Kaluram Onkarmal and Another

Vs

Baidyanath Gorain

Civil Appeal No. 875 of 1964

(CJI P. B. Gajendragadkar, M. Hidyatullah, J. C. Shah, S. M. Sikri JJ)

11.02.1965

JUDGMENT

GAJENDRAGADKAR, C.J.-

Appellant No. 1, Kaluram Onkarmal, was let into possession of the premises described as holding No. 182H, G.T. Road, Asansol as a monthly tenant under Harbhajan Singh Wasal who was the owner of the said premises. The rent agreed to be paid was Rs. 35 per month payable according to the English Calendar. It appears that in 1953, the Calcutta National Bank Ltd. (now in liquidation) sued the owner Wasal on the original side of the Calcutta High Court on a mortgage. In the said suit, a preliminary decree was passed and in due course, it was followed by a final decree. During the proceedings of the said suit, Mr. K. K. Ghose was appointed Receiver of the mortgaged properties, including the premises in the present suit. On February 18, 1960, the Receiver put the mortgaged properties to sale and the respondent, Baidyanath Gorain, purchased them. The said sale was confirmed by the Calcutta High Court on March 1, 1960. That is how the respondent became the owner of the suit premises along with other properties under mortgage. After he acquired title to the suit premises in this manner, the respondent informed appellant No. 1 about the same by his letter dated the 2nd April 1960.

On December 11, 1961, the respondent sued appellant No. 1, and appellant No. 2, Kaluram Bajranglal in the First Court of the Munsif at Asansol for ejectment. He claimed vacant possession of the premises let out to appellant No. 1 on several grounds. He urged that he reasonably required the premises for rebuilding them after demolishing the existing structure. According to him, the existing structure had become very old and was in a dilapidated condition. He also alleged that appellant No. 1 had unlawfully sublet the suit premises to appellant No. 2, and that he had failed to pay or deposit the rents for the last three years in accordance with law.

The claim for ejectment thus made by the respondent was disputed by appellant No. 1 on several grounds. Appellant No. 1 denied that the respondent required the suit premises for rebuilding, and also disputed his allegation that he had sublet the said premises unlawfully. In regard to the averment made by the respondent that appellant No. 1 had failed to pay or deposit the rents due for the last three years, appellant No. 1 made a detailed denial. He urged that the rents had been regularly paid to the owner in time before August, 1960, and he pleaded that since the month of August, 1960 when he found that the owner was not prepared to accept the rents from him, he deposited them with the House Rent Controller, Asansol, from month to month. It was his case that notice had been served on the owner in respect of these deposits from month to month as provided by section 21(3) of the West Bengal Premises Tenancy Act, 1956, (Act XII of 1956) (herematter called 'the Act'). The written statement further averred that the deposit of the monthly rent continued

to be made regularly under s. 21 and that the rent for March, 1962 had been duly deposited on April 10, 1962. This written statement was filed on April 11, 1962.

During the pendency of this suit, the respondent made an application under s. 17(3) of the Act and claimed that the defence of appellant No. 1 against delivery of possession should be struck out, because he had failed to deposit or pay the amount in Court as required by s. 17(1) of the Act. This application was strenuously opposed by appellant No. 1 on the ground that s. 17(3) could not be invoked against him in view of the fact that he had been depositing the rent from month to month under s. 21, and he urged that the deposit of rent thus made by him amounted to payment of rent by him to the respondent under s. 22(3) and, therefore, no default had been committed by him at all. This dispute raised the question about the true scope and effect of the provisions of s. 17(3) and s. 22(3) of the Act. The learned trial Judge held that notwithstanding the fact that appellant No. 1 had been depositing the rent from month to month under s. 22 with the Rent Controller, having regard to the provisions contained in s. 17(1) his failure to deposit the relevant amount in Court incurred the liability to have his defence struck out under s. 17(3). In coming to this conclusion, the learned Judge followed a decision of the Division Bench of the Calcutta High Court in Abdul Majid v. Dr. Samiruddin [62 C.W.N. 555]. Having held that s. 17(3) applied, the learned Judge directed that the defence raised by appellant No. 1 against the claim of the respondent for delivery of possession of the suit premises must be struck out.

