

CASE NO.:
Appeal (civil) 3178 of 2005

PETITIONER:
Gaya Prasad Kar

RESPONDENT:
Subrata Kumar Banerjee

DATE OF JUDGMENT: 03/10/2005

BENCH:
Dr.AR Lakshmanan & Altamas Kabir

JUDGMENT:
J U D G M E N T

ALTAMAS KABIR, J.

This appeal pursuant to leave granted is directed against the judgment and order dated 18.2.2003 passed by a learned single Judge of the Calcutta High Court in a Civil Revision Application being C.O.No.472 of 2000 wherein the respondent before us, who was the landlord, had challenged the Order dated 24.1.2000 passed by the learned Civil Judge (Junior Division), 3rd Court at Howrah in Title Suit No.181 of 1995. By the said order the learned court disposed of the petition filed under Section 17 (2) and (2A) of the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as 'the Act') by the appellant herein who was the tenant and declaring that the appellant-tenant was not a defaulter in payment of rent.

The respondent before us claims to be the absolute owner of the premises situated at Holding No. 252/4, Panchanantala Road, Howrah- 711101, since his purchase of the property by a registered deed of conveyance dated 16.3.1992. After attornment, the appellant became the tenant under the respondent in respect of the suit premises at a rental of Rs.40/- per month according to the English calendar. According to the respondent-landlord, the appellant-tenant was a statutory defaulter as he failed and neglected to pay the monthly rents since the month of March 1994. Since, according to the respondent-landlord, the suit premises was also reasonably required by him for his own use and occupation and for the benefit of his dependents and family members, the respondent-landlord sent a notice to the appellant-tenant under Section 13 (6) of the Act calling upon the appellant-tenant to quit and vacate the tenanted premises upon the expiry of the month of March 1995 or upon expiry of the month of tenancy which would expire after a month from the date of receipt of the notice. Inasmuch as, in spite of having received the notice, the appellant-tenant failed to vacate the suit premises, the respondent-landlord was compelled to file a suit for eviction against the appellant-tenant, being Title Suit No 181 of 1995, in the Court of Third Munsif at Howrah, inter alia praying for a decree of eviction against the appellant-tenant and for delivery of possession of the suit premises in favour of the respondent-landlord.

The appellant-tenant was served with summons of the suit on 27.5.1995 and with the leave of the Court he began depositing the monthly rents for the suit premises in court with effect from the month of July 1995. Prior to the said period, as will appear from the materials on record, the rent for the month of March 1994 was tendered by the appellant-tenant to the respondent-landlord on 2nd April 1994 and 25th April 1994 respectively, but the Money Orders were refused by the respondent-landlord on 9th April 1994 and 29th April 1994. The appellant-tenant thereafter deposited the rents for the months of March, April and May 1994 with the Rent Controller, Howrah, and continued to deposit the rents regularly with the said Rent Controller up to June 1995.

However, by way of caution, after receiving summons of the suit, the appellant-tenant filed an application under Section 17 (2) and (2A) of the Act together with an application for condonation of delay under Section 5 of the Limitation Act. The respondent-landlord filed his objection to the said application under Section 17(2) and (2A) denying all the statements made

therein. The appellant-tenant's application under Section 5 of the Limitation Act was allowed by the learned Civil Judge (Junior Division) on 4.9.1998 and thereafter the application filed by the appellant-tenant under Section 17 (2) and (2A) of the Act was taken up for hearing and after a protracted hearing, in which evidence was led by the parties, the learned Civil Judge (Junior Division) came to the conclusion that the monthly rents had been tendered by the appellant-tenant within the time limit prescribed under Section 4 of the Act, which the respondent-landlord intentionally did not accept, as a result whereof the appellant-tenant was compelled to deposit the same with the Rent Controller, Howrah and subsequently with the Court from the month of July 1995.

Aggrieved by the said decision of the learned Civil Judge (Junior Division), Howrah, the respondent-landlord filed a revision petition before the High Court at Calcutta under Section 115 of the Code of Civil Procedure and the same was numbered as C.O.No.472 of 2000. The learned single Judge came to the finding that as the rent for the month of March 1994 had been tendered by the appellant-tenant first on 2nd April 1994 and thereafter again on 25th April 1994, the initial tender was beyond the period prescribed under Section 4 of the aforesaid Act and since the initial tender was invalid, all the other subsequent deposits could not be held to be valid. On such reasoning, the learned single Judge of the Calcutta High Court set aside the order passed by the learned Civil Judge (Junior Division) and held that the appellant-tenant was a defaulter in payment of rent from the month of March 1994. While holding that the appellant-tenant was a defaulter, the learned single Judge also observed that since the rents for the months of March 1994 to June 1995 had already been deposited with the Rent Controller and subsequently in the trial court, the respondent-landlord would be at liberty to withdraw the same.

