

**In Re: Ashim Kumar Mukherjee**

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**Court :** Kolkata

**Decided On :** May-20-1987

**Reported in :** (1987)0CALLT453(HC)

**Judge :** Nirendra Krishna Mitra, J.

**Acts :** [West Bengal Premises Tenancy Act, 1956](#) - Section 17(1), 17(2), 17(2A), 17(3) and 17(4); ;Code of Civil Procedure (CPC) - Section 151; ;[Limitation Act, 1963](#) - Section 5

**Appellant :** In Re: Ashim Kumar Mukherjee

**Advocate for Def. :** Bhaskar Bhattacharyee, Adv.

**Advocate for Pet/Ap. :** S.P. Roy Chowdhury and ;G.R. Thakur, Advs.

**Disposition :** Revision allowed

**Judgement :**

**Nirendra Krishna Mitra, J.**

1. The opposite parties instituted Ejectment Suit No. 506 of 1983 before the learned Judge, II Bench, City Civil Court, Calcutta for eviction of the petitioner from the suit premises inter alia, on the ground of default in payment of rent since June, 1982 at the rate of Rs. 185 per month payable according to the English Calendar and also on the grounds of reasonable requirement and sub-letting. On July 7,

1983 the petitioner received summons in the said suit and on August 24, 1983 he filed two applications one under Section 17(2) and the other under Section 17(2A)(b) of the [West Bengal Premises Tenancy Act, 1956](#) along with an application under Section 5 of the Limitation Act inter alia raising disputes regarding the arrears of rent as also the relationship of landlord and tenant between the parties. The learned Judge by his order dated October 30, 1984 rejected the petitioner's said application for condonation of delay considering also the merits of the petitioner's said applications under Section 17(2) holding inter alia that the petitioner was a defaulter in payment of rent since June, 1982 and there was relationship of landlord and tenant between the parties. The petitioner thereafter moved this Court in revision against the said order of rejection of the application under Section 5 of the Limitation Act and obtained a Rule being C.R. No. 2 of 1985 which was ultimately discharged by Sukumar Chakravarty, J, on 4th July, 1985. Thereafter, the petitioner on 14th of August, 1985, made an application under Section 151 of the Code of Civil Procedure in the trial Court paying for permission to deposit all arrears of rent as alleged by the plaintiff/opposite parties in the plaint together with the statutory interest and the learned Judge by his order dated 10th September, 1985, permitted the petitioner to deposit the said amount at his own risk and consequently the petitioner deposited the entire arrears of rent together with the statutory interest amounting to Rs. 8,932.57 paise calculated from June 1982 to September 1985, as per the said order. In the meantime the opposite parties had filed an application under Section 17(3) of the aforesaid Act to which the petitioner filed his written objection. The petitioner also filed another application under Section 151 of the Code of Civil Procedure on April 30, 1986 inter alia praying for treating the aforesaid deposits as valid discharge of his liability to pay the arrears of rent and also prayed for dismissal of the opposite parties' said application under Section 17(3). The learned Judge, II Bench, City Civil Court, Calcutta by the impugned order, however, rejected the petitioner's said second application under Section 151 of the Code of Civil Procedure holding inter alia that the same was misconceived and not maintainable. Against the said order of rejection dated 7th January, 1987 the petitioner has moved the present revisional application in this Hon'ble Court.

2. It is contended by Mr. Roy Chowdhury, learned Advocate appearing on behalf of the petitioner that since the delay in filing his application under Section 17(2) read with Section 17(2A)(b) of the [West Bengal Premises Tenancy Act, 1956](#) was not condoned, in the eye of law there was no existence of such an application and it should be deemed that the petitioner did not raise any of the disputes as could be raised under Section 17(2) at all and all that the petitioner had to do was to deposit the entire arrears of rent together with the statutory interest under Section 17(1) of the said Act to avoid the penal consequences of Section 17(3) and to get relief under Section 17(4) and as the petitioner had deposited the said amount under Court's order dated September 10, 1985 such deposits should have been treated as deposits under Section 17(1) by extending the time in the facts and circumstances of the case,

3. Mr. Bhattacharya, learned Advocate appearing on behalf of the opposite parties, however, contended that since the petitioner had raised disputes regarding the arrears of rent and relationship of landlord and tenant between the parties in his written statement and also in his application under Section 17(2) of the aforesaid Act, he could not take recourse to the provisions of Section 17(1) of the Act subsequently, no matter whether the Court refused to condone the delay in filing such application under Section 17(2) read with Section 17(2A) and the subsequent deposit of all arrears of rent with interest in Court by the petitioner as per the Court's order dated September 10, 1985 could not be treated to be valid deposit under Section 17(1) even if the Court had power to extend the time or condone the delay in making such deposits, as according to Mr. Bhattacharya, Section 17(1) can be invoked so far as deposit of arrears of rent with interest is concerned only in those cases, where the tenant-defendant had not raised any dispute regarding rate of rent, arrears of rent or relationship of landlord and tenant between the parties.