This order was challenged by both the appellants by preferring a revision application before the Calcutta High Court. Before this revision application reached the stage of hearing, the question raised by it had already been concluded by a majority decision of the Special Bench of the Calcutta High Court in Siddheswar Paul v. Prakash Chandra Dutta [A.I.R. 1964 Cal. 105]. The learned single Judge who heard this revision application was naturally bound by the said majority decision, and applying the said decision, he held that the order passed by the learned trial Judge striking out the defence of appellant No. 1 under s. 17(3) of the Act was justified. It is this order which is challenged by Mr. N. C. Chatterjee on behalf of the appellants in the present appeal which has been brought to this Court by special leave. Mr. Chatterjee contends that the majority decision of the Special Bench in Siddheswar Paul's case [A.I.R. [1964] Cal. 105] is erroneous and has proceeded on a misconstruction of the tone, scope and effect of the two relevant section of the Act - ss. 17 & 22. That is how the short question which falls for our decision in the present appeal is : what is the true scope and effect of the provisions prescribed by sections 17 and 22 of the Act ? It appears that the Special Bench in Siddheswar Paul's case was divided on this issue; the three learned Judges have taken the view that s. 22(3) does not apply to cases falling under s. 17(1), whereas two other learned Judges have come to the conclusion that if a tenant had made a deposit with the Rent Controller to which s. 22(3) applies, section 17(3) cannot be invoked against him. The separate judgments delivered by all the learned Judges who constituted the Special Bench have dealt with the point at great length and each one has subjected the said two provisions to a close analysis and examination. In the present appeal, we propose to consider the matter in a broad way and will confine ourselves to some general considerations which flow from the construction of the two relevant provisions and which, in our opinion, support the view taken by the majority of the Judges in the Special Bench.

Before addressing ourselves to the main point in dispute between the parties, it is necessary to refer broadly to the scheme of the Act and its main provisions. The Act was passed in 1956 and it superseded the earlier Act XVII of 1950. The Act consists of seven Chapters. Ch. I deals with definitions; Ch. II contains provisions regarding rent; Ch. III covers suits and proceedings for eviction; Ch. IV has reference to deposit of rent; Ch. V considers the question of appointment of the Controller and other Officers, their powers and functions; Ch. VI provides for appeals, revision and

review; and Ch. VII deals with penalties and miscellaneous provisions. Section 2(b) defines a "Controller"; s. 2(c) defines "fair rent"; s. 2(d) defines a "landlord"; and s. 2(h) defines a "tenant". A tenant, according to s. 2(h), includes any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be payable and also any person continuing in possession after the termination of his tenancy, but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction. Section 4(1) provides that a tenant shall, subject to the provisions of the Act, pay to the landlord : (a) in cases where fair rent has been fixed for any premises, such rent; (b) in other cases, the rent agreed upon until fair rent is fixed. Section 4(2) lays down that rent shall be paid within the time fixed by contract or in the absence of such contract, by the 15th day of the month next following the month for which it is payable; and under s. 4(3), any sum in excess of the rent referred to in sub-s. (1) shall not be recoverable by the landlord. These provisions are in conformity with the pattern which is usually adopted by Rent Restriction Acts. The rest of the provisions of Chapter II deal with the fixation of standard rent; with the said provisions, we are not concerned in the present appeal.

Chapter III which deals with suits and proceedings for eviction contains s. 17 which falls to be considered in the present appeal. Section 13 which affords protection to tenants against eviction, lays down that notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the grounds specified by clauses (a) to (k). Amongst these clauses, it is clause (i) which deals with a case where the tenant has made default in the payment of rent for two months within a period of twelve months or for two successive periods in cases where rent is not payable monthly. Section 14 imposes a restriction on subletting. Section 15 prohibits a tenant from receiving any sum or consideration for relinquishment of tenancy; and s. 16 provides that the creation and termination of sub-tenancies shall be notified in the manner prescribed by it. That takes us to s. 17. Section 17(1) reads thus :-

> "On a suit or proceeding being instituted by the landlord on any of the grounds referred to in s. 13, the tenant shall, subject to the provisions of sub-s. (2), within one month of the service of the writ of summons on him deposit in Court 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."

