

Aloka Ghose Vs Inspector General of Police, West Bengal and Another

Court: Calcutta High Court

Date of Decision: Nov. 28, 1961

Acts Referred: West Bengal Premises Tenancy Act, 1956 " Section 17, 17(3), 3

Citation: 66 CWN 302

Hon'ble Judges: P.N. Mookerjee, J; Chatterjee, J

Bench: Division Bench

Advocate: Mukunda Behari Mullick, Mahendra Kumar Ghosh and Rabindra Nath Mitra, for the Appellant;Noni Coomar Chakravarty and Arun Kumar Janah, for the Respondent

Judgement

P.N. Mookerjee, J.

This Rule is directed against an order of the learned Subordinate Judge, directing, inter alia, that the plaintiff's

application u/s 17 (3) of the West Bengal Premises Tenancy Act, 1956, for an order under the said sub-section of the aforesaid section be taken

up, in the circumstances of this case, at the time of hearing of the suit. The suit in question is a suit for ejectment. The plaintiff's above application

was made on allegations of default in the payment of rent on the part of the defendants.

2. The defence, inter alia, was that there was no relationship of landlord and tenant between the parties and the suit was not maintainable and a

further point was specifically raised that the premises was a requisitioned premises and the requisition was still continuing.

3. On behalf of the plaintiff petitioner, Mr. Mullick has pressed before us that the application u/s 17(3) cannot be postponed until the hearing of the

suit simply because a defence on the above line has been raised. We are inclined to accept this submission of the petitioner. Applications u/s 17 of

the above Act are meant to be disposed of at a preliminary stage of the suit; otherwise their very purpose would be frustrated. Even if it involves

consideration of a very material defence to the suit, that is not necessarily a ground for deferring the hearing of the application until the hearing of

the suit. It may be that the Court, at the stage of the section 17(3) application, will decide the above question, which forms a material issue in the

suit itself, only prima facie and for purposes of the said proceeding, leaving it open for a final decision at the time of hearing of the suit. It may also

be that the Court may take up the issue upon that question along with the application u/s 17(3) and decide the two together fully so that the

decision on that issue will be final for purposes of the suit also. But there is no justification for deferring consideration of the application u/s 17(3)

simply because of the above defence or circumstances until the trial of the suit

4. In the above view, we would direct the learned Subordinate Judge to take up the plaintiff's application u/s 17(3) of the above Act either with or

without the issue on the above point as to the maintainability of the suit on the ground of absence of relationship of landlord and tenant between the

parties and the alleged continuance of the requisition.

5. We may add here that Mr. Chakravarty, appearing on behalf of the defendants opposite parties, drew our attention to section 1, sub-section

(3), proviso 2 of the above Act and contended that the said Act would not apply to the present proceeding. We need only note that there is

dispute between the parties as to whether the alleged requisition is continuing but, in any event, if this point is raised before the learned Subordinate

Judge, he will deal with it and decide it in accordance with law at the time of hearing of the section 17(3) application. If the defendants succeed in

their above point and the above Act is held not to apply to the instant case, obviously, the plaintiff's aforesaid application will have to be dismissed.

But that is a matter for the learned Subordinate Judge to consider and we are expressing no opinion on the point.

6. The Rule is made absolute accordingly, the order of the learned Subordinate Judge is set aside and the case is remitted to him for consideration

of the matter u/s 17(3) in accordance with law in the light of the observations, made hereinbefore. Costs of this Rule will abide the final result of the

aforesaid application.

Chatterjee, J.

I agree.