

Murari Mohan Mitra and ors. Vs. Indra Narayan Kundu

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Court : Kolkata

Decided On : Apr-01-1976

Reported in : AIR1977Cal153

Judge : S.K. Bhattacharyya and ;A.K. Janah, JJ.

Acts : [West Bengal Premises Tenancy Act, 1956](#) - Section 17(1), 17(2), 17(2A), 17(2B) and 17(4); ;[Limitation Act, 1963](#) - Section 5

Appeal No. : A.F.O.D. No. 939 of 1969

Appellant : Murari Mohan Mitra and ors.

Respondent : indra Narayan Kundu

Advocate for Def. : C. Tandon and ;Gian Kaur, Adv.

Advocate for Pet/Ap. : Monmohan Mukherjee and ;Manick Chandra Banerjee, Adv.

Disposition : Appeal dismissed

Judgement :

S.K. Bhattacharyya, J.

1. This appeal by the tenant defendant is directed against the judgment and decree passed by the Judge, 10th Bench, City Civil Court. Calcutta decreeing the

plaintiff-respondent's suit for ejectment of the defendant-appellant. The respondent sued the appellant for eviction from premises No. 53, Mahatma Gandhi Road, Calcutta-9 on the ground of default in the matter of payment of rent as also for subletting a portion of the premises without the prior consent of the landlord, after service of a notice to quit. The plaintiff alleged that the defendant had failed or neglected to comply with the said notice served On him on September 26, 1966 and accordingly the suit was instituted on March 28, 1967- In the said suit the defendant entered appearance on May 17, 1967 and filed his written statement disputing the default and denying the alleged subletting. On May 23, 1967 the defendant filed an application under Section 17

(1) of the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as 'the Act') for permission to deposit rent for the month of April and May 1967 and also for subsequent months. On the said permission being granted, the defendant deposited the rent for those months in court. On May 24, 1967 the defendant filed another application under Section 17(2) of the Act raising a dispute as to the amount of rent in arrears and further contended that he had already over-paid a certain sum to the plaintiff. The plaintiff duly filed his objection against the defendant's application under Section 17

(2) of the Act OD June 13, 1967 and simultaneously the plaintiff filed another application under Section 17(3) of the Act for striking out the defence against delivery of possession. On September 25, 1967 the defendant filed an application under the provisions of the West Bengal Ordinance VI of 1967 inter alia praying that if the court finds any amount payable by the defendant as arrears of rent, the defendant prayed for payment of the said sum by instalments. To this application the plaintiff also filed his objection on January 27, 1968. On July 13, 1968 the defendant filed an application under Section 5 of the Limitation Act for condonation of delay in filing the application under Section 17

(2) of the Act and an objection thereto was filed by the plaintiff on August 19, 1968. On September 6, 1968 the court below heard the application under Section 17

(2) of the said Act read with Section 5 of the Limitation Act and after hearing the learned Advocates of the parties rejected the application on the ground that

Section 5 was not attracted to the facts of the instant case and besides the defendant had not been able to satisfactorily explain the delay in filing the application. On the same date, the court passed an order under Section 17

(3) of the Act striking out the defence of the defendant against ejectment and thereafter the suit was heard and decreed ex parte on February 11, 1969, Against this decision the defendant preferred the instant appeal.

2. Mr. Mukherjee, learned Advocate appearing for the appellants in this appeal, has contended before us that the learned Judge was in error in rejecting the defence application under Section 17 (2) on the ground that it was barred by limitation. His contention was that the provisions of Section 5 of the Limitation Act should have been made applicable by the learned trial Judge and in the circumstances explained on behalf of his client, delay of two days in preferring the application under Section 17 (2) of the Act, should have been condoned. In the next place, Mr. Mukherjee contended that assuming that the tenant was a defaulter in the matter of payment of rent, he not having obtained any such relief in respect of the premises on an earlier occasion, is entitled to the benefit of the proviso to Sub-section (4) of Section 17 of the Act and the decree passed in the instant suit cannot, therefore, be sustained. Lastly, Mr. Mukherjee challenged the notice of ejectment which according to him did not specify anything about the termination of the tenancy of the defendant.

3. Mr. Tandon appearing for the respondent in this appeal joined issue on all the three points canvassed by Mr. Mukherjee before us and took us through the relevant materials on record. Mr. Tandon contends that even assuming that Section 5 of the Limitation Act is applicable to an application under Section 17 (2) of the Act, the tenant defendant would not be entitled to any relief inasmuch as his initial application for making deposit under Section 17 (1) of the Act was also barred by limitation and the subsequent deposit of rent for the month of April 1968 made by him on 18-5-1968 was also beyond time. Consequently, the tenant defendant was not entitled to claim the benefit of the proviso to Sub-section (4) of Section 17 of the Act.

