

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**SA 11 of 2015**

**Projnan Chakravarti & Anr.**

**Vs.**

**Sudipta Basu (Since Deceased) substituted by his legal heirs &  
representatives Purnima Basu & Ors.**

|                     |                              |
|---------------------|------------------------------|
| For the Appellants  | : Mr. Dibyajyoti Raha        |
| For the Respondents | : Mrs. Sarmistha Ghosh Sarma |
| Heard on            | : 22.08.2024, 19.09.2024     |
| Judgment on         | : 15.05.2025                 |

**Ananya Bandyopadhyay, J.:-**

1. The present second appeal arises out of a decree of eviction passed in favour of the plaintiffs/respondents and affirmed by the learned First Appellate Court. The facts giving rise to the present appeal are as follows:
2. The plaintiffs had instituted Title Suit No. 302147 of 1994 before the Learned Civil Judge (Junior Division), 2nd Additional Court at Alipore, seeking eviction of the defendant on the grounds of default, subletting, and reasonable requirement.
3. The plaintiffs' case, in brief, had been that their maternal grandfather, Subodh Chandra Basu, since deceased, had been the absolute owner of premises no. 18/2, Fern Road, P.S. Gariahat, Calcutta – 700019. During his lifetime, he had executed a registered deed of trust in respect of the said

premises, appointing his wife, Niharkana Basu, and his daughter, Smt. Sipra Basu, the plaintiffs' mother, as joint trustees. It had been stipulated in the trust deed that upon the demise of the joint trustees, the plaintiffs would become the absolute owners of the said premises.

4. It had been alleged that the defendants were inducted as monthly tenants under the plaintiffs in respect of the first floor of the suit premises at a monthly rent of Rs.400/-, payable according to the English calendar month.
5. The grounds for eviction had been, inter alia, that (a) the defendant had defaulted in the payment of rent since June 1991, (b) the defendant had sublet one room of the tenanted premises without the plaintiffs' consent, and (c) the suit premises had been reasonably required by the plaintiffs for their own use and occupation, they not having any other suitable accommodation. It had also been submitted that the adjacent premises at 18/1, Fern Road, in the plaintiffs' occupation, had been wholly insufficient to meet their residential needs.
6. The plaintiffs had issued an eviction notice dated 22.12.1993 terminating the defendant's tenancy upon the expiry of January 1994 or upon the expiry of the month of tenancy next following one month from the date of receipt of the said notice. The notice had been dispatched under registered post with acknowledgment due and also under certificate of posting.
7. Despite receipt of the said notice, the defendant had failed to vacate the suit premises, compelling the plaintiffs to institute the suit seeking eviction and mesne profits quantified at Rs.300/- per day until delivery of vacant possession.

8. The original defendant had contested the suit by filing a written statement. Upon his demise during the pendency of the suit, his legal heir had been substituted and had continued contesting the proceedings.
9. In defence, it had been contended that the extent of tenancy described by the plaintiffs had been incorrect; that the defendant had been forcibly evicted from a portion of the tenanted premises; and that the rent amount had never been revised despite a verbal agreement reducing the rent from Rs.400/- to Rs.200/- following surrender of part of the premises in July 1991. It had further been submitted that the plaintiffs had sufficient accommodation and that no notice of eviction had ever been served.
10. The learned Trial Court, upon considering the pleadings and evidence, had decreed the suit on the ground of default in payment of rent. It had been held that the plaintiffs had become absolute owners of the suit premises by virtue of the trust deed and subsequent demise of the trustees. The defendant had been found to be a monthly tenant at a rent of Rs.400/- per month.
11. The notice dated 22.12.1993 had been found to be valid and duly served. The Court had held that the defendant had failed to comply with the requirements under Section 17(2A) of the West Bengal Premises Tenancy Act and had thus disentitled himself to the protection under Section 17(4). On this basis, he had been held to be a defaulter in law.
12. The plea of subletting had not been substantiated with cogent evidence, and the ground of reasonable requirement had also not been accepted in view of discrepancies and non-disclosure of material facts by the plaintiffs,

including the number of rooms available to them and the extent of their occupation in the adjoining premises.

