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BHAGIRATH AGARWAL

v.

M/S. SIMPLEX CONCRETE & PILES (I) PVT. LTD. & ORS.

(Civil Appeal Nos. 7544-7546 of 2008)

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MARCH 23, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

C

*West Bengal Premises Tenancy Act, 1956 – ss.17(2A), 34 – Denial of interest for arrears of rent to be paid in installment – Propriety of – Default in payment of rent by respondent-tenant – Ejectment suit by appellant-landlord – City civil court directed respondent-tenant to pay arrears of rent in installments, however, without any interest thereon – Challenge by appellant in High Court, rejected – On appeal, held: The statutory provision is very clear – Whenever payment of rent including arrears is permitted to be paid in installments, the statute contemplates that the beneficiary shall be granted interest – Thus, once the rent including the arrears is permitted to be paid in installments, there is no discretion available with the Court to deny interest – It is the statutory right and entitlement of the landlord to get interest – This is irrespective of the justification or explanation, if any, available for the non-payment – Appellant shall be entitled to interest.*

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Disposing of the appeals, the Court

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**HELD:** 1.1 The statutory provision of Section 17(2A) of the West Bengal Premises Tenancy Act, 1956 is very clear. Whenever payment of rent including arrears is permitted to be paid in installments, the Statute contemplates that the beneficiary shall be granted interest. This is irrespective of the justification or explanation, if any, available for the non-payment. No doubt, under Section 34 of the Act in case the landlord has refused to provide the amenities and in case the tenant spent money for providing the amenities, the said amount, subject to the conditions therein, can be set off. Though, there is such a case set up by the tenant, yet no set off has been granted by the Trial Court, and the tenant was permitted to pay the dues in installments. Once the arrears are permitted to be paid in installments, there is no discretion available with the Court to deny interest. It is not a

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discretionary relief; it is the statutory right and entitlement of the landlord to get interest. The appellant shall be entitled to interest. [Para 6] [700-F-H; 701-A] A

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 7544-7546 of 2008.

From the Judgment and Order dated 29.11.2007 of the High Court at Calcutta in C. O. No. 2503 of 2006 with C. O. No. 3811 of 2006 with C. A. N. No. 7802 of 2006 B

WITH

C. A. Nos. 7552-7554 of 2008. C

S.B. Upadhyay, Sr. Adv., Pawan Upadhyay, Mrs. Anish Upadhyay, P. Mishra, Nishan Kumar, Ms. Sharmila Upadhyay, Syed Ali Ahmad, Syed Tanweer Ahmad, S. S. Bandyopadhyay, Mohan Pandey, Ms. Daisy Hannah, Shekhar Kumar, Advs. for the appearing parties.

The Judgment of the Court was delivered by D

**KURIAN, J. C. A. Nos. 7544-7546/2008**

1. The appellant is aggrieved since he has been denied interest for the arrears of rent vide order dated 22.05.2006 passed by the City Civil Court at Calcutta in the Ejectment Suit No.717 of 1992. To the extent relevant, the order reads as follows:- E

“That the petitions filed by the defendant under Section 17(2) and 17(2A)(b) of the West Bengal Premises Tenancy Act are allowed on contest without any cost. The petition filed by the defendant for abatement of rent is dismissed on contest. The defendant is a defaulter in payment of rent since November, 1990 @ Rs.19,000/- per month. Thus the total defaulting period is 186 months i.e. since November, 1990 to April, 2006. Thus the total amount of rent payable by the defendant is Rs.19,000/- x 186 = Rs.35,34,000/-. From the submission of the Id. Lawyer it is available that the defendant already paid Rs.5 lakhs as per order of the Hon’ble Court. So the due amount is Rs.35,34,000/- - Rs.6,00,000/- = Rs.29,34,000/-. The defendant is directed to pay the above said arrear rents by ten monthly installments @ RS,3,00,000/- per installment along with current rent. The last installment will be Rs.2,34,000/-. Each installment is to be paid F G

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A within the last working day of each month. The first installment is to be paid by 30<sup>th</sup> June, 2006.”

2. Since the appellant was denied interest, the matter was pursued before the High Court. However, the High Court declined to interfere with the order passed by the City Civil Court and hence this appeal.

B 3. It is not in dispute that the respondent/tenant was permitted to pay the arrears of rent in installments. No doubt, there was a defence taken by the respondent that the default in payment of the arrears of rent was on account of the conduct of the appellant/landlord in denying amenities. Yet the City Civil Court has directed the respondent/tenant to pay the arrears of rent in installments and there was no appeal at the instance of the respondent/tenant.

C 4. The view adopted by the City Civil Court seems to be that there is a discretion vest in the Court and in exercise of that discretion, taking note of the conduct of the landlord, the City Civil Court thought it fit to deny interest and permitted payment of only the defaulted arrears.

D 5. We are afraid, the view cannot be sustained. Section 17(2A) of the West Bengal Premises Tenancy Act, 1956 reads as follows:-

E “Provided that where payment is permitted by installments, such sum shall include all amounts calculated at the rate of rent for the period of default including the period subsequent thereto upto 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 upto the date of such order.”

F 6. The statutory provision is very clear. Whenever payment of rent including arrears is permitted to be paid in installments, the Statute contemplates that the beneficiary shall be granted interest. This is irrespective of the justification or explanation, if any, available for the non-payment. No doubt, under Section 34 in case the landlord has refused to provide the amenities and in case the landlord spent money for providing the amenities, the said amount, subject to the conditions therein, can be set off. Though, there is such a case set up by the tenant, yet no set off has been granted by the Trial Court, and the tenant was permitted to pay the dues in installments. Once the arrears are permitted to be paid in installments, there is no discretion available with the Court to deny interest.

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It is not a discretionary relief; it is the statutory right and entitlement of the landlord to get interest. A

7. Therefore, this appeal is allowed. It is made clear that the appellant shall be entitled to interest under the West Bengal Premises Tenancy Act, 1956. No costs.

C.A. Nos. 7552-7554/2008

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8. In view of the order passed in C.A. Nos. 7544-7546/2008; these appeals are disposed of. No costs.

Divya Pandey

Appeals disposed of.