the Act would be attracted. It is true that the Premises Tenancy Act is a special statute enacted for the benefit or protection of the tenant.

12. Section 17 provides a scheme for payment of the amount in respect of which default has been made also for payment month by month. The words "month by month" occurring in Section 17(1) cannot be excluded. The tenant cannot evolve his own procedure for payment of several months' rent at a time. The obligation cast upon the tenant under Sec. 17(1) of the Act is to deposit month by month. The tenant has not made any deposit in January 1982 and March 1982. Though monthly rents have been deposited, but as some of the deposits were not in consonance with the provisions contained in the latter part of Section 17(1), there was a breach of the said provision. In such circumstances, it has to be held that the tenant has failed to deposit amount referred to in sub-section (1) within the time specified therein. The application u/s 17(3) of the Act is thus allowed. The defence against the delivery of possession is struck out.

13. The revisional application succeeds.

14. The impugned order of the learned Munsif is set aside. The application u/s 17(3) is allowed. The Rule is made absolute.

There will be no order as to costs.

Let the records be sent below forthwith.

Let operation of this order be stayed for one month.