

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

Present:-

The Hon'ble Justice Subhasis Dasgupta.

**C.O. No. 1638 of 2022
Sri Adwaity Nandi & Ors.
Vs.
Md. Aslam Khan Lodhi & Ors.**

With

**C.O. No. 1640 of 2022
Sri Adwaity Nandi & Ors.
Vs.
Md. Aslam Khan Lodhi & Ors.**

For the Petitioners/ Defendants : Mr. Pradip Kumar Kundu, Adv.

For the Opposite Parties/ Plaintiffs : Mr. Rajdeep Bhattacharya, Adv.
Mr. S.E. Huda, Adv.
Mr. M.I. A. Lodhi, Adv.

Heard On : 02.08.2022.

Judgment : 08.08.2022.

Subhasis Dasgupta, J:-

Both the revisional applications were taken up for hearing together, on the prayer of both the parties, for a common law point being involved. Revisional application being C.O. No. 1638 of 2022 is relatable to Ejectment Suit No. 360 of 2000, while C.O. No. 1640 of 2022 pertains to

Ejectment Suit No. 1063 of 2000, pending before the learned Judge, 5th Bench, Presidency Small Causes Court at Calcutta.

Admittedly, those two Ejectment Suits are for eviction of tenants taking the ground of defaulter etc. under the West Bengal Premises Act, 1956. Further admitted position is that on 11th March, 2019, an order has been there in application of provision under Section 17(3) of the W.B.P.T. Act of 1956, thereby striking off the defence of tenants against delivery of possession.

Learned advocate appearing for the petitioners/defendants/tenants submitted that no opportunity of hearing had been given to petitioners/defendants/tenants, while defence of the petitioners/defendants against delivery of possession had been struck off. It was thus contended that order striking off defence under Section 17(3) of W.B.P.T. Act of 1965 was passed *ex parte* without affording any opportunity of hearing to petitioners/tenants.

It was further submitted that an application under Section 151 C.P.C. was then filed on 25th March, 2019, praying for recalling the order dated 11th March, 2019, which was rejected by the order impugned.

Learned advocate appearing for the petitioners further contended that despite having all required challans to show that there had been no departure in complying with the provisions available under Section 17(1), and also the order passed under Section 17(2), (2A) of W.B.P.T. Act, granting installments, the order directing defence against the delivery of

possession be struck off in application of the provisions under Section 17(3) of W.B.P.T. Act, was contrary to law. The required challans, though not available in the case record, had already been inspected by opposite parties, learned advocate for the petitioners argued.

In reply to the submission raised by the petitioners/defendants, learned advocate appearing for the opposite parties/plaintiffs submitted that without challenging the order, passed under Section 17(3) of W.B.P.T. Act, the petitioners simply proceeded to file an application under Section 151 C.P.C. for recalling the order allowing application under Section 17(3) of the W.B.P.T. Act, what is of course against the spirit of law.

Learned advocate for the opposite parties further contended that the entire endeavour of petitioners was to re-open the order passed under Section 17(3) of W.B.P.T. Act, what had been disposed of on 11th March, 2019. As the challans could not be found in the case record, the court below rightly attracted the provisions available under Section 17(3) of W.B.P.T. Act against the petitioners/defendants, and for the decision of application under Section 17(3) of W.B.P.T. Act, no formal notice upon opposite parties was necessary, learned advocate for opposite parties replied.

It was also submitted by the learned advocate for the opposite parties that the suit for eviction was instituted in the year 2000, taking the ground of defaulter etc., in which the petition under Section 17(2) of W.B.P.T. Act, was disposed of in 22nd March, 2002, granting 12 monthly

installments. In connection with petition under Section 17(2) of W.B.P.T. Act, the petitioners/defendants were held to be a tenants under opposite parties/plaintiffs.

Upon referring such facts, learned advocate for the opposite parties/plaintiffs submitted further that the application under Section 151 C.P.C. praying for recalling was a purposive application, simply to cause delay to the disposal of this case, particularly when the suit had already been set for preemptory hearing.

The only issue requiring address is whether the court below had rightly rejected the prayer for recalling of the order under Section 151 C.P.C. or not.

The undenying position is that petitioners had not challenged the order dated 11th March, 2019, directing defence against the delivery of possession be struck off under Section 17(3) of W.B.P.T. Act. The petition under Section 17(2) of W.B.P.T. Act was disposed of long back in the year 2002, granting some installments.