13. The learned Trial Court had accordingly decreed the suit on contest, without costs, and had directed the defendant to vacate and deliver possession of the suit premises within two months. Mesne profits had also been awarded in favour of the plaintiffs.
14. Aggrieved thereby, the defendant had preferred Title Appeal No. 26 of 2012 before the Learned Additional District Judge, 10th Court, Alipore. The learned Appellate Court had noted that the defendant had been a monthly tenant in respect of the first floor of premises no. 18/2, Fern Road, Kolkata – 700019, consisting of multiple rooms and amenities, at a monthly rent of Rs.400/-, as per the English calendar month.
15. The Appellate Court had reiterated the plaintiffs' case that rent had not been paid since June 1991 and that the defendant had allegedly sublet part of the premises without consent. Eviction notice dated 22.12.1993 had been found to have been validly issued and duly served upon one Soma Chakraborty, on behalf of the defendant. In the absence of any rebuttal to establish that she had not been a family member, the notice had been accepted as having been validly served.
16. It had further been observed that although the defendant had filed an application under Section 17(2) of the Act for depositing arrears of rent, there had been failure to comply with the court's order regarding the same. Even after being afforded an opportunity through modification of the earlier order, the arrears had not been cleared. The plea of ignorance owing to the

demise of the original tenant had not been accepted in the absence of adequate explanation.

17. On the allegation of subletting, the Appellate Court had concurred with the Trial Court's finding that the same had not been established through evidence. As regards the plea of reasonable requirement, it had been noted that the plaintiffs had not filed any cross-objection under Order XLI Rule 22 of the Code of Civil Procedure, and thus, the said issue could not be reopened at the appellate stage.
18. The Learned First Appellate Court had therefore affirmed the finding that the appellants/defendants had been defaulters in rent and that a valid notice of eviction had been served. The judgment and decree of the Trial Court had been upheld, and the appeal had been dismissed on contest without costs.
19. This Hon'ble Court by an order dated January 20<sup>th</sup>, 2015 had interalia observed as follows:-

*"This appeal will be heard on the following substantial question of law: Whether the learned judges of the Courts below, substantially, erred in law in passing a decree for eviction on the ground of default when the defendants/ appellants have, substantially, complied with the direction passed under sub-Section (2) of Section 17 of the West Bengal Premises Tenancy Act, 1956 and when the defendants/appellants filed an application under Section 151 of the Code of Civil Procedure for extension of time for depositing remaining two instalments?"*

20. The learned advocate representing the appellants submitted that the present second appeal arises from the concurrent findings of both the Trial Court and the First Appellate Court in a suit for eviction filed under the West Bengal Premises Tenancy Act, 1956, instituted originally against the father

of the appellants, now deceased, on the grounds of default, sub-letting and reasonable requirement. The Courts below decreed the suit solely on the ground of default, the other grounds having been dismissed and not appealed against by the respondent-landlords.

21. It was urged that pursuant to an application under Section 17(2) of the said Act, the original tenant had complied with the order of deposit, albeit with a subsequent modification. While 12 out of 14 instalments were deposited, the original tenant expired before completion of the same, and the appellants, upon substitution, inadvertently failed to deposit the remaining two instalments, which was only discovered at the stage of final hearing. The said default, it was submitted, was neither deliberate nor wilful. Upon such discovery, the remaining amounts along with statutory interest were deposited immediately on the next date, and an application under Section 151 CPC seeking condonation of the delay was filed.
22. The Courts below, however, declined to condone the delay and proceeded to decree the suit, relying on the strict import of Section 17(3) of the Act. It was contended that such a reading is unduly rigid, and the word "shall" as employed in Section 17(3) ought to be construed as "may" in view of the law laid down by the Hon'ble Supreme Court in ***B.P. Khemka Pvt. Ltd. v. Birendra Kumar Bhowmik***<sup>1</sup>. It was further submitted that no specific application under Section 17(3) was filed by the respondents seeking striking out of the defence, thereby vesting the Court with discretion not to penalise the appellants, particularly when the substantial compliance with the Court's directions had been demonstrated.