4. Coming now to the question of notice, it has to be pointed out that a composite notice of ejectment and of suit was issued on the defendant on September 21, 1966 and the same was received by defendant on September 26. The notice has been marked Ext 1. This notice after reciting that the defendant was a monthly tenant under the plaintiff in respect of premises No. 53 Mahatma Gandhi Road at a certain rental, stated that the defendant was a defaulter in the matter of payment of rent since April 1964 and he had also sublet a portion of the premises without the previous consent in writing of the landlord. In para 4 of the said notice it was stated that the defendant should deliver quiet, peaceful and vacant possession to his landlord of the demised premises excluding the ground floor shop room on the expiry of the last day of October, 1966 and for non-compliance of the said notice a suit for ejectment would be filed against the defendant for recovery of possession. This notice, in our view, cannot be regarded as invalid or insufficient and it clearly requires the defendant to make over possession on the expiry of the last day of the particular month of the tenancy. The notice as such cannot be regarded as insufficient and invalid and the objection of Mr. Mukherjee on this score cannot, therefore, be accepted.

5. It was admitted by Mr. Mukherjee that the application under Section 17

(2) was filed two days beyond time but in view of the materials on record he contended that it had been improperly rejected by the learned Judge. The writ of summons in the instant case was served on the defendant on April 22, 1967 and the defendant entered appearance on May 17, 1967. Thereafter he filed two applications, one under Section 17

(1) and another under Section 17

(2) of the Act, respectively on 23rd and 24th May, 1967. Both the applications, it would appear, were barred by time inasmuch as Section 17

(1) contemplates that on a suit or proceeding being instituted by the landlord, the tenant shall be subject to the provisions of Sub-section

(1) within one month of the service of writ of summons on him deposit in court an amount calculated at the rate of rent at which it was last paid. Since the writ of summons was admittedly served on April 22, 1967, one month would expire on the corresponding day in the following month, which was a Monday. As the Court was open on that day both the applications under Sections 17

(1) and 17

(2) would thus appear to be beyond time. In fact the defendant filed an application for condonation of two days' delay in respect of his application under Section 17

(2) of the Act long afterwards, but no such prayer was made in so far as the application under Section 17

(1) was concerned. Section 17

(2) of the Act provides that where there is a dispute as to the amount of rent payable by the time fixed, the tenant shall within the time specified in Sub-section (1), deposit in court the amount admitted by him to be due from him together with an application for determination of the rent payable. In the instant case the defendant no doubt raises a dispute, but at the time of hearing of the said application, it was admitted on behalf of the tenant defendant that he was in arrears to the tune of Rs. 4315.35 P. (Vide order No. 34/37 dated 6-9-1968). This amount was accepted by the learned Advocates of both the parties as representing the arrears of rent at the rate of Rs. 203.50P. per month calculated upto March 1968 after adjustment of all payments, including payments towards Corporation taxes. Thus the admitted position was that the defendant was in arrears to the tune of Rs. 4315.35 P. and this sum had not been deposited by the defendant within time. Mr. Mukherjee contends that since his application under Section 5 of the Limitation Act read with Section 17

(2) of the Act was pending, he did not have an opportunity of making the deposit before the court and that at any rate, he was entitled to protection under the proviso to Sub-section

(4) of Section

17. When the application under Section 17 (2) of the Act came up for hearing before the learned Judge, he rejected the application on two grounds. In the first place he held that Section 5 did not apply to a case like this and in the second place he found that no adequate reason for delay in filing the application beyond time had been made out. Mr. Mukherjee assailed the decision of the learned Judge on both the grounds. In so far as the first ground is concerned, he has relied upon the decision of the Supreme Court in the case of Mangu Ram v. Delhi Municipality : 1976 CriLJ179 . That case arose out of an appeal filed under Section 417 of the Code of Criminal Procedure against an order of acquittal and the Supreme Court therein held that the provisions of Section 5 of the Limitation Act, 1963 would be available to the appellant. It was held therein that unless any special or local law expressly excluded the applicability of Section 5, it would be available for extension of the period in view of the departure made in the Limitation Act, 1963 in so far as provisions contained in Section 29, Sub-section

(2) were concerned. In another case before the Supreme Court, the words 'sufficient cause' in Section 5 of the Limitation Act it was pointed out, should receive a liberal interpretation (State of West Bengal v. Administrator, Howrah Municipality : [1972]2SCR874a . In Gurudayal v. Sagarmal Bengani : AIR1972 Cal430 , a Division Bench of this court had laid down that the provisions of the Limitation Act of 1908 attracts the provisions of Section 5 of the Limitation Act, 1963 to the appropriate provisions of the Premises Tenancy Act including Section 17-B

(1) of the West Bengal Premises Tenancy Act. The Division Bench pointed out that the intention of the Legislature had always been that Section 5 of the Limitation Act could be availed of in suitable cases. In view of the above authorities, it must be held that the learned Judge was not correct in coming to the conclusion that the provisions of Section 5 of the Limitation Act, 1963 did not apply to a case like this and we hold that this provision would be available to the tenant defendant in an application under Section 17

(2) of the Act in suitable cases.