Section 17(2) deals with cases where there is a dispute as to the amount of rent payable by the tenant. This provision is not relevant for our purpose. Section 17(3) provides that if a tenant fails to deposit or pay any amount referred to in sub-s. (1) or sub-section (2), the Court shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit. It is under this sub-section that the impugned order has been passed. Section 17(4) lays down:-

> "If a tenant makes deposit or payment as required by sub-s. (1) or sub-s. (2), 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 he has made default in payment of rent for four months within a period of twelve months."

Reading s. 17(1) by itself, it is clear that when a landlord institutes a suit to recover possession of the premises let to his tenant on any of the grounds referred to in s. 13, the tenant is required to deposit the amount in Court as provided by it. It would be noticed that the first part of s. 17(1) enables the tenant who has committed a default in the payment of rent prior to the institution of the suit to make up for that default and pay the defaulted amount as specified by this sub-section. This can be done subject to the condition that the tenant pays interest on the defaulted amount calculated in the manner prescribed by it. In regard to the amount payable in future pending the suit or proceeding, s. 17(1) provides that the tenant 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. In the Calcutta High Court there appears to be a difference of opinion as to whether the amount which is required to be deposited by the tenant is rent or not. We are proceeding to deal with the present appeal on the footing that the said amount in law is rent, though it is not described as such by s. 17(1).

It is thus clear that whatever may be the cause on which the landlord's claim for eviction is based, s. 17(1) provides that subject to the provisions of sub-s. (2), within one month of the service of the writ of summons on him, the tenant is required to deposit in Court the amount in the manner prescribed by it. If he fails to comply with the requirements of s. 17 (1), s. 17(3) steps in and enables the landlord to claim that the defence of the tenant against delivery of possession should be struck out. If section 17(1) and (3) are read by themselves, there is no doubt that appellant No. 1 has failed to comply with s. 17(1), and so, s. 17(3) can be legitimately invoked against him. He, however, contends that in applying s. 17(3), the Court must take into account not only s. 17(1) but also s. 22(3), and his argument is that if he has deposited the amount of rent under s. 21 and the deposit is otherwise valid, then the deposit itself amounts to payment of rent by him to the landlord and as such, no order can be passed against him under s. 17(3), because, in law, he has not committed a default in the payment of rent at all; and it is this contention which makes it necessary to consider the impact of the provisions of s. 22 on the application of s. 17(3) against appellant No. 1.

Let us, therefore, read s. 22 and attempt to decide what is the effect of s. 22(3) on cases falling under s. 17(1). As we have already pointed out, s. 22 occurs in Chapter IV which deals with deposit of rent. This Chapter begins with s. 21. Section 21(1) provides that where the landlord does not accept any rent tendered by the tenant within the time referred to in s. 4, or where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner. Section 21(2) lays down that the deposit shall be accompanied by an application which should set forth the particulars prescribed by clauses (a) to (d). Section 21(3) requires that the said application shall be accompanied by the prescribed number of copies thereof. Section 21(4) requires the Controller to send a copy of the application received by him from the tenant to the landlord. Under s. 21(5), the Controller is authorised to allow the landlord to withdraw the rent deposited with him. Section 21(6) empowers the forfeiture of the deposit to Government, subject to the conditions prescribed by clauses (a) & (b) of the said sub-section. There are three other sub-sections to s. 21 which are not relevant for our purpose.

That takes us to s. 22 it reads thus :-

"(1) No rent deposited under s. 21 shall be considered to have been validly deposited under that section for purposes of clause (i) of sub-section (1) of s. 13, unless deposited within fifteen days of the time fixed by the contract in writing for payment of the rent or, in the absence of such contract in writing, unless deposited within the last day of the month following that for which the rent was payable.

(2) No such deposit shall be considered to have been validly made for the purpose of the said clause if the tenant wilfully or negligently makes any false statement in his application for depositing the rent, unless the landlord has withdrawn the amount deposited before the date of institution of a suit or proceeding for recovery, or possession of the premises from the tenant.

(3) If the rent is deposited within the time mentioned in sub-section (1), and does not cease to be a valid deposit for the reason mentioned in sub-section (2), the deposit shall constitute payment of rent to the landlord as if the amount deposited has been valid legal tender of rent if tendered to the landlord on the date fixed by the contract for payment or rent when there is such a contract, or, in the absence of any contract, on the fifteenth day of the month next following that for which rent is payable."