With the introduction of Section (2B) of W.B.P.T. Act, it was made clear that an application for extension of time, if filed, shall be entertained, unless filed before the expiry of the time specified thereafter in Sub-Section (1) or (2) of Section 17 of W.B.P.T. Act.

It was not the case made out that there had been departure in complying with the order passed under Section 17(2) of W.B.P.T. Act, and

also within the extended period of time, if granted under Section 17 (2B) of W.B.P.T. Act.

Without any controversy, the application under Section 17(3) of W.B.P.T. Act was disposed of on a date, when tenants/defendants did not take any steps on that day. The court below attracted the provisions of Section 17(3) of W.B.P.T. Act for the non-availability of relevant challans in the case record. Thus, in the absence of relevant challans in the case record, suggestive to show that there was compliance of order passed under Section 17(1) or 17(2), if there be any, the court below proceeded to attract the mischief, as available under Section 17(3) of W.B.P.T. Act against the petitioners.

The settled proposition of law is very clear that for striking out defence, no formal application is required to be filed by landlord. If there is material before the court that there was non-compliance with the provision of Sub-Section (1), (2), (2A) of Section 17 of the W.B.P.T. Act, the court can strike out the defence. Therefore, the question of issuing formal notice, as raised by the petitioners, was not necessary.

Upon perusal of petition filed under Section 17(3) by the petitioner, it appears that the mischief provided under Section 17(3) of W.B.P.T. Act was sought to be attracted against the petitioners/tenants alleging failure of tenants/petitioners to deposit the current monthly rent within due time, thereby making infraction of Section 17(1) of W.B.P.T. Act. While

allowing petition under Section 17(3) by order dated 11th March, 2019, the court below found no relevant challans in the case record since long.

Para-6 of the application under Section 151 of C.P.C. praying for recalling of the order dated 11th March, 2019, reveals that petitioners disputed with the allegation to have not deposited the monthly rent by challans, disclosing further that all the required challans were there to refute the allegation leveled against the tenants.

There was nothing left in the impugned order that in connection with the disposal of the petition under Section 17(3) of the W.B.P.T. Act, there was a previous direction passed by the court below, at least for the ends of justice, requiring the tenants/petitioners to produce all the challans, if there be any, to traverse the allegation raised in this case.

The only consideration, while allowing petition under Section 17(3) of W.B.P.T. Act was that, that the relevant challans were not in the case record since long. Therefore, all the relevant challans, if there be any, could not be ascertained by the court below, while allowing the petition under Section 17(3) of the W.B.P.T. Act.

As the court below is obliged to ascertain not only subjectively, but objectively as well, whether there was non-compliance with regard to the provisions of Sub-Section (1), (2), (2A) of Section 17 of W.B.P.T. Act by tenants, such obligation, supposed to be discharged by the court below could not be adequately exercised, when it is a specific case made out by the petitioners/tenants that all the required challans are with

petitioners/tenants, and there was no non-compliance of such provision of law, as mentioned hereinabove.

The court below could have considered the same in aid of Section 151 C.P.C., permitting petitioners/tenants to produce all the challans, if there be any, for the proposed re-visit of the order allowing application under Section 17(3) of the W.B.P.T. Act.

Though, ordinarily the order passed by the court below declining to exercise discretion for recalling the order is not interfered by the superior court, but for the discussion made hereinabove and also for the peculiarity of circumstance involved in this case, the discretion vested to court below cannot be said to have been appropriately exercised .

Both the revisional applications are thus disposed of upon setting aside the order dated 1st April, 2022, passed by learned Judge, 5th Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 360 of 2000, and Ejection Suit No. 1063 of 2000, with a direction upon the court below to rehear the petition under Section 151 C.P.C., filed by the petitioners, afresh dealing with the specific prayer for recalling an order dated 11th March, 2019, within three (3) weeks from the date of communication of this order.

Petitioners are given liberty to produce all the challans before the court below in answer to petition filed by the opposite parties/plaintiffs under Section 17(3) of the W.B.P.T. Act, within fortnight from the date of

communication of this order. This would no prevent the opposite parties to challenge the challans, if produced, in accordance with law.

In view of the long pendency of the suits referred above for eviction, logical conclusion of suits may be reached expeditiously, without granting any adjournment, unless it is extremely unavoidable.

Parties are directed to make communication of this order to the learned court below.

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

(Subhasis Dasgupta, J.)