SRI SHIBU CHANDRA DHAR

v.

SRI PASUPATI NATH AUDDYA

MARCH 6, 2002

[G.B. PATTANAIK, S.N. VARIAVA AND K.G. BALAKRISHNAN, JJ.]

West Bengal Premises Tenancy Act, 1956:

Section 13, Section 17 (2A) and (2B) and 17A to 17D (As inserted by Amendment Act 30 of 1969)—Interpretation of.

Tenancy Laws—Rent—Deposit not made within time—Application not made for extention of time within the prescribed period—Power and discretion of Court to extend time—Held, intention of Legislature was to give benefit to tenant—Court has power to extend time—Held, the word 'shall' used in Section 17 (2B) means 'may'—Held, Act is a beneficial legislation—Should be construed liberally so that purpose is fulfilled.

Tenants—One of the tenants purchasing building of Landlord—Another tenant not paying rent to the new Landlord—Instead filing suit for specific performance—Subsequent to dismissal of suit application for deposit of rent filed under Section 17(1)—Applications dismissed by Trial Court but appeal allowed by High Court—Appeal preferred by landlord before Supreme Court—Held, there was no sufficient cause for the tenant for not depositing the rent—On facts no interference was called for with the exercise of discretion by High Court—Leniency shown to tenant should be on heavy costs.

The appellant, a tenant, purchased the building of his landlady. The respondent, another tenant of the building, did not pay any rent to the appellant and instead filed a suit for specific performance claiming that there was an oral agreement to sell between himself and the landlady. Thereafter the appellant filed two suits under Section 13 of the West Bengal Premises Tenancy Act, 1956 each for possession of a shop, damage, mesne profits and injunction against the respondent. Subsequent to dismissal of his suit for specific performance the respondent filed applications under Section 151 of the Code of Civil Procedure, 1908 praying that he be allowed to deposit all arrears of rent in accordance with Section 17(1) of the Act. These applications

A were dismissed by Additional District Judge but appeals preferred by respondent were allowed.

The question for consideration in these appeals is whether a Court has discretion to extend time if a deposit is not made or an application is not made within the time provided in Section 17. On behalf of the appellant it was B contended that (i) in view of the provisions contained in sub-section (2B) of Section 17 of the West Bengal Premises Tenancy Act, 1956 Court cannot entertain an application for extension of time after the prescribed period of 30 days; (ii) sub-section (2B) of Section 17 uses the word 'shall' which shows that the provisions thereof are mandatory in nature; (iii) the word 'shall' in C the said sub-section cannot be interpreted as 'may'.

Disposing of the appeal, the Court

HELD: 1. The West Bengal Premises Tenancy Act, 1956 is a beneficial legislation. Such a statute has to be liberally construed so as to ensure that D the statutory purpose is fulfilled and not frustrated. Prior to its amendment, Section 17 provided that a tenant could, within the time provided in sub-section (i) of Section 17, deposit or pay the amount to the landlord and that if he fails to deposit, the Court shall order the defence against delivery of possession to be struck off. Thereafter, by the Amendment Act, Sub-section (2A) and (2B) of Section 17 were added. At the same time Sections 17A to E 17D were added. Undoubtedly, sub-section (2B) of Section 17, read by itself, conveys an impression that it is mandatory in nature. However, sub-sections (2B) of Section 17 cannot be read in isolation. Sub-section (2B) of Section 17 has to be read alongwith sub-section (2A) of Section 17 and Sections 17A to 17D. Sub-section (2A) of Section 17 gives a Court the power to extend time F on an application by the tenant. The Court can permit the tenant to deposit or pay in instalments on terms as may be fixed by the Court. The wordings of sub-section (2A) of Section 17 are wide. They show that a tenant could make an application for extension of time on more than one occasion. The Court has power to enlarge time on each of such applications. The second or third application will obviously be filed beyond the time provided in Section 17(1). G As the Court has power to extend time on each such application it is clear that the word 'shall' used in sub-section (2B) of Section 17 means 'may'. The submission that the Court has no power to extend time under Section 17 of the said Act cannot be accepted. [258-H; 259-A-C]

2. A conjoint reading of Sections 17(2A) and (2B) alongwith Sections H 17A to 17D shows that the Legislature intended to give benefit to the tenants.