It is the said decision of the learned single Judge of the Calcutta High Court which is the subject matter of the civil appeal before us.

Appearing in support of the appeal, Mr. Pijush K. Roy, learned advocate, urged that by no stretch of imagination could the appellant-tenant be said to be a defaulter in payment of rent, since admittedly the rents had regularly been deposited first with the Rent Controller, Howrah and thereafter with the trial court with effect from March 1994. Mr. Roy submitted that the delay of 15 days in tendering the monthly rent for the month of March 1994 had been occasioned by the fact that although initially the said amount had been tendered within the time prescribed under Section 4 of the above Act, upon the refusal by the respondent-landlord to accept the same, the same had to be tendered again but a few days beyond the period prescribed under Section 4 of the above Act. Mr. Roy submitted that on account of the above, the appellant-tenant filed an application under Section 5 of the Limitation Act for condonation of delay in tendering the rent and such application had been duly allowed by the learned Civil Judge (Junior Division), Howrah, upon payment of costs.

Mr. Roy then urged that, in any event, the West Bengal Premises Tenancy Act, 1956, had been enacted as a benevolent piece of legislation and under Section 17 (2A) of the said Act the court had been vested with ample power to extend the time for making all deposits under Sub-section (1) and Sub-section (2) of Section 17 of the said Act. Mr. Roy submitted that such an application having been made, the same had been duly allowed by the learned Civil Judge (Junior Division) and it was not open to the respondent-landlord to claim that the appellant-tenant was, in fact, a defaulter in payment of monthly rents which under the aforesaid Act has very serious consequences. In support of his aforesaid submission, Mr. Roy firstly referred to a decision of this Court in the case of *M/s. B.P. Khemka Pvt. Ltd. vs. Birendra Kumar Bhowmick And Anr.*, (1987) 2 SCC 407, which was a case dealing with delay of two months in payment of the rent. Considering the provisions of Section 17 (2A) and Section 17 (2A) (b) of the Act, this Court held that the said default was a default in a technical sense and not in the real sense and was hence of an inconsequential nature. It was further observed that having regard to the intendment of the Act and the nature of the provisions, it can never be said that the defaults were of such a serious nature as to warrant the court refusing to exercise its discretion and to feel constrained to strike out the defence.

Following the decision in *B.P. Khemka's case* (supra), this Court in the case of *Gopal Chandra Ghosh vs. Renu Bala Majumdar (Smt.) And Anr.*, (1994) 2 SCC 258, took a similar view regarding the powers of the court to extend the

time for making deposits of rents.

Mr. Roy then referred to a three-Judge Bench decision of this Court in *Shibu Chandra Dhar vs. Pasupati Nath Auddya*, (2002) 3 SCC 617, where in similar circumstances, this Court held that the relevant provisions would indicate that the court has power to extend the time but that such power has to be judicially exercised. Mr. Roy urged that in the aforesaid circumstances, the decision of the learned single Judge of the Calcutta High Court could not be sustained and was liable to set aside.

Opposing the prayer made on behalf of the appellant-tenant, Mr. Bijan Kumar Ghosh, learned advocate appearing for the respondent-landlord, reiterated the stand taken before the High Court that since the initial deposit of the monthly rent for the month of March 1994 had been tendered beyond the time prescribed under Section 4 of the Act, the said deposit and all subsequent deposits must be held to be invalid and, therefore, the High Court had rightly held that the appellant-tenant was a defaulter in payment of the monthly rents.

Mr. Ghosh urged that the application under Section 17 (2) and (2A) of the above Act could not possibly cure the initial defect since the provisions thereof were referable only to Sub-section (1) and Sub-section (2) of Section 17 and not Section 4 of the above Act.

Mr. Ghosh submitted that in the aforesaid circumstances, the application filed by the appellant-tenant under the aforesaid provisions were of no relevance to the facts at issue in the instant case.

