

CALCUTTA HIGH COURT

Pokarmal Gurdayal

Vs

Sagarmal Bengani

(Mitra, J.)

23.02.1973

JUDGEMENT

Mitra, J.

(1.) THIS Rule is directed against an order of the Sixth Subordinate Judge, Alipore, being Order No. 56 of November 10, 1970, in T. S. No. 3 of 1968 Sagarmal Bengani v. M/s. Pokarmal Gurdayal rejecting the defendant's application under section 17B(1) of the West Bengal Tenancy Act, 1956, and another application under section 5 of the Limitation Act. The facts briefly are as follows: - On January 21, 1964, Sagarmal Bengani filed T. S. No. 3 of 1964 before the Subordinate Judge, Sixth Court, Alipore, against M/s. Pokarmal Gurdayal for ejection of the defendant from a godown at Premises No. P-3, Brojodayal Saha Road, Cossipore, on the ground of default in payment of rent since April, 1963. On March 27, 1965 the Court passed an order under section 17(3) of the West Bengal Premises Tenancy Act, 1956, striking out the tenant's defence against delivery of possession. On May 5, 1965, tenant applied for relief against forfeiture under section 114 of the Transfer of Property Act. On May 20, 1965, the application for relief against forfeiture was rejected. On June 26, 1965, the suit was dismissed; but the landlord preferred an appeal to which we would revert a little later.

(2.) ON August 24, 1965, The West Bengal Ordinance No. VI of 1965 was promulgated. Section 17A (1) of this Ordinance was as follows: - Where any decree or order for the recovery of possession of any premises has been made in a suit or proceeding in which the defence against delivery of possession was struck out by an order under sub-section (3) of section 17, but the possession of such premises has not been recovered from the tenant by the execution of such decree or order, the tenant may make an application to the Court which made such decree or order within a period of sixty days from the commencement of the West Bengal premises Tenancy (Amendment) Ordinance, 1965, for setting aside such decree or order. This Ordinance was promulgated by the Governor of West Bengal on August 21, 1965, and was published in the Calcutta Gazette extraordinary on August 24, 1965. The provisions of this Ordinance were also enacted by the West Bengal legislature by Act XXIX of 1965. Section 17A of that Act ran thus:

17A. Power of Court to set aside decree or order for ejectment in certain cases. (1) Where any decree or order for the recovery of possession of any premises has been made in a suit or proceedings in which the defence against delivery of possession was struck out by an order under sub-section (3) of section 17, but the possession of such premises has not been recovered from the tenant by the execution of such decree or order, the tenant may make an application to the Court which made such decree or order within a period of sixty days from the commencement of the West Bengal Premises Tenancy (Amendment) Ordinance, 1965, (W. B. Ordinance VI of 1965) for setting aside such decree or order. We are not directly concerned in this Rule either with the Ordinance of 1965 or with the Act of 1965, but we have quoted the above provisions merely to show that the Legislature has consistently used the same form of expression in all the subsequent enactments we shall refer to later.

(3.) THE landlord, in the instant case, preferred an appeal against the dismissal of the suit. THE appeal was marked as T. A. No. 1091 of 1965. This Title Appeal was disposed of on November 17, 1965. THE Additional District judge, seventh Court, Alipore reversed the judgment of the trial court and passed an ejectment decree in favour of the landlord. In 1966, the tenant filed a second appeal being Second Appeal No. 1053 of 1966 in this Court against the judgment and decree of the Appellate Court. On April 20, 1966 a Division Bench of this Court in C. R. No. 529(S) of 1966 directed the tenant to deposit Rs. 11,400 on or before May 1, 1969, and to continue to deposit Rs. 450 every month. According to the tenant, this order has upto now been complied with. On August 26, the Governor of West Bengal promulgated the West Bengal Ordinance VI of 1967. By this ordinance sections 17B and 17C were inserted into the West Bengal Premises Tenancy Act, 1965. In this application, we are concerned with sec 17C, the relevant portions whereof are as follows: - Section 17C. Power of Court to set aside decree in cases where defence against delivery of possession struck out. - (1) Where a decree for recovery of possession of any premises was passed before the commencement of the West Bengal Premises Tenancy (Amendment) Ordinance, 1967, in a suit in which the defence against delivery of possession was struck out by an order under sub-section (3) of section 17, but the possession of such premises has not been recovered from the tenant by the execution of such decree; the tenant may, within a period of sixty days from the commencement of the West Bengal Premises Tenancy (Amendment) ordinance, 1967, make an application to the Court which passed such decree to set aside such decree. ;