Section 17(2B) and Sections 17A to 17D use the word 'shall'. A conjoint reading of these Sections makes it very clear that the word 'shall' used in all these Sections, necessarily means 'may'. Therefore, a Court has power to extend time. Of course, the power would have to be judicially exercised. [259-D]

3. Neither Section 17 nor Sections 17A to 17D make any distinction based on tenants in small defaults for reasons beyond their control and/or tenants who commit wilful, gross or deliberate defaults. The interpretation of the Sections does not depend on whether the default is wilful or otherwise. If a Court has no power to extend time then even in cases of small defaults or defaults for reasons beyond the control of the tenant, time could not be extended. Court can condone delay and/or extend time in cases of small defaults or where default is for reasons beyond the control of the tenant if it has power to extend time. Even if the Court has power to extend time, in case of wilful, gross or deliberate defaults, Court may refuse to extend time. [258-E-F]

4. On the facts of this case, it is clear that the respondent did not have sufficient cause for not depositing the amount of rent for such a long period of time. However, as the High Court has exercised its discretion, this Court does not propose to interfere. However, on the facts of this case, the leniency shown to the respondent should be on heavy costs. Accordingly, the respondent should pay cost fixed at Rs. 50, 000 within a period of 6 weeks from the date of this Order. If such cost is paid these Appeals shall stand dismissed, if not paid within the period aforesaid, then the Appeal shall stand allowed and the impugned Judgment shall stand set aside and the Order of the Trial Court shall stand revived. [260-A-C]

B.P. Khemka Pvt. Ltd. v. *Birendra Kumar. Bhowmick and Anr.*, [1987] 2 SCC 407 and *Gopal Chandra Ghosh* v. *Renu Bala Mazumdar and Anr.*, [1994] 2 SCC 258, affirmed.

M/s. B.P. Khemka Pvt. Ltd. v. *Birendra Kumar Bhowmick and Anr.*, [1987] 2 SCC 407, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 694 of 1999.

From the Judgment and Order dated 2.6.98 of the Kolkata High Court in C.O. No. 3213 of 1997.

WITH

A C.A. No. 695 of 1999.

Ranjan Mukherjee for the Appellant.

T. Raja, for the Respondent in C.A. No. 694/99.

Yashwant Das, Abhijit Sengupta, Anand and D. Bharat Kumar for the B Respondent in C. A. No. 695/99.

The Judgment of the Court was delivered by

S.N. VARIAVA, J. 1.These two Appeals are against the common Judgment dated 2nd June, 1998 in two Revision Applications filed by the C Appellant (herein) before the High Court of Calcutta. Both the Appeals are being disposed of by this common Judgment as the facts are similar and the law point is the same.

2. Briefly stated the facts are as follows:

D One Smt. Maya Lata Dey was the owner of a building containing six shops in 7B, Kabi Tirtha Sarani, P. S. Watgunge, Calcutta - 700023. The Appellant was a tenant in one shop and the Respondent was a tenant in two of the shops. On 12th March, 1993 the Appellant bought the building from the said Smt. Maya Lata Dey by a registered sale deed. A letter dated 1st April, 1993 was sent by the landlady, Smt. Maya Lata Dey, to all the tenants intimating E them that she had sold the building to the Appellant and that they should attern tenancy to the Appellant and pay rent to the Appellant.

3. The Respondent filed, against Smt. Maya Lata Dey and the Appellant, Title Suit No. 307 of 1993 in the Court of the Munsif at Alipore for specific performance of an alleged oral Agreement to Sell. The Respondent claimed F that there was an earlier Agreement to Sell between Smt. Maya Lata Dey and himself and that thus the property could not have been sold to the Appellant. After filing the suit for specific performance the Respondent did not pay any rent to the Appellant. The Appellant, therefore, filed a Suit No. 215 of 1993 for recovery of arrears of rent. That suit came to be decreed on 19th August, 1993.

