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GOPAL CHANDRA GHOSH

v.

SMT. RENU BALA MAJUMDAR AND ANR.

JANUARY 12, 1994

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[B.P. JEEVAN REDDY AND B.L. HANSARIA, JJ.]

West Bengal Premises Tenancy Act, 1956 : Section 17—Eviction ordered for failure to deposit rent in time—Delay of two days—Defence of tenant that delay occurred due to intervening holiday—Striking off defence—Effect of—
C *Held: Order of eviction does not follow automatically—Landlord to prove that case for eviction has been made out.*

The Respondent filed a suit for eviction of the appellant sometime in 1980 on grounds of *bona fide* requirement, sub-letting of the premises by the appellant and default in payment of rent from November, 1979. The
D trial court as well as the first appellate court did not accept the case of the respondent insofar as the first two grounds are concerned. There was no finding of default in payment of rent, the third ground.

However, an eviction order was passed against the appellant for his
E failure to deposit the rent for the month of November, 1984 before the 15th of the succeeding month, viz., 15th December 1984, as provided under s. 17(1) of the West Bengal Premises Tenancy Act, 1956 as the deposit was on 17th December.

Having failed in the Courts below, the appellant preferred the
F present appeal, contending that there was delay of two days only and these two days being Saturday and Sunday, the failure to deposit the rent within the time prescribed was technical and not real and hence it should be regarded as inconsequential.

Allowing the appeal, this Court

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HELD : 1.1. The purpose behind the West Bengal Premises Tenancy Act, 1956 is to give protection to a tenant. While construing such a statute, the substance of the matter has to be seen, and not merely the form. Technicalities would have no place when the Court is seized with a human problem, as is the one at hand, relatable as it is to the earning of livelihood
H by the appellant by carrying on business in the shop premises. In such a

case, it is the heart of the matter which counts, and not the facade of it. [116-B-C]

1.2. The present case was covered by sub-section (3) of S.17 of the Act which is directory in nature. This would be more so while deciding whether to order for eviction. The courts below were, therefore, under no obligation to order for eviction merely because of two days delay in deposit of rent by the appellant. This is not all. Sub-section (3) permits striking off the defence and requires proceeding with the hearing of the suit. So, merely because defence is struck off, order of eviction will not follow automatically; the landlord shall have to prove *dehors* the defence of the tenant, that a case for eviction has been made out. This aspect of the matter was completely missed by the courts below. It cannot be said that nothing would be required to be proved by a landlord in a case based on allegation of default. The plea of default shall have to be established as any other plea is required by law. [117-A-C]

1.3. It was a fit case where two days delay in depositing the rent for the month of November, 1984, ought to have been condoned. The failure not to do so has resulted in failure of justice. This apart, the respondents not having established their case of default in payment of rent from November 1979 onwards, on which plea eviction was prayed for when the suit was filed, the decree of eviction could not have been legally passed. [117-D-F]

M/s. B.P. Khemka Pvt. Ltd. v. Birendra Kumar Bhowmick, [1987] 2 S.C.C. 407 and *Shyamcharan Sharma v. Dharamdas*, [1980] 2 S.C.C. 151, relied on.

Ved Prakesh Wadhwa v. Vishwa Mohan, [1981] 3 S.C.C. 667 and *J.L. Varandani v. Asha Late Mukherjee (Dead) by L.rs.*, [1990] 4 S.C.C. 40, distinguished.

Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee, [1976] 1 S.C.R. 451 and *Ganesh Prasad v. Lakshmi Narayan*, [1985] 3 S.C.C. 53, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1325 of 1988.

From the Judgment and Order dated 7.4.1987 of the Calcutta High Court in Appeal from Appellate Decree No. 208 of 1987.

Dr. S. Ghosh, G.S. Chatterjee, D.P. Mukherjee and A. Banerjee for

A the Appellant.

