

13.12.2022

166

Ct. no. 652

sb

C.O. 793 of 2020

With

CAN 1 of 2020

With

CAN 2 of 2020

Sri Bilwapada Manna & Anr.

Vs.

Sukanta Das & Anr.

Mr. Sourav Sen

...for the petitioner

Mr. Kushal Chatterjee

Mr. Prasayan Mukherjee

Mr. Debrup Chowdhury

Mr. Prabal Kr. Singh ...for the opposite party

Being aggrieved and dissatisfied with the order

dated 9th January, 2020 passed by the learned Civil

Judge (Junior Division), 1st Court, Uluberia in Title suit

no. 159 of 2000, the present application under Article

227 of the Constitution of India has been preferred.

The petitioner contended that the predecessor-in-

interest of the opposite parties as plaintiff filed aforesaid

suit for declaration and eviction against the father of the

defendant/petitioner herein in the court of learned Civil

Judge (Junior Division), 1st Court, Uluberia. After service

of summons the father of the present defendants entered

appearance in the suit by filing application under Section

17(2) and 17(2A) of the West Bengal Premises Tenancy

Act and the plaintiff filed written objection against the

same. By order no. 152 dated 26.6.2018, learned trial

court was pleased to dispose of the said application under Section 17(2) and 2(A) of the Act of 1956, inter alia fixing the quantum of the rent to be deposited by the defendant.

Being aggrieved and dissatisfied by the aforesaid order dated 26.6.2018, the plaintiff preferred a civil revision before this Court, being C.O. 2184 of 2018 and this court was pleased to dispose of the same inter alia directing the court below to reconsider the application under Section 17(2) and 17(2A) of the act, only after the tenants would comply with the provisions of Section 17(1). On 9.1.2020, after remand said application under Section 17(2) and 17(2A) of the Act was again taken up for hearing in presence of both the parties and learned trial Judge was pleased to reject the application as not maintainable in the eyes of law and fixed the next date of hearing for framing of issue.

Learned counsel for the petitioner submits that the order impugned was passed on the basis of wrong interpretation of law and he has practically failed to appreciate that Section 17(1) of the Act is not mandatory unlike the latest act of 1997 and the said act does not mandate to file application under Section 17(1) of the Act prior to filing an application under Section 17(2) and 17(2A) of the Act and as such the order was passed on the basis of surmise and conjectures.

Learned counsel for the opposite party submits that the defendant has not applied under Section 17(1) of

the West Bengal Premises Tenancy Act. He further submits that defendant admitted at least Rs. 50/- per month as an arrear rent, month by month, which he had not deposited before the court below within one month from his appearance and as such the court below rightly came to the conclusion that for non-compliance of Section 17(1) of the said Act by not depositing the admitted arrear amount of rent, the application under Section 17(2) and 17(2A) is not maintainable. He further submits that the defendant/tenant has not even prayed for instalment for deposit of the arrear rent in his application under Section 17(2) and 17(2A). Accordingly, the trial court rightly rejected the defendant's prayer under Section 17(2) and 17(2A) of the said act and such order does not call for any interference.

On perusal of the application under Section 17(2) and 17(2A) of the said act which was filed by the petitioner on 31.7.2001, it appears that the petitioner/defendant has prayed for a determination as to whether the defendant is a tenant in respect of the suit property at monthly rent of Rs. 150/- or not and also prayed for a direction for payment of monthly arrear rent of Rs.50/- per month by way of easy instalments.

On perusal of the plaint, it appears that the plaintiff has contended in paragraph 3 that in consideration of the new construction, huge sum has been invested by the plaintiff and as such it was agreed

between the parties that the monthly rent will be Rs. 500/- per month.

Sub-section (2A) of Section 17 of runs as follows:-

(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.