Mr. N. C. Chatterjee for the appellants contends that the effect of s. 22(3) is that the deposit made by appellant No. 1 shall be held to constitute payment by him to the landlord, and so, there can be no scope for invoking s. 17(3) against him inasmuch/the basis of s. 17(3), in substance, is that the tenant whose defence is sought be struck out has committed a default in the payment of rent. The object of s. 17(1) is to secure the payment of rent by the tenant to the landlord and since that object has been satisfied by the deposit duly made by appellant No. 1 under s. 21(1), it would be unreasonable to allow s. 17(3) to be invoked against him. It is common ground that the deposit of rent has been made by appellant No. 1 in compliance with the provisions of s. 21 and that it is not rendered invalid under s. 22(2). In other words, Mr. N. C. Chatterjee is entitled to urge his point on the assumption that appellant No. 1 has made a valid deposit under s. 21 and is entitled to the benefit of s. 22(3). Can a valid deposit made under s. 21 be permitted to be pleaded by a tenant when an application is made against him under s. 17(3) ?; that is the question which arises for our decision in the present appeal. The answer to this question necessarily depends upon the determination of the true scope and effect of the provisions contained respectively in s. 17 and s. 22.

As a matter of common-sense, Mr. N. C. Chatterjee's argument does sound to be prima facie attractive. If, in fact, appellant No. 1 has deposited the rent from month to month, it does appear harsh and unreasonable that his defence should be struck out on the ground that he has deposited the rent not in the Court where the suit is pending, but with the Controller. When appellant No. 1 began to deposit the rent with the Controller, he was justified in doing so; but on the other hand, it is urged against him by Mr. P. K. Chatterjee that as soon as the suit is filed under s. 17 and the period prescribed by it has expired, it was obligatory on appellant No. 1 to pay the amount in Court and stop depositing it with the Rent Controller; in other words, his failure to pay the amount in Court incurs the penalty prescribed by s. 17(3) notwithstanding the fact that he may have deposited the same amount with the Controller. The requirements of s. 17(1) cannot be said to be satisfied by taking recourse to the provisions of s. 22(3); that in substance is the argument for the respondent. The question thus raised for our decision no doubt lies within a very narrow compass and its answer depends upon a proper construction of sections 17 and 22; but, as we have already indicated, this narrow question has given rise to a sharp conflict of opinion in the Calcutta High Court. It appears plain that appellant No. 1 finds himself in the present difficult position presumably because, acting

upon the view expressed in some of the judgments of the Calcutta High Court, he was advised to deposit the rent with the Controller even after he was sued by the respondent and s. 17(1) began to operate against him.

In dealing with this vexed problem, it is relevant to remember that the two competing provision occur in two different Chapters and apparently cover different fields. Chapter IV deals with the question of deposit of rent in general, whereas s. 17 in Ch. III makes a provision for the payment of the amount mentioned by it in Court after a suit or proceeding has been instituted by the landlord against the tenant. It is common ground that the Rent Controller is not Court within the meaning of s. 17(1). Prima facie, a general provision for the deposit of rent prescribed by s. 21 would not apply to special cases dealt with by s. 17. The provisions of s. 21 and 22 which are general in character, would cover cases which are not expressly dealt with by the special provision prescribed by s. 17. In other words, though a tenant may deposit rent with the Controller under the provisions of ss. 21 and 22, as soon as a suit is brought against him by the landlord, s. 17 which is a special provision, comes into operation and it is the provision of this special section that must prevail in cases covered by it; that is the first general consideration which cannot be ignored.