A.K. Ganguli, Ms. Mridula Ray, Dr. S. Bharadwaj and S.S. Ray for the Respondents.

The Judgment of the Court was delivered by

B HANSARIA, J. 1. The appellant has come to be evicted from the premises (a shop room) on his failure to deposit rent for November, 1984, within 15th December, 1984, which is held to have incurred the wrath of Section 17 of West Bengal Premises Tenancy Act, 1956 (hereinafter called 'the Act'). There is no dispute that the rent was deposited on 17th December, 1984. There was thus, if at all, delay of two days. This would even be not so, if notice is taken of the fact that 16th was a Sunday, which shows that 15th was a Saturday. If it would have been a half-working day, Explanation to Section 4 of the Limitation Act would have taken care of 15th as well, in which case there would have been no delay at all.

D 2. Let it be seen whether the provision of section 17 is really so harsh as to deny benefit of a beneficent statute like the Act at hand, even if there was delay of two days in depositing the rent.

E 3. The eviction order came to be passed on a suit filed by the respondents some time in 1980 in which eviction was prayed on three grounds:

- (a) *Bonafide* requirement of the premises;
- (b) sub-letting of the premises by the appellant; and
- F (c) default in paying rent from the month of November, 1979 onwards.

G 4. The trial court as well as the first appellate court did not accept the case of the respondents in so far as first two grounds are concerned. As to the third, there is no finding of default as averred. What, however, happened was that the appellant failed to deposit rent for the month of November, 1984 within the time visualised by Section 17 (1) of the Act, which ultimately led to the passing of the order of eviction against him. As already stated this come to happen because it has been held by the courts below that is the mandate of Section 17 of the Act.

H 5. For understanding the contentions advanced by the learned coun-

sel of the parties, it would be necessary to note Section 17 in its entirety, A
which at the relevant time read as below:

"Sec.17 When a tenant can get the benefit of protection
against eviction.(I) On a suit or proceeding being in- B
stituted 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 C
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 pay-
ment is made together with interest on such amount cal- D
culated at the rate of eight and one-third percent 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.

(Emphasis supplied) E

(2) If in any suit or proceeding referred to in sub- section
(I) there is any dispute as to the amount of rent payable
by the tenant, the tenant, shall, within the time specified
in sub-section (I), deposit in court the amount admitted F
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- G

(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 H

A 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 (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
C 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
D 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;

E (b) having regard to the circumstance 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
F 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
G 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.

H (2B) No application for extension of time for the deposit

or payment of any amount under clause (a) of sub-section (2A) shall be entertained unless it is made before the expiry of the time specified therefor in sub-section (1) or sub-section (2), and no application for permission to pay in instalment under clause (b) of sub-section (2A) shall be entertained unless it is made before the expiry of the time specified in sub-section (1) for the deposit or payment of the amount due on account of default in the payment of rent.

(3) If a tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be allowed under clause (a) of sub-section (2A), or fails to deposit or pay any instalment permitted under clause (b) of sub-section (2A) within the time fixed therefore, the Court shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.

(4) If a tenant makes deposit or payment as required by sub-section (1) or sub-section (2) or sub-section (2A), no decree or order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant shall be made by the Court but the Court may allow such costs as it may deem fit to the landlord:

Provided that a tenant shall not be entitled to any relief under this sub-section if, having obtained such relief once in respect of the premises, he has again made default in the payment of rent for four months within a period of twelve months".

6. Shri Ghosh, learned counsel for the appellant, submits, on the strength of decision of this Court in *M/s. B.P. Khemka Pvt. Ltd. v. Birendra Kumar Bhowmick*, [1987] 2 S.C.C. 407, that the failure, if any, of the appellant was technical and not real; and so, the same should be regarded as inconsequential in nature. In *Khemka's* case, this Court was called upon to decide as to whether sub-section (3) of Section 17 of the Act was

A mandatory in nature or directory. After referring to *Govindlal Chaganlal Patel v. Agricultural Produce Market Committee*, [1976] 1 S.C.R. 451 and *Ganesh Prasad v. Lakshmi Narayan*, [1985] 3 S.C.C. 53, in the latter case the provision being similar to Section 17(3) of the Act it was held in paragraph 14 that the word 'shall' in abovesaid sub-section has to be read as 'may'.