In **Radeshyam Saha Vs. Ramani Mohan**

Chakraborty reported in 87 CWN 868 it was held as follows:

“It has been contended on behalf of the plaintiff/opposite party that as the defendant/petitioner in his application before the trial court prayed for permission to deposit by instalments the amount to be determined after adjudication under section 17(2) of the Act his prayer for relief under section 17(2A) (b) of the Act was not maintainable and the trial court has rightly rejected it. But I am unable to accept this contention. Where the tenant’s application under section 17(2) is found to be not maintainable for failure to deposit the admitted amount of arrears due from him along with the application, there is no determination after adjudication under section 17(2) of the Act of the amount payable by him so as to preclude the tenant from getting the benefit of section 17 (2A) (b) of the Act in respect of the arrears payable under section 17(1) of the Act. Where the tenant makes a composite application under section 17(2) and (2A) (b) of the Act and the application under section 17(2) is not maintainable the court has to deal with the application as one under section 17(2A) (b) of the Act. No doubt the prayer in the composite application in the present case has not been happily worded as the court for reasons already stated cannot permit payment of the amount determined under section 17(2) by

instalments contemplated in section 17(2A) (b) of the Act. But a party should not be deprived of the relief to which he is entitled merely because he has not couched his prayer for such relief in appropriate words. Genuine claims should not be defeated by looking at the form and overlooking the substance of the relief sought for. In the present case the defendant in his composite application also prayed for such necessary orders as the court would deem fit and proper. In my view the trial court should not have rejected the defendant's prayer for relief under section 17(2A) (b) of the Act merely because the application under section 17(2) is not maintainable. It has been observed by the learned judge Chittatosh Mookerjee J. sitting singly in Laxmi Narayan Vs. Durga pada Karmakar AIR 1981 Calcutta 352 at page 354 as follows:

"when an application under section 17(2) is not entertained on the ground that the defendant tenant did not deposit the amount admitted by him to be due, his other prayer under section 17(2A) (b) of the Act cannot be automatically dismissed. In the event such prayer under section 17(2A) (b) has been made within the time as specified in section 17(2B) the court is under a statutory duty to consider the circumstances of the tenant and also that 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 payment of rent and to permit the tenant to pay or deposit the total sum due by such dates as the court may fix".

In Shankarlal Keriwal Alias Sharma Vs.

Moolchand Prosad and Ors. reported in **89 CWN 224** it

was held as follows:-

"The main question is regarding the calculation of the interest and the point whether the petitioner was entitled to installments under sub-section (2A) of section 17 of the Act after disposal of the application under section 17(2) of the Act. In the unreported decision of the Supreme Court in Civil Appeal no. 6960 of 1983 (Ashoke Ghose V. smt. Dev Bala Devi) the supreme Court considered the scheme of section 17 of the Act. It has been held that the scheme of sec. 17 clearly shows whereas suit is filed for eviction on the ground of non-payment of rent, it is incumbent upon the tenant to deposit the rent in arrears either within one month from the date of the service of writ of summons or where the tenant appears in the suit without a writ of summons being served upon him, within one month from the date of his appearance. but this obligation imposed by section 17(1) is subject to the provisions of sub section (2) of section 17 which provides that if there is a dispute as to the amount of rent payable by the tenant, an application has to be made to the court within the time prescribed in sub section (1). On such an application being made, the court has to make a preliminary order specifying the amount, if any, due from the tenant. Sub section (2A) confers powers on the court to grant the benefit of payment of rent in arrears by installments. The scheme that emerges from a combined reading of sections 17(1) , (2), (2A) and (3) is to the effect that where the amount of rent in arrears is not in dispute, the tenant in order to obtain the benefit of protection