Section 17 deals with suits or proceedings in which the landlord claims eviction on any of the grounds referred to in s. 13; and as we have already noticed, s. 13 which affords protection to the tenant's eviction, permits the landlord to claim eviction only if he can place his claim on one or the other of the clauses (a) to (k); that is to say, it is only if one or other of the conditions prescribed by the said clauses is proved that the landlord can claim to evict his tenant. Default in the payment of rent is one of these clauses, but there are several other clauses referring to different causes of action on which eviction can be claimed by the landlord, and it is to all these cases that s. 17(1) applies. It is thus clear that normally, when a suit is brought for eviction, the tenant would have to comply with the retirements of s. 17(1). It is only where owing to the refusal of the landlord to accept the rent tendered by the tenant, or where there is a bona fide doubt as to who is entitled to receive the rent, that the provisions of s. 21 empower the tenant to deposit the rent with the Controller. In all other cases, if the tenant was playing rent to the landlord and is faced with a suit for eviction, s. 17(1) will unambiguously apply and the amount of rent will have to be paid in Court as required by it. It is also clear that if a tenant has been depositing the rent validly and properly under s. 21, a suit against him under s. 13(1)(i) cannot be filed. Section 13(1)(i) authorises the landlord to claim eviction of his tenant on the ground that he has made a default in the payment of rent as described by it. But such a default cannot be attributed to a tenant who has been depositing the rent with the Controller properly and validly under s. 21. Such a valid payments amounts to payment of rent by the tenant to the landlord under s. 22(3), and so, a tenant who has been making these deposits cannot be sued under s. 13(1)(i).

It is true that the complication of the present kind arises where a tenant who has been making a valid deposit under s. 21 is sued for ejectment on grounds other than s. 13(1)(i), and s. 17(1) comes into operation against him. In such a case, if the special provisions prescribed by s. 17(1) apply to the exclusion of sections 21 & 22, the fact that a deposit has been made by the tenant can be no answer to the application made by the landlord under s. 17(3).

In this connection, it is necessary to bear in mind the fact that s. 17(1) is really intended to give a benefit to the tenant who has committed a default in the payment of rent. The first part of s. 17(1) allows such a tenant to pay the defaulted amount of rent together with the prescribed interest in Court within the time prescribed, and such a tenant would not be evicted if he continues to deposit the amount in Court, during the pendency of the suit as required by the latter part of s. 17(1). In our

opinion, the scheme of s. 17(1) is a complete scheme by itself and the Legislature has intended that in suits or proceedings to which s. 17(1) applies, the payment of rent by the tenant to landlord must be made in the manner prescribed by s. 17(1). Even in cases where the tenant might have been depositing the rent with the Controller under s. 21, he has to comply with s. 17(1) before the period prescribed by s. 17(1) has elapsed. It is significant that the requirement to deposit the amount in Court comes into force within one month of the service of the writ of summons on the tenant. In other words, appellant No. 1 was justified in depositing the rent even after the present suit was filed until one month from the service of the writ of summons of the suit had elapsed. The Legislature has taken the precaution of giving the tenant one month's period after the service of the writ of summons on him before requiring him to deposit the amount in Court. The object obviously appears to be that when a suit or proceeding has commenced between the landlord and the tenant for ejectment, and the tenant has received notice of it, the payment of rent should be made in Court to avoid any dispute in that behalf.

It is also relevant to remember that in the matter of payment of rent in Court, s. 17(1) has provided that the amount to be paid in future shall be paid by the 15th of each succeeding month, and that means that the date for the payment of the amount has been statutorily fixed which is distinct from the requirement of s. 4. Section 4(2) provides for the payment of rent within the time fixed by contract, but s. 17(1) requires the payment to be made by the 15th of each succeeding month whatever may be the contract. If, according to the contract, rent was payable quarterly, or six monthly, or even annually, s. 17(1) supersedes that part of the contract and requires the rent to be paid, month by month, by the 15th each succeeding month.

The position under sections 21 & 22 is, however, substantially different on this point. Section 21(1) in terms requires the deposit to be made within the time referred to in s. 4, and that means where there is a contract made by the parties in relation to the time for the payment of rent, it is on the contracted date that the rent has to be deposited under s. 21. The scheme of the three clauses of s. 22 clearly is integrally connected with s. 21. These clauses deal with deposits made under s. 21. In fact it would be difficult to read s. 22(3) independently of s. 22(1) and (2); all the three clauses of s. 22 must be read together, and so, the time for making the deposit for the purpose of s. 22(3) would be the time prescribed by contract and not the statutory time provided by s. 17(1). It is clear that the deposit of rent made before the Controller under section 21 is based on the contractual obligation of the tenant to pay the rent, and he makes the deposit because the landlord is not receiving the rent or there is a dispute as to who the real landlord is. On the other hand, the deposit of rent made in Court under s. 17(1) is the result of a statutory obligation imposed by the said sub-section; no doubt, the amount required to be deposited may be the amount for which the parties may have entered into a contract, but the manner and the mode in which the deposit is required to be made in Court are the result of the statutory provision, and in that sense they constitute a statutory obligation. That is another feature which distinguishes the deposits covered by sections 21 and 22 from the deposits prescribed by s. 17(1).