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<sup>1</sup> AIR 1987 SC 1010.

23. Reference was also made to the decisions of this Hon'ble Court in ***Pasupati Nath Auddya v. Shiba Ch. Dhar***<sup>2</sup> and ***Sheikh Shahjahan v. Smt. Shama Debi Bai***<sup>3</sup>, in support of the proposition that a minor procedural lapse should not result in the drastic consequence of eviction where equity favours protection.
24. It was further submitted that the appellants have complied with the conditional stay granted by this Hon'ble Court by depositing occupational charges at an enhanced rate of Rs. 18,000/- per month since January 2015, which, in the event of the appeal being allowed, ought to be refunded to the appellants, in terms of the ratio laid down by the Hon'ble Supreme Court in ***State of Maharashtra v. Super Max International Pvt. Ltd***<sup>4</sup>.
25. The learned Advocate for the respondents submitted the appellants to have deliberately failed to have complied with the order of the trial court which disposed of the petition of 17(2) of the West Bengal Premises Act determining arrear rent along with statutory interest which was directed to be paid by the defendant appellant in ten installments which was further modified on the prayer of the defendant appellant to be paid in fourteen installments which was subsequently being defaulted and were not allowed such protection under Section 17(4) of the West Bengal Premises Act. Accordingly both the learned trial court as well as the first appellate court were justified in granting a decree of eviction on favor of the present respondents.

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<sup>2</sup> 1998 (2) CLJ 14

<sup>3</sup> 1977 (2) CLJ 545

<sup>4</sup> AIR 2010 SC 722.

26. The plaintiffs had claimed ownership of premises No. 18/2, Fern Road, Calcutta, through a registered deed of trust executed by their maternal grandfather, Subodh Chandra Basu, appointing his wife and daughter (the plaintiffs' mother) as joint trustees, with the plaintiffs to become absolute owners after their demise. The defendants had been inducted as monthly tenants in the first floor of the said premises at a rent of Rs. 400/- per month. The plaintiffs had instituted a suit for eviction on the grounds of default in rent payment from June 1991, subletting without consent, and their own reasonable requirement, further alleging insufficiency of alternative accommodation in the adjoining premises. They had issued an eviction notice dated 22.12.1993, terminating the tenancy with effect from January 1994, which had been served by registered post. Despite service of notice, the defendants had not vacated the premises, prompting the plaintiffs to file the suit along with a claim for mesne profits.
27. The original defendant had filed a written statement denying the extent of tenancy, the allegations of default, subletting, and reasonable requirement, and had claimed partial surrender of the tenanted premises with a corresponding rent reduction based on a verbal agreement. Upon his death, his legal heir had been substituted and continued the contest. The Trial Court had held that the plaintiffs had become absolute owners under the trust deed, the tenancy had been validly terminated, and the defendants had defaulted in payment of rent, having failed to comply with Section 17(2A) of the West Bengal Premises Tenancy Act. The Court had found no conclusive evidence of subletting or reasonable requirement but had decreed the suit on the ground of default, granting eviction and mesne profits

without costs, directing the defendants to vacate within two months. Aggrieved, the defendants had preferred an appeal. The Learned Additional District Judge had reaffirmed that the plaintiffs had established ownership through the trust deed and that the eviction notice had been duly served on the defendants, evidenced by receipt through one Soma Chakraborty. The defendants had filed a petition under Section 17(2) of the Act but had failed to comply with the order for depositing arrears, even after receiving an extension, and their plea of ignorance following the original tenant's death had not been accepted due to insufficient justification. The Court had again found no evidence to prove subletting, and since the plaintiffs had not filed a cross-objection regarding the ground of reasonable requirement within the stipulated period under Order XLI Rule 22 CPC, the matter had not been reopened in appeal. Consequently, the appellate court had upheld the judgment and decree of the trial court, dismissed the appeal on contest without cost, and affirmed the plaintiffs' entitlement to eviction.