Having regard to the fact that the West Bengal Premises Tenancy Act, 1956, is a benevolent piece of legislation, we have carefully gone through the provisions of the Act and the submissions made in connection therewith for the purpose of examining the correctness of the view taken by the learned single Judge of the Calcutta High Court.

While it is no doubt true that Section 4 of the Act provides that rents are to be paid within the time fixed by the contract, or, in the absence of a contract, by the 15th day of the month next following the month for which it is payable, once a suit is filed on any of the grounds referred to in Section 13, the tenant would be entitled to the benefits of extension of time under Sub-Section (1) and Sub-section (2) of Section 17 of the Act with reference to the amounts to be deposited within Sub-section (1) and (2) thereof. For the purpose of better understanding, the provisions of Section 17 (1), Section 17 (2) and Section 17 (2A) are extracted hereinbelow:-

"Section 17. When a tenant can get the benefit of protection against eviction.\027

(1) 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 up to the date of deposit, and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate.

(2) If in any suit or proceeding referred to in sub-section (1) there is any dispute as to the amount of rent payable by the tenant, 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 to the Court for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application

for determination of the rent payable. On receipt of such application, the Court shall\027

(a) having regard to the rate at which rent was last paid, and the period for which default may have been made, by the tenant, make, as soon as possible within a period not exceeding one year, a preliminary order, pending final decision of the dispute, specifying the amount, if any, due from the tenant and thereupon the tenant shall, within one month of the date of such preliminary order, deposit in court or pay to the landlord the amount so specified in the preliminary order; and

(b) having regard to the provisions of this Act, make, as soon after the preliminary order as possible, a final order determining the rate of rent and the amount to be deposited in Court or paid to the landlord and either fixing the time within which the amount shall be deposited, or paid or, as the case may be, directing that the amount already deposited or paid be adjusted in such manner and within such time as may be specified in the order.

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), on the application of the tenant, the Court may, by order,--

(a) extend the time specified in sub-section (1) or sub-section (2) for the deposit or payment of any amount referred to therein;

(b) having regard to the circumstances of the tenant as also of the landlord and the total sum inclusive of interest required to be deposited or paid under sub-section (1) on account of default in the payment of rent, permit the tenant to deposit or pay such sum in such instalments and by such dates as the Court may fix:

Provided that where payment is permitted by instalments such sum shall include all amounts calculated at the rate of rent for the period of default including the period subsequent thereto up to the end of the month previous to that in which the order under this sub-section is to be made with interest on any such amount calculated at the rate specified in sub-section (1) from the date when such amount was payable up to the date of such order."

From the said provision, it would be evident that it was the intention of the Legislature that on a suit for eviction being filed under the provisions of this Act, the tenant was required to deposit rent either in court or with the Rent Controller or pay to the landlord an amount equivalent to 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 of rent is made together with interest at the rate indicated therein. In the instant case, there is no willful default in tendering of the rents by the tenant to the landlord and it was only on account of the initial refusal of the landlord that the tenant was compelled to tender rents for the month of March 1994 for the second time which was according to the time prescribed under Section 4 of the Act.

In our view, the provisions of the Act vests the court with ample authority to extend the time for making the deposit of rents in case of default and this is a fit case where the learned Civil Judge (Junior Division) has on a true

interpretation of the provisions of the Act and the circumstances of the case came to a finding that the appellant-tenant was not a defaulter. As expressed by this Court in B.P.Khemka's case (supra), the default, if any, was too technical to be taken note of so as to arrive at a conclusion that the tenant had committed wilful default in payment of the monthly rents.

Apart from the above, Section 39 of the Act provides that subject to the provisions in this Act relating to limitation, all the provisions of the Indian Limitation Act, 1908 shall apply to suits, appeals and proceedings under this Act. Since Section 17 (2A) confers power upon the court to extend time for making deposits of all arrears for the period in default, the application made by the appellant-tenant under Section 5 of the Limitation Act for condonation of delay in the initial tendering of the rent becomes meaningful.

For the reasons aforesaid, we are unable to agree with the views expressed by the learned single Judge of the Calcutta High Court and we accordingly set aside the order passed by the learned single Judge in the revision application and restore the order of the learned Civil Judge (Junior Division), Howrah holding that the appellant-tenant was not a defaulter in payment of the rents. The appeal is accordingly allowed but there will be no order as to costs.