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4. Thereafter the Appellant filed two suits, each for possession of a shop, damage, mesne profit and injunction against the Respondent. The suits were filed under Section 13 of the West Bengal Premises Tenancy Act, 1956 (hereinafter called the said Act). The Respondent filed applications under Section 10 of the Civil Procedure Code for stay of the suits on the ground H that his suit for specific performance of contract was pending. The applications

were dismissed. On 22nd December, 1995 Suit No. 307 of 1993 filed by the Respondent was dismissed. We are told that an Appeal has been filed against the order of dismissal and that the said Appeal is pending.

5. On 23rd April, 1996 the Respondent filed applications, under Section 151 of the Civil Procedure Code, praying that he be allowed to deposit all arrears of rent along with statutory interest thereon in accordance with Section 17(1) of the said Act. In the said application he contended that he had been advised by his lawyer that he should not pay rent as that would affect his suit for specific performance which was then pending and that now that the suit for specific performance was dismissed he was tendering the rent. It must be mentioned that along with the applications the Respondent deposited all arrears of rent. The applications were opposed by the Appellant. The learned Additional District Judge rejected the applications. However, both the Appeals filed by the Respondent were allowed by the impugned Judgment dated 2nd June, 1998.

6. When this matter reached hearing on 21st November, 2001 this Court observed as under:

> "It is conceded that the tenant did not deposit the amount of arrears of rent within one month from the date of service of writ of summons under sub-section (1) of Section 17 of the West Bengal Premises Tenancy Act, 1956 nor made an application within that time for extension of time under sub section 2(A) and 2(B) of Section 17. An application by tenant, seeking extension of time, made beyond one month, for condoning the delay in deposit which too was made beyond one month, was rejected by the Trial Court but allowed by the High Court in exercise of its revisional jurisdiction. The High Court, while dong so, relied on an observation made by this Court in *M/s. B.P. Khemka Pvt. Ltd.* v. *Birendra Kumar Bhowmick and Anr.*, [1987] 2 SCC 407 vide para 15, which reads as under:
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> > "..... then the court surely has the further discretion to condone the default and extend the time for payment or deposit and such a discretion is a necessary implication of the discretion not to strike out the defence."
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> We have our reservations about the correctness of the observation so made. The question - whether an application under Section 17(2A), if filed beyond the period of one month from the date of service of writ of summons would be entertainable, inspite of the bar created by

A sub-section 2-B, did not specifically arise for decision before this Court in B. P. Khemka's case. Since B. P. Khemka's case is a two-Judge Bench decision, let the matter be placed for hearing before a three-Judge Bench.

At this point of time, learned counsel for the respondent invites
B attention of the Court to a concession recorded by the High Court at the bottom of internal page 14 of its order. Learned counsel for the appellant submits that there is no such concession made as is sought to be spelt out. We do not deem it necessary to express any opinion on either contention."

C 7. Accordingly this matter is before this Court. The question before this Court is whether a Court has discretion to extend time if a deposit is not made or an application is not made within the time provided in Section 17. It would thus be convenient to set out Section 17. Section 17 reads as follows:

D *"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 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
E 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
F 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.

G (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
H application for determination of the rent payable. On receipt of such

application, the Court shall - A

(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 B 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 C 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.

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(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;

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(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 :

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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 G was payable up to the date of such order.

(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 H

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 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. "

At this stage it must be mentioned that sub-sections (2A) and (2B) were inserted by the West Bengal Premises Tenancy (Amendment) Act, 1969 (Act 30 of 1969). At the same time Sections 17A to 17D were also inserted. Section 17A provides that a Court "shall" set aside an order striking out defence if an application to that effect is made by a tenant within 30 days from the date of the Order striking off defence. Section 17B provides that even if a decree for recovery of possession is passed, after defence is struck off, a tenant may within 60 days of the amending Act apply to Court to set aside the decree and the Court shall set aside the decree. Section 17C provides that if the tenant deposits amounts as directed by the Court, under Section 17A and/or 17B, then the tenant will be deemed to have duly deposited as required by Section 17(1) or 17(2). Section 17D provides that if a decree is passed, under circumstances set out in clauses (a) & (b) thereof, the Court shall set aside the decree on an application of the tenant.