28. The appellants had preferred the present second appeal being aggrieved by the judgment and decree of the learned First Appellate Court, which had affirmed the judgment and decree of the learned Trial Court in a suit for eviction filed in 1994 under the West Bengal Premises Tenancy Act, 1956, against the father of the appellants, now deceased, who had been a monthly tenant at a rent of Rs. 400/-. The learned Trial Court had decreed the suit solely on the ground of default and had dismissed the claims of sub-letting and reasonable requirement. It had found that the arrears of rent with statutory interest had been determined under Section 17(2) of the Act and directed to be paid in instalments, which had been complied with in part by

the original defendant before his death. Upon his death, the appellants had been substituted and had discovered at the time of argument that the last two instalments had remained unpaid. They had deposited the remaining amount with statutory interest the very next day and had filed an application under Section 151 CPC seeking condonation of delay, which had been rejected. Consequently, the Trial Court had held that the appellants were not entitled to protection under Section 17(4) and had decreed eviction solely on the ground of default.

29. A Title Appeal had been filed, which had also been dismissed, prompting the present appeal, which had been admitted on the question of whether the Courts below had erred in law by decreeing eviction despite substantial compliance with Section 17(2) and the filing of an application under Section 151 CPC. By order dated 20.01.2015, this Court had granted a stay of execution proceedings on the condition that the appellants would pay occupational charges of Rs. 18,000/- per month, which they had complied with since January 2015. It had been contended that the Courts below, guided by Section 17(3), had wrongly treated the default as fatal and failed to consider that the delay had not been willful or intentional, as the appellants had deposited 12 of the 14 instalments and had promptly made good the shortfall upon discovery. It had further been argued that the word “shall” in Section 17(3) ought to have been read as directory and not mandatory in light of the Supreme Court’s decision in ***M/s. B.P. Khemka Pvt. Ltd. vs. Birendra Kumar Bhowmik***, (*supra*) Moreover, there had been no application by the respondents under Section 17(3) to strike out the defence, and the Courts below had not exercised their discretion judicially,

especially since a revision application against the rejection of the Section 151 CPC application had remained pending.

30. The appellants had emphasized that the default of two instalments after the substantial compliance had been inadvertent and had not prejudiced the respondents, and the Courts had erred in mechanically applying the law without appreciating the equities involved. They had also cited precedents including ***Pasupati Nath Auddya vs. Shiba Ch. Dhar*** (*supra*) and ***Sheikh Shahjahan vs. Shama Debi Bai*** (*supra*) in support of their contentions. It had been submitted that the decree be set aside and the appellants be refunded the amount of occupational charges paid in excess of the contractual rent, in line with the Supreme Court's decision in *State of Maharashtra vs. Super Max International Pvt. Ltd.* (*supra*)
31. The following Sections of The West Bengal Premises Tenancy Act, 1956 have been replicated as follows:-

**S. 17. When a tenant can get the benefit of protection against eviction.**—(1) *On a suit or proceeding being instituted by the landlord on any of the grounds referred to in section 13, the tenant 21[shall, subject to the provisions of sub-section (2), within one month] of the service of the writ of summons on him, 22[or where he appears in the suit or proceeding without the writ of summons being served on him, within one month of his appearance] 23[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—*

*(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 or 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*

*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 therefor, 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) [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.*