6. The question as to whether the delay in the instant case has been satisfactorily explained, is a matter on which we do not find any reason to differ from the learned Judge of the court below, even if the expression 'sufficient cause' is liberally interpreted in this case. Mr. Mukherjee sought to contend that the tenant defendant was an old and ailing man, having had several heart attacks and his case should therefore, have been viewed with a little more compassion by the learned Judge. It, however, appears from the record that in spite of his illness, the tenant defendant was not precluded from filing his defence on the date on which he appeared before the court and also in making an application under Section 17 (1) of the Act earlier to the application under Section 17 (2). In spite of his alleged illness, it appears from the verification of the application under Section 17 (2) of the Act that he attended his Advocate's chamber at 6, Madan Street, Calcutta on May 24, 1967 and again on September 25, 1967 at the City Court premises for signing the verification in connection with the application filed under Ordinance VI of 1967. It has not been satisfactorily explained and it does not also stand to reason why the tenant in the circumstances could not file the application within time and we see no reason to differ from the finding of the learned trial Judge that in spite of his illness, he was not precluded from filing the application under Section 17 (1) of the Act and his defence several days earlier. The tenant defendant, in our view, has not been able to make out a satisfactory ground for condonation of delay in the instant case and the application in the circumstances must be held to have been rightly rejected.

7. Mr. Mukherjee's next contention is that not having obtained relief on any previous occasion in respect of the above premises, his default, if any, was to be condoned under the proviso to Sub-section (4) of Section 17 of the Act and in support of this contention he relied upon the Special Bench decisions in the cases of S. K. Mukherjee v. N. Ram Puria (: AIR1972 Cal524 (SB)) and Jamuna Prosad Chaurashia v. K. L. Poddar 0043/1973 : AIR1973 Cal204 . In the first cited case the proviso to Section 17 (4) came under challenge as unreasonable and unconstitutional and the Special Bench held that the provisions of Act IV of 1968 or Act XXX of 1969 by which the proviso to Sub-section (4) of Section 17 was amended, could not be considered as unreasonable or unconstitutional. In the last cited case the Special Bench in interpreting the amended proviso to Section 17

(4), no doubt held that the tenant will have to go only if he, having already obtained the relief against eviction provided under Sub-section (4) of Section 17, has again committed a default in the payment of rent for four months within a period of twelve months. In the instant case we are not called upon to enter into that aspect of the matter, inasmuch as, the tenant defendant has patently failed to comply with the requirements of Sub-sections (1) and (2) of Section 17, and as such, he was not entitled to any protection under Sub-section (4) of Section 17 of the Act.

8. This apart, the application by the defendant under the provisions of Ordinance VI of 1967 came to be filed before the court on September 25, 1967, that is long after the time stipulated in Sub-section (1) or Sub-section (2) of Section 17 of the Act. Mr. Mukherjee contends that the Ordinance VI of 1967 came to be promulgated on August 26, 1967 and he has filed the application within one month from the date of such promulgation. According to Mr. Mukherjee an application for extension of time as contemplated in Section 17 (2B) of the Act could only be made after the Ordinance amending Section 17 came into force and it would be unreasonable to expect any one to make an application for extension of time within the period stipulated in Section 17 (2B). Sub-section (2B) provides for the making an application for extension of time for deposit of payment of any amount under Sub-section (2A) (a) or for making an application for the grant of instalments under Sub-section (2A) (b) and no such application shall be entertained unless it was made before the expiry of the time specified therefore either in Sub-section (1) or (2) or Sub-section (1) as the case may be. It is evident from the above provisions that the applications for extension of time or for the grant of instalments, as the case may be, must be made within the period stipulated in Sub-section (1) or (2) of Section 17 no matter at what point of time the Ordinance may have come into existence. Undoubtedly it operates harshly with regard to a particular class of defaulters, but we do not think we can stretch the language to give relief to any particular category of tenants. The identical point came up for consideration before a Division Bench of this Court in the case of *Parekh Bros. v. Kartick Chandra Saha* : AIR1968 Cal532 . In that case, a verbal prayer was made before the court for extension of time specified in Sub-section (1) or (2) of Section 17 of the Act as amended by the West Bengal Premises Tenancy (Amendment) Ordinance, 1967. The Division Bench held that the application for extension of

