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SLP(C)No. 716 OF 2002
ITEM No.210

Court No. 8

SECTION XVI
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.716/2002
(From the judgement and order dated 24/09/2001 in CO 789/99
of The HIGH COURT OF CALCUTTA)

SRI SHANKAR CHOWDHURY @ KHATIK Petitioner (s)

VERSUS

SRI HARBHAJAN SINGH SOLE Respondent (s)

(With prayer for interim relief and office report) (For Final Disposal)

Date : 11/10/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Petitioner (s) Mr. S B Sanyal, Sr. Adv.
Mr. Dhritiman Bhattacharya, Adv.
Ms. Sangeeta Mandal, Adv.
Mr. Annindya Banerjee, Adv. for
M/s Fox Mandal & Co., Advs.

For Respondent (s) Mr. S.B. Upadhyay, Adv.
Mr. Sujit K. Singh, Adv.

UPON hearing counsel the Court made the following
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Mr. S B Sanyal, learned senior counsel appearing for the petitioner commenced his arguments at 11.45 A.M. and concluded at 12.25 P.M. Thereafter, Mr. S.B. Upadhyay, learned counsel for the respondent made his submissions in reply for 20 minutes.

Special leave granted.

The order of the High Court is set aside and this appeal is allowed, in terms of the signed order. However, the appellant must pay to the respondent costs fixed at Rs.10,000/-. The costs must be paid within a period of four weeks from today.

(D.P. WALIA)
Court Master

(S.L. GOYAL)
Court Master

(Signed Order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2002@@
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[arising out of S.L.P.(C) No. 716 of 2002]

Sri Shankar Chowdhury @ Khatik ..Appellant

vs.

Sri Harbhajan Singh Sole ..Respondent

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Special leave granted.

This appeal is against an order dated 24th September, 2001 of the Calcutta High Court.

Briefly stated the facts are as follows :

The respondent had filed a petition for eviction. In an application under Section 17(2) of the West Bengal Premises Tenancy Act, 1956 (hereinafter called 'the said Act'), on 24th April, 1996, the rent was fixed at Rs.285/- per month; the appellant was directed to deposit arrears of rent amounting to Rs.41,040/- together with interest thereon at 8.33 per cent, at the rate of Rs.5,000/- per month; and the appellant was also directed to deposit the current monthly rent on or before the 15th of each month. The revision filed by the appellant against this order was dismissed. The appellant then filed a Civil Revision Application in the High Court which was dismissed on 4th December, 1996. While dismissing the Civil Revision Application, the High Court extended time for payment of the instalments till the month of December 1996.

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The appellant having lost all through, deposited certain amounts. However, it appears that while depositing the said amounts, he made a short deposit of Rs.1,710/- towards arrears of rent and a sum of Rs.724/- towards interest. He also did not make any deposit of the monthly rent of Rs.285/- for the period May 1996 to October 1996. The respondent, therefore, filed an application under Section 17(3) of the said Act. On 23rd February, 1998, the defence of the appellant was struck off.

The appellant then filed an application to set aside the order dated 23rd February, 1998. Along with the application he deposited all the amounts. The trial court by its order dated 5th March, 1999 allowed this application. The trial court held that it had discretion and that as the appellant had deposited all amounts the discretion should be exercised in favour of the appellant. The trial court held that the said Act was a beneficial Act and a benevolent interpretation had to be given.

Against the order dated 5th March, 1999, the respondent filed a civil revision application in the High Court. This has been allowed by the impugned order dated 24th September, 2001. The High Court has held, after going into the scheme of the said Act, that once a defence is struck off then there is no power to review such an order. The High Court has held that any deposits made after an order striking

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off defence cannot be considered. The High Court has held that the tenant cannot be given benefit of any such deposits. The High Court has also held, on merits, that no case was made out for setting aside the order striking off defence.

In our view, the High Court is not right in concluding that once an order striking off defence is made, there is no power to review such an order. Section 17A of the said Act specifically provides that even though an order striking off defence is made the Court can always set aside such an order and give time to the tenant to make the deposits. Faced with this, it was submitted that the application was under Section 151 of the Civil Procedure Code and not under Section 17A of the Act. It was submitted that in an application under Section 151 the Court could not review an order striking off defence. We see no substance in this submission. The Act itself provides that an order striking off defence can be set aside. Merely because the application was stated to be under Section 151 C.P.C. and not under Section 17A of the said Act, would be no ground for not considering that application. In a beneficial legislation like this, the Court has to look at the substance and not the form.

Even otherwise, the decisions of this Court in M/s.@@ CCCC

B.P. Khemka Pvt. Ltd. vs. Birendra Kumar Bhowmick and@@ CC Another, 1987 (2) SCC 407 and Sri Shibu Chandra Dhar vs. Sri@@ CCCCCC CC Pasupati Nath Auddya, 2002 (2) Scale 468, show that the word@@ CCCCCCCCCCCCCCCCCCCCCC 'shall', in Section 17, means 'may'. It has been held that ...4/-

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the Court always has discretion to extend time in appropriate cases. In this case, as already stated above, the High Court by its order dated 4th December, 1996 extended time till December 1996. This fact seems to have been lost sight of by all the courts. The appellant had deposited most of the amounts in November 1996. The balance was deposited by the appellant along with his application for setting aside the order dated 23rd February, 1998.

Under these circumstances, the trial court was right in exercising the discretion that it did. The High Court erred in interfering. In our view, the order of the High Court cannot be sustained and is, accordingly, set aside.

This appeal is allowed. However, the appellant must pay to the respondent costs fixed at Rs.10,000/-. The costs must be paid within a period of four weeks from today.

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.....J.
(S.N. VARIAVA)

.....J.
(B.N. SRIKRISHNA)

New Delhi;
October 11, 2002.