32. The Hon'ble Supreme Court in **Bijay Kumar Singh v. Amit Kumar Chamariya**<sup>5</sup> held the following:-

*21. Sub-section (3) provides for consequences of non-payment of rent i.e. striking off the defence against the delivery of the possession and to proceed with the hearing of the suit. Such provision is materially different from sub-sections (2-A) and (2-B) which was being examined by this Court in B.P. Khemka [B.P. Khemka (P) Ltd. v. Birendra Kumar Bhowmick, (1987) 2 SCC 407] . Sub-sections (2-A) and (2-B) of Section 17 of the 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso to Section 7(2) and sub-section (3) of Section 7 of the Act. Therefore, the provisions of sub-section (2) are mandatory and required to be scrupulously followed by the tenant, if the tenant has to avoid the eviction on account of non-payment of arrears of rent under Section 6 of the Act. There is an outer limit for extension of time to deposit of arrears of rent in terms of the proviso to sub-section (2) of Section 7 of the Act. The consequences flowing from non-deposit of rent are contemplated under sub-section (3) of Section 7 of the Act. Therefore, if the tenant fails to deposit admitted arrears of rent within one month of receipt of summons or within one month of appearance without summons and also fails to make an application for determination of the disputed amount of rate of rent and the period of arrears and the subsequent non-payment on determining of the arrears of rent, will entail the eviction of the tenant. Section 7 of the Act provides for a complete mechanism for avoiding eviction on the ground of arrears of rent, provided that the tenant takes steps as contemplated under sub-section (2) of Section 7 of the Act and deposits the arrears of rent on determination of the disputed amount. The deposit of rent along with an application for determination of dispute is a precondition to avoid eviction on the ground of non-payment of arrears of rent. In view thereof, tenant will not be able to take recourse to Section 5 of the*

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<sup>5</sup> (2019) 10 SCC 660

*Limitation Act as it is not an application alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.*

33. Admittedly the defendants/appellants had filed an application under Section 17(2) of the West Bengal Premises Tenancy Act, 1956, whereupon the Learned Trial Court, by order no. 148 dated 23.06.2006, had directed the appellants to deposit arrear rent to the tune of ₹27,132/- in ten instalments by 15.07.2006. Subsequently, on an application under Section 151 of the Code of Civil Procedure filed by the appellants, the Learned Trial Court, by order no. 152 dated 07.09.2006, had modified the earlier order and granted the appellants further opportunity to deposit a reduced balance amount of ₹14,794/- in fourteen instalments.
34. Despite such indulgence shown by the Court, the appellants had failed to deposit the entire sum as directed. On 11.08.2011, at the stage of final hearing, the appellants filed a further petition under Section 151 of the Code of Civil Procedure, submitting that they were under a bona fide impression that the order under Section 17(2) had been duly complied with, and that the omission of the last two instalments had come to light only at the time of arguments. It had further been stated that the original defendant—the predecessor-in-interest of the present appellants—had been depositing the arrear rent prior to his demise on 16.08.2010, and that the present appellants had not been fully aware of the status of compliance.
35. The Learned Trial Court, however, by order dated 01.09.2011, had rejected the said application upon recording that the obligation to deposit the arrears had arisen as early as 2007 or 2008, and that there had been no

satisfactory explanation for the inordinate delay of nearly four years in addressing the default. The predecessor of the appellant being their father expired on 16.08.2010 and the arrears of rent were to have been deposited within the year 2007 or 2008 complying the same to be paid in fourteen installment vide order dated 23.06.2006 passed by the trial court prior to the death of the father of the present appellants. The claim of the present appellants to be ignorant of the dealings of their deceased father who had been responsible for deposition the rent could not be sustained since the father of the present appellants had been a defaulter in paying the arrears of rent of the remaining installments which should have been exhaustively paid within the year 2007 considerably prior to the date of his demise. The demise of the predecessor-in-interest in 2010 could not condone the failure to comply with orders passed years earlier, and in the absence of cogent justification, the prayer for condonation was justifiably declined.

36. In view of the provision under Section 17(2) of the West Bengal Premises Tenancy Act 1956 and the observations of the Hon'ble Supreme Court in ***Bijay Kumar Singh v. Amit Kumar Chamariya*** (*supra*) , no further extensions of time for depositing the remaining two installments should have been granted after a lapse of four years in an application under section 151 of the Code of Civil Procedure, since the present appellants could not be allowed to take the plea of ignorance. The default in payment balance installments was committed much prior to the death of the father of the appellants disregarding the Trial Courts Order.
37. In view of the above discussions, the instant Second Appeal being SA 11 of 2015 stands dismissed

38. The decisions in Title Suit No. 302147 of 1994 and the Title Appeal No. 26 of 2012 are affirmed. The instant appeal is disposed of accordingly. Decree to be drawn up.
39. The Trial Court Records shall be sent down to the concerned trial court forthwith.
40. Copy of the order be sent to the Department as well as concerned trial court for information.

**(Ananya Bandyopadhyay, J.)**