Mr. N. C. Chatterjee argued that if the majority view of the Calcutta High Court is upheld, it may lead to some anomalies. As an illustration, he asked us to consider the case of a suit falling under s. 17(1) which ultimately fails and is dismissed. In such a suit, the rent would have to be deposited in Court by the tenant as required by s. 17(1); but if the suit fails, what happens to the rent ? Would the tenant be treated as being a defaulter, or would the tenant who is required to make a deposit in Court as required by s. 17(1) be compelled as a precaution, to make another deposit with the Controller in cases where the landlord had refused to accept rent before he filed the suit ? We are not impressed by this argument. In our opinion, if the tenant had deposited the rent in Court as required by s.

17(1), he could not be treated as a defaulter under any provision of the Act. Payment in Court made by the tenant under the statutory obligation imposed on him would, in law, be treated as payment of tent made by him to the landlord.

Mr. N. C. Chatterjee also relies on the fact that s. 24 in terms provides that the acceptance of rent in respect of the period of default in payment of rent by the landlord from the tenant shall operate as a waiver of such default, when there is no proceeding pending in Court for the recovery of possession of the premises. The argument is that where the Legislature intended to confine the operation of a specified provision to cases where there is no proceeding pending in Court, it has expressly so stated. In our opinion, this argument is not well-founded. Section 24 merely indicates that the Legislature thought that it was necessary to make that provision in order to avoid any doubt as to whether acceptance of rent would amount to waiver or not in cases where no proceeding was pending in Court. On the other hand, from the wording of s. 24 it may be permissible to suggest that the Legislature did not think of providing for the consequence of acceptance of rent after the commencement of a proceeding for the recovery of possession, because it knew that the said matter would be covered by s. 17(1).

Besides, s. 22(2) gives some indication that the provisions of s. 22 are not intended to be applied when suits or proceedings have commenced between the landlord and the tenant. It would be noticed that s. 22(2) says that no deposit shall be considered to have been validly made for the purposes of s. 22(1) if the tenant wilfully or negligently makes any false statement in his application for depositing the amount unless the landlord has withdrawn the amount deposited before the date of institution of a suit or proceeding for recovery of possession of the premises from the tenant. This last clause may suggest that the provisions of all the clauses of s. 22 may not be applicable after the suit or proceeding has commenced.

As we have already pointed out, the question raised for our decision in the present appeal really centres round the determination of the areas covered by s. 17 on the one hand, and sections 21 and 22 on the other; and though it may be conceded that the words used in the respective sections are not quite clear, on the whole the scheme evidenced by them indicates that the Legislature wanted s. 17(1) to control the relationship between the landlord and the tenant as prescribed by it once a suit or proceeding for ejectment was instituted and a period of one month from the service of the writ of summons on the defendant had expired. We have carefully considered the reasons given by the two learned Judges who delivered the minority judgments in the Siddheswar Paul's [A.I.R. [1965] Cal. 105] case, but we have come to the conclusion that the majority view on the whole correctly represents the true scope and effect of s. 17, as distinguished from sections 21 and 22.

In the result, the appeal fails and must be dismissed. There would be no order as to costs.

Before parting with this appeal, however, we would like to add that appellant No. 1 has to submit to the penalty prescribed by s. 17(3) apparently because, acting upon the opinion expressed by some of the learned Judges of the Calcutta High Court, he was advised to continue to deposit the rent with the Controller even after the present suit was filed against him. We do not know whether there are many other cases of the same type. In case there are several other cases of this type, that would really mean unjust hardship against tenants who, in substance, have not committed default in the matter of payment of rent, and yet would be exposed to the risk of ejectment by virtue of the application of s. 17(3). In our opinion, such tenants undoubtedly deserve to be protected against ejectment. We trusts the Legislature will consider this matter and devise some means of giving appropriate relief to this class of tenants.

Appeal dismissed.

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