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7. Shri Ghosh has also placed reliance on *Shyamcharan Sharma v. Dharamdas*, [1980] 2 S.C.C. 151, in which, while considering the import of sub-sections (1), (5) and (6) of Section 13 of the Madhya Pradesh Accommodation (Control) Act, which are in part-materia with sub-sections (1), (3) and (4) of Section 17 of the Act, it was held that court has power under sub-section (6) to condone delay in deposit of rent having become due after institution of suit for eviction. Learned counsel calls in aid *Ved Prakash Wadhwa v. Vishwa Mohan*, [1981] 3 S.C.C. 667, too in which case this Court dealt with "rather trifling question" noted in paragraph 4 which was that the date of deposit of the rent could not be taken to be the date on which challan was passed but only the date on which the actual money was put into the treasury. The Bench after noting two earlier decisions stated that these decisions had laid down the law that when money is tendered before the Court and thereupon challan is passed by the ministerial officers, whereafter the money is deposited in treasury with the challan, the deposit relates back to the date on which the tender was made or the challan presented.

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8. Shri Ghosh has referred to the decision in *Ved Prakash's* case because the challan in the present case was passed on 11.12.1984 and, as such, within 15 days of 30th November, 1984, which would satisfy even the letter of law. As to this facet of the case, we may, however say that this Court took the aforesaid view because it was noted that before challan was passed money was required to be tendered. There is nothing before us to satisfy whether in the present case too the money was required to be tendered before challan was passed. We would, therefore, hold that *Ved Prakash's* case does not assist the appellant.

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9. Shri Ganguli appearing for the respondents has strenuously contended that the present case is not covered by sub-section (3) but attracts sub-section (4) of Section 17 whose requirement is not satisfied as the appellant had admittedly not deposited the rent as required by sub-section

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(1). According to the learned counsel the case at hand is nearer to *J.L. Varandani v. Asha Late Mukherjee (Dead) by L.rs.*, [1990] 4 S.C.C. 40, in which relief under sub-section (4) of the Act was denied to a tenant who had not made deposit as required by sub-section (1) read with sub-section (2A). Shri Ganguly urges that in case of failure of a tenant to deposit the monthly rent as required by the concluding part of sub-section (1), the only relief he can claim under Section 17 of the Act is to apply to the Court to extend the time specified for deposit by sub-section (1) as permitted by sub-section (2A) and, if this would not be done, the Court would have no choice but to order for eviction. The aforesaid follows, according to Shri Ganguly, from what was held by this Court in *Varandani's* case.

10. We are not persuaded to accept the aforesaid submission, as in *Varandani's* case the plea of the tenant was that as despite non-deposit of rent within the time allowed no order for striking off the defence had been passed, it should be presumed that the delay in payment of rent was condoned or deemed to have been condoned, because of which no decree for eviction could be passed. The facts of the instant case are different inasmuch as *Varandani's* case was concerned with *arrear rent*, as by Order No.26 dated March 23, 1977 of which reference has been made in paragraph 1 as well as in the ultimate paragraph, the appellant has been asked to deposit arrears at specified rate, whereas in the case at hand it is post-institution rent with which we are concerned. Further, the plea of presumed condonation of delay advanced in *Varandani* is not relevant for the case at hand because non-striking off the defence, on which ground the plea was advanced is governed by sub-section (3), which in *Khemka's* case has been held to be directory.

11. Shri Ghosh has a point when he contends that if the power relating to striking off defence be directory, the power to order eviction has *proprio vigore* to be so inasmuch as the order of eviction has greater lethality than an order striking off defence.