8 .Mr. Mukherjee appearing for the Appellant has assailed the impugned Judgment on the ground that it is against the express provision of Section 17

of the said Act. Mr. Mukherjee submitted that by virtue of sub-section (2B) of Section 17 a Court cannot entertain an application for extension of time after the period of 30 days mentioned in the sub-section. He submitted that any application made beyond the period of 30 days must necessarily be rejected by the Court. Mr. Mukherjee submitted that the Court had no power to entertain an application filed beyond time. He submitted that the language of sub-section (2B) of Section 17 was clear and unambiguous. He submitted that no other interpretation could be given in view of the clear and unambiguous language. He submitted that a Court had no discretion but to strike out the defence of the tenant against delivery of possession. He submitted that sub-section (2B) of Section 17 uses the word "shall". He submitted that this shows that the provisions of sub-section (2B) of Section 17 are mandatory in nature. He submitted that it would be wrong to interpret the word "shall" as "may".

9. In the cases of *B.P. Khemka Pvt. Ltd.* v. *Birendra Kumar Bhowmick and Anr.*, reported in [1987] 2 SCC 407 and *Gopal Chandra Ghosh* v. *Renu Bala Mazumdar and Anr.*, reported in [1994] 2 SCC 258 this Court has held that the word "shall" must be taken to mean "may" in Section 17 of the said Act. Both these authorities have held that the Court has discretion to extend time in appropriate cases.

10. Mr. Mukherjee submitted that neither in Khemka's case nor in Ghosh's case the question under consideration arose. He submitted that the decision in Ghosh's case is based entirely on *Khemka's* case. He submitted that two learned Judges of this Court have been unwilling to accept the ratio in *Khemka's* case. He submitted that even though Ghosh's case has not been mentioned in the referral Order, still *Ghosh's* case also requires reconsideration. He submitted that in both those cases the defaults were minor in nature. He submitted that both those decisions are based on facts of those cases. He submitted that the Court must draw a distinction between a technical or a minor default and a wilful, gross and deliberate default. He submitted that in case of a wilful, gross and a deliberate default the Court must compulsorily reject the application. He submitted that it must be held that Courts have no discretion to condone the delay and have no option but to strike out the defence of a tenant.

11. Mr. Mukherjee submitted that if the Court interprets sub-section (2B) of Section 17 as being only directory and not mandatory then sub-section (3) of Section 17 would be rendered otiose and nugatory. He submitted

A that in that case a landlord would not be able to exercise his right to get an order striking out the defence of the tenant. Mr. Mukherjee submitted that Sections 17A to 17D have nothing to do with the mandatory nature of Section 17(2B). He submitted that Sections 17A to 17D were introduced to give a chance to bonafide tenants who were in small defaults on account of reasons which were beyond their control. He submitted that the aforesaid Sections B were not enacted to give protection to tenants who committed a wilful, gross and deliberate default. He submitted that the word "shall" if read as "may" would defeat the scheme of the said Act and there would be no criteria to exercise discretion in condoning default. He submitted that such an interpretation would defeat the legislative intent which was to provide an C enforceable right to a landlord against the defaulting tenant. He submitted that even though the said Act is a beneficial piece of legislation the landlord must also be given the benefit when the said Act provides a right to the landlord.

D 12. He submits that in any case, on the facts of this case, there has been a wilful, gross and deliberate default of non-payment of rent from 1993 to 1996. He submits that, on the facts of this case, the Court should not condone delay, even if the Court was to hold that Courts have power to condone delay.