4. Under Section 17(2) of the [West Bengal Premises Tenancy Act, 1956](#) the tenant-defendant may raise any dispute regarding the rate of rent, arrears of rent and the relationship of landlord and tenant between the parties to the suit and is also entitled to get extension of time or instalments as the case may be under Section 17(2A) of the Act in making the deposits as would be determined by the

Court under Section 17(2) and the Court has also the power to extend the time and even condone the delay in making such applications. If, however, no such dispute is raised under Section 17(2), the tenant-defendant is to comply with the provisions of Section 17(1) by depositing the entire amount due as mentioned therein together with statutory interest within the time as specified in the said Section 17(1), the time limit of which, however, can be extended by the Court under Section 17(2A)(a) of the Act, subject, of course to the provisions of Section 17(2B) and even can condone the delay in the matter under Section 5 of the Limitation, Act as has been held by the Supreme Court in the case of Rajendra Nath Kar v. Gangadas and Ors., : [1979]2SCR945 . Court, however, has no power to extend such time, or condone such delay by invoking Section 151 of the Code of Civil Procedure.

5. No doubt, after the deposits as indicated in Section 17(1) of the Act are made, the tenant-defendant can file an application under Section 17(2) raising a dispute as to the rate of rent, amount of arrears due or the relationship of landlord and tenant between the parties and till the said dispute or disputes is or decided under Section 17(2) the tenant is not required to deposit the arrears of rent. Deposits made under Section 17(1) would not amount to an admission on the part of the tenant-defendant under Section 17 of the Evidence Act so far as default in payment of rent is concerned since the payment supposed to be made under the first part of Section 17(1) is not 'rent' but an 'amount' calculated at the rate of rent at which it was last paid for which the tenant may have made default. Moreover, the deposits under Section 17(1) are made by the tenant-defendant, at his own risk without absolving him of the penal consequences under Section 17(3) as no adjudication by the Court is required to be made in such matter.

6. The tenant-defendant in the present case, has denied and disputed in his written statement all the allegations of the plaintiff-landlord as made in the plaint including the arrears of rent and challenged the relationship of landlord and tenant and no doubt had raised such disputes in his application under Section 17(2), which application, however, was not entertained by the Court below as the delay in filing such application was not condoned as such in the eye of law there was no application under Section 17(2) raising any such dispute and the tenant was

required to deposit the entire arrear amount in terms of Section 17(1) of the said Act within the time specified therein, which time, however, could be extended under Section 17(2A) read with Section 17(2B) and even the delay in making such deposits could be condoned under Section 5 of the Limitation Act but not under Section 151 of the Code of Civil Procedure as discussed above.

7. In the present case the tenant-defendant had deposited the entire arrears of rent after his application under Section 17(2) read with Section 17(2A) was rejected on the ground of limitation and prayed for acceptance of the said amounts as valid deposits purportedly under Section 17(1) and also prayed for extension of time or condonation of delay in making such deposits under Section 151 of the Code of Civil Procedure through wrongly, but such technical defects he should not be penalised more so when as per the decision of this Court in the case of Himangshu Kumar Lahiri v. Gajendra Kumar De, 1986(1) C.H.N. 413 an application under Section 151 of the Code can be treated as one under Section 5 of the Limitation Act and when the facts and circumstances of the case do not prove any mala fide intention or act on the part of the tenant.

8. Therefore in the special facts and circumstances of the present case the deposits made by the tenant-defendant should be treated as deposits as per the provisions of Section 17(1) and the delay in making such deposits should be condoned treating the application under Section 151 of the Code to be one under Section 5 of the Limitation Act.

9. It must, however, be borne in mind that the position would have been otherwise had the application under Section 17(2) read with Section 17(2A) been disposed of on merits or even dismissed for default. In that case the tenant-defendant after such disposal or dismissal could not in any way invoke Section 17(1) of the [West Bengal Premises Tenancy Act, 1956](#) at all so far as the arrears of rent was concerned.

10. The impugned order is therefore set aside and the revisional application is thus allowed without any order as to costs. I, however, make it clear that this order will not absolve the tenant-defendant completely of the penal consequences under Section 17(3) of the aforesaid Act. If the tenant-defendant fails to comply with the

second part of Section 17(1) certainly the provisions of Section 17(3) of the Act would be attracted.

11. Let this order be communicated to the Court below forthwith and the Court below is to dispose of the application under Section 17(3) filed by the landlord-plaintiff within six weeks from the date of communication of this order to the Court below.

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