time for making the deposit or payment of any amount has to be made before the expiry of the time specified therefore in Sub-section (1) or (2) of Section 17 and since there was no such application for extension of time, the appellant was not entitled to any extension for this purpose. It was pointed out by the Division Bench that the Ordinance has been framed in such a manner that very few tenants would derive any benefit from it, but it was not for their Lordships to speculate about the reasons as to why the Ordinance was drafted in that manner. Almost a similar view was taken by another Division Bench in the case of *K. Gurudayal v. Sagarmal* : AIR1972 Cal430 (supra). In that case the Division Bench was considering the applicability of the provisions of Section 17B of the Act originally introduced as Section 17C by the West Bengal Ordinance VI of 1967. The Division Bench after discussing the different Ordinances and Acts promulgated or enacted in this connection and after reciting the history of legislation of that particular section, held that an application under Section 17-B (1) could be made only from August 26, 1967. No other date had any relevance to the applicability of that section. The result of this interpretation may have led to an impossible situation, but it was not for the court but for the legislature to intervene and set the matter right.

9. The provisions of Ordinance VI of 1967 which was published in the Gazette (Extraordinary) on August 26, 1967, introduced material amendments in Section 17 of the [West Bengal Premises Tenancy Act, 1956](#). By Section 2 of that Ordinance, after Sub-section (2) of Section 17 two other Sub-sections, being (2-A) and (2B), were introduced and the proviso to Sub-section (4) was substituted. The introduction of the other subsections is not relevant for our purpose. Sub-section (2-B) provided that no application for extension of time for the deposit or payment of any amount under Clause (a) to Sub-section (2-A) shall be entertained unless it was made before the expiry of the time specified therefor in Sub-section (1) or Sub-section (2) and no application for the grant of instalment under Clause (b) of Sub-section (2-A) shall be entertained unless it is made before the expiry of the time specified in Sub-section (1).

10. It will be evident from a reading of this section that three classes or categories of cases could be contemplated to be in existence at the date when the Ordinance

came into force, namely on August 26, 1967. In the first class would come those cases, where application for extension of time for making deposit or payment in terms of Sub-section (2-A) (a) or grant of instalments in terms (2-A) (b) is yet to run out within the meaning of Sub-section (1) or Sub-section (2) as the case may be. In the second class would come those cases where the time for making application for extension of time or grant of instalments under the above clauses of Sub-section (2-A) had actually run out within the meaning of Sub-section (1) or Sub-section (2) as the case may be and the third category of cases would be those where the defence against delivery of possession had already been struck off.

11. In so far as the first and third categories of cases are concerned, no difficulty arises, for the tenants of the first category would be entitled to make an application for extension of time or grant of instalments under Sub-section (2B) and in so far as the third category is concerned, they would be entitled to proceed or apply under Section 17-B (1) as introduced by Section 4 of the Ordinance. In so far as the second category of cases is concerned, it appears to us that they would be left without any remedy and the instant case unfortunately falls within the second category. It is exactly such a case that was in contemplation of the Division Bench that decided *Parekh Bros. v. Kartick Chandra* : AIR1968 Cal532 (Supra) and their Lordships pointed out that it was not for them to speculate about the reasons why the Ordinance was drafted in that manner. Unfortunately for Mr. Mukherjee the instant case falls within the second class. Benefits available under the proviso to Sub-section (4) of Section 17 would only be available to a tenant, if he conforms to the requirements of Sub-section (4). Since the tenant in the instant case did not comply with the requirement of Sub-section (4) benefits under the proviso is not available to him. For the reasons discussed above by us, we are unable to accept the contention raised by Mr. Mukherjee that he is entitled to relief under the proviso to Sub-section (4) of Section 17 in view of the promulgation of Ordinance VI of 1967 on August 26, 1967.

12. In the result, therefore, this appeal fails and the appellants are not entitled to any relief. The appeal is accordingly dismissed. The judgment and decree of the court below are affirmed but the decree shall not be executed till the 31st of

October, 1976 provided the appellants continue to deposit an amount equivalent to the rate of rent month by month by the 15th of each succeeding month according to English Calendar in the court below, the first of such deposits is to be made by the 15th of May, 1976. The rent for the month of October, 1976, is, however, to be deposited by the 31st of October, 1976. In default of any of these deposits the decree will become executable at once. There will be no order as to costs in this appeal.

13. No order is necessary on the application filed under Section 17 as amended by Act XXX of 1969 which was filed by the appellants in this Court on 24-3-1976.

Janah, J.

14. I agree.

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