E 13. To be noted that neither Section 17 nor Sections 17A to 17D make any distinction based on tenants in small defaults for reasons beyond their control and/or tenants who commit wilful, gross or deliberate defaults. The interpretation of the Sections does not depend on whether the default is wilful or otherwise. If a Court has no power to extend time then even in cases of small defaults or defaults for reasons beyond the control of the tenant, F time could not be extended. Court can condone delay and/or extend time in cases of small defaults or where default is for reasons beyond the control of the tenant if it has power to extend time. Even if the Court has power to extend time, in case of wilful, gross or deliberate defaults, Court may refuse to extend time.

G 14. We are unable to accept Mr. Mukherjee's submission that the Court has no power to extend time under Section 17 of the said Act. The said Act is a beneficial legislation. Such a statute has to be liberally construed so as to ensure that the statutory purpose is fulfilled and not frustrated. Prior to its amendment Section 17 provided that a tenant could, within the time provided H in sub-section (1) of Section 17, deposit or pay the amount to the landlord

and that if he fails to deposit the Court shall order the defence against delivery of possession to be struck off. Thereafter, by the Amendment Act, sub-sections (2A) and (2B) of Section 17 were added. At the same time Sections 17A to 17D were added. Undoubtedly, sub-section (2B) of Section 17, read by itself, conveys an impression that it is mandatory in nature. However, sub-section (2B) of Section 17 cannot be read in isolation. Sub-section (2B) of Section 17 has to be read along with sub-section (2A) of Section 17 and Sections 17A to 17D. Sub-section (2A) of Section 17 gives a Court the power to extend time on an application by the tenant. The Court can permit the tenant to deposit or pay in instalments on terms as may be fixed by the Court. The wordings of sub-section (2A) of Section 17 are wide. They show that a tenant could make an application for extension of time on more than one occasion. The Court has power to enlarge time on each of such applications. The second or third application will obviously be filed beyond the time provided in Section 17(1). As the Court has power to extend time on each such application it is clear that the word "shall" used in sub-section (2B) of Section 17 means "may".

15. If the submissions of Mr. Mukherjee were to be accepted then it would lead to absurd results. This can best be illustrated by way of examples. If an application had been made by a tenant for extension of time to make deposit beyond time and even if the defence had been struck off, under Section 17A the tenant could make another application within a period of 30 days and on such an application the order striking off the defence "shall" be set aside by the Court. Similarly even though a decree may have been passed after the defence was struck off, the Court could under Section 17B set aside the decree. But if an application for extension of time was pending on the date the Amendment Act came into force, then neither Section 17A nor Section 17B would apply and on the arguments of Mr. Mukherjee the Court would be helpless to extend time. The Legislature could not have intended that Court must first strike out the defence and then under Section 17A set aside the order. A conjoint reading of Sections 17(2A) and (2B) along with Sections 17A to 17D shows that the Legislature intended to give benefit to the tenants. To be noted that Section 17(2B) and Sections 17A to 17D use the word "shall". A conjoint reading of these Sections makes it very clear that the word "shall", used in all these Sections, necessarily means "may". A conjoint reading shows that a Court has power to extend time. Of course the power would have to be judicially exercised. We, therefore, confirm the view taken in Ghosh's case and in *Khemka's* case.

16. On the facts of this case, it does appear to us that the Respondent

A did not have sufficient cause for not depositing the amount of rent for such a long period of time. However, as the High Court has exercised its discretion, we do not propose to interfere. However, in our opinion, on the facts of this case, the leniency which has been shown to the Respondent should be on heavy costs. Considering the cost of litigation today, in our view, the Respondent should pay in both these Appeals cost fixed at Rs. 50,000 (i.e. B Rs. 25,000 in each Appeal). The same should be paid within a period of 6 weeks from today. If such cost is paid this Appeal shall stand dismissed with no further order as to costs. If, however, the said sum of Rs. 50,000 or any part thereof is not paid within the period aforesaid, then the Appeal shall stand allowed and the impugned Judgment dated 2nd June, 1998 shall stand C set aside and the order of the trial Court dated 4th September, 1997 shall stand revived.

17. The Appeals stand disposed of accordingly.

T.N.A. Appeals disposed of.