against eviction must comply with sub section (1) which requires the tenant to deposit the rent in arrears within one month from the date of the service of the writ of summons or where no such writ of summons is served on the tenant, within one month from the date of his appearance in Court. However, if the amount of rent in arrears is in dispute, the tenant has to make an application within the time specified in subsection (1) to the court inviting the court to pass a preliminary order pending final decision of the dispute, specifying the amount, if any due from the tenant and thereupon the tenant will have to deposit the amount specified in the preliminary order within one month from the date of the preliminary order. It may be that the amount may be sufficiently large and in a given set of circumstances, the tenant may be economically handicapped the tenant may be one who belongs to the economically handicapped class and may find it difficult to comply with the order within the prescribed time and therefore, the legislature conferred power on the court under sub section (2A) to grant amongst others the benefit of depositing the rent specified in the preliminary order by installments as determined by the court. If the tenant fails to comply with the provisions contained in sub section (1) or (2) or (2A), as the case may be, the consequence as provided in sub section (3) may ensue. In view of the decision of the Supreme Court in Civil Appeal no. 6960 of 1983 it cannot be said that the provisions of sub-section (2A) of section 17 of the Act will not be attracted while disposing of the application under section 17(2) of the Act. In the instant case the petitioner has not only filed the application under section 17(2) but also an application under section 17(2A) of the Act. Having regard to the circumstances, it appears that the petitioner's applications under sections 17(2) and 17 (2A) of the Act should be sent back to the learned court below for hearing in accordance with law. The learned Munsif's finding regarding the arrears of rent will stand. The learned Munsif will, however, consider the contention of the petitioner about incorrectness regarding calculation of interest. The learned Munsif will also consider the petitioner's application under section 17(2A) of the Act in accordance with law."

Where the tenant makes a composite application under Section 17(2) and 2A(b) of the Act and court finds that Section 17(2) is to maintainable, the court can still deal with application as one under Section 17(2A)(b) of the Act. The fact that the prayer in the composite application has not been happily worded the court cannot refuse payment by installment and a party should not be deprived of the relief to which he is entitled merely because he has not couched the prayer for such relief in

appropriate words. Therefore, when the defendant in his composite application prays for such necessary orders as the court would deem fit and proper the court is not bound to reject defendant's prayer for relief under Section 17(2A) (b) merely because the application under Section 17(b) is not maintainable.

In ***Bhagaban Shaw Vs. Simmi Goyel*** reported in **(83 CWN 58)** it was held by a coordinate bench of this court as follows:

“9. in view of his situation as the tenant had filed an application with prayer under Sub-section (2A) also, his failure to deposit admitted arrears at the rate last paid as required under Section (2) would not be fatal to his application, as on his application under Sub-section (2A) filed within time the court can extend the time for deposit or payment of any amount referred to therein. The learned Munsif thus committed an error in exercise of his jurisdiction in holding that the application in the circumstances was not maintainable.”

Accordingly, Clause (a) of Subsection 2A provides notwithstanding anything contained in Sub-section (1) the court may by order extend the time specified in Sub-section (1) of Section 17 for deposit or payment of any amount referred to therein. But Sub-section (2B) has made it clear that such prayer for extension has to be made within the period specified in Sub-section (1) of Section 17. But it has been held that court can condone the delay in appropriate cases.

In view of the aforesaid facts and circumstances of the case, it appears that the relationship between the parties has not been disputed but the rate of rent has been disputed by the defendant/tenant. The defendant

has been specifically pleaded in his petition that he has paid Rs. 30,000/- to the opposite party/landlord and it was agreed that Rs. 100/- would be adjusted per month from the rent and rest amount of Rs.50/- would be payable. Accordingly, the defendant/petitioner has raised a serious dispute about the rate of rent. It is true that the defendant though admitted that Rs. 50/- is the payable amount of rent per month but he has not paid the said amount as admitted arrear amount nor he has filed application under Section 17(1) of the act along with the admitted arrear amount of rent.

Having considered the facts and circumstances of the case, the impugned order passed by the court below being order no. 198 dated 9.1.2020 is hereby set aside. the case is remitted to the court below to ascertain whether present case comes within the ambit of section 17(2A)(a) or not and whether it is an appropriate case where Section 17(2B) attracts and not a fit case to condone delay and in that event the court below will be at liberty to proceed with the suit after striking out defence against delivery of possession under Section 17(3) of the Act. The learned court below is directed to dispose of the application filed by the petitioner under Section 17(2) and (2A) of the said act in accordance with law in the light of the aforesaid observations within a period of three months from the date of communication of the order.

Accordingly, C.O. 793 of 2020 is disposed of. Pending applications, if any, also stand disposed of.

Since the suit is pending for a considerable period of time, the trial court is directed to make expeditious disposal of the suit and shall make every endeavour to conclude the entire proceeding of the suit preferably within a period of one year from the date of communication of the order.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)