12. Being seized with a beneficial piece of enactment, we have to take a view which would advance the object and purpose by the Act, which apparently is to give protection to a tenant and not to allow the law to permit throwing out of a tenant merely because of some technical violation of the statute. That this is the approach which has to be adopted would be clear from *Union of India v. Philpittiaqo De Gama*, [1990] 1 S.C.C. 277, in

- A paragraphs 16 and 17 of which it was stated that text of a statute is not to be construed merely as a piece of prose without reference to its nature or purpose; and that if the strict gramatical interpretation were to give rise to absurdity or inconsistency, the Court would discard such interpretation and adopt one which will give effect to the purpose of the legislature. The purpose in so far as the Act at hand is concerned is, as already noted, to give protection to a tenant. While contruing such a statute, the substance of the matter has to be seen, and not merely the form. Technicalities would have no place when the Court is seized with a human problem, as is the one at hand, relatable as it is to the earning of livelihood by the appellant by carrying on business in the shop premises. In such a case it is the heart of the matter which counts, and not the facade of it.

13. As Shri Ganguli has strongly urged that the requirement of sub-section (1) relating to deposit of rent falling due after institution of the rent having not been satisfied, it was almost incumbent on the Court to pass an order of eviction, let it be seen whether the case at hand really attracts sub-section (4) or sub-section (3) as in the contention of Shri Ghosh. As sub- section (4) deals with the situation which arises on a tenant making deposit or payment as required, *inter alia*, by sub-section (1), whereas sub-section (3) is concerned with failure to deposit or pay any amount referred in sub-section (1), we are of the view that it is really sub-section (3) which would get attracted in the instant case it being one of non-deposit as required by sub-section (1). Acceptance of contention of Shri Ganguli would amount to conceding a situation converse to the one mentioned in sub-section (4) as a part of legislative mandate. Logic does not permit us to so hold, as, though all men are said to be animals, the converse of it that all animals can be said to be men does not follow.

14. To buttress his submission, Shri Ganguli has, however, submitted that where ejectment is prayed only on the ground of default, it is sub-section (4) alone which would operate, other grounds of eviction would be covered by sub-section (3). We find no such sequitur, because sub-section (1) refers to suit or proceedings instituted by the landlord on any of the grounds referred to in Section 13, reference to which shows that default in payment of rent is one of the grounds. So operation of sub-section (3) cannot be confined to cases other than those of default in payment of rent, as that sub-section opens by referring to the question of failure to deposit rent, which question can arise only if the tenant be a defaulter.

15. We, therefore, hold that the present case was covered by sub-section (3) which was held to be directory in *Khemka's* case. This would be more so while deciding whether to order for eviction. The courts below were, therefore, under no obligation to order for eviction merely because of two days delay in deposit of rent by the appellant. This is not all. Sub-section (3) permits striking off the defence and requires proceeding with the hearing of the suit. So, merely because defence is struck off, order of eviction will not follow automatically; the landlord shall have to prove de hors the defence of the tenant, that a case for eviction has been made out. The aspect of the matter completely missed the courts below. We do not agree with Shri Ganguli that nothing would be required to be proved by a landlord in a case based on allegation of default. According to us, the plea of default shall have to be established as any other plea is required by law.

16. Thus, not only *Khemka's* case but *Shyamcharan Sharma's* case also helps the appellant and, according to us, it was a fit case where two days delay in depositing the rent for the month of November, 1984, ought to have been condoned. The failure not to do so has resulted in failure of justice. This apart, the respondents not having established their case of default in paying rent from November 1979 onward, on which plea eviction was prayed for when the suit was filed, the decree of eviction could not have been legally passed.

17. In the aforesaid view of the matter, we allow the appeal by setting aside the impugned decree of eviction. In the facts and circumstances of the case, we make no order as to costs.

G.N.

Appeal allowed.