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SK
Ct. No. 18
08.02.2021

**C.O. No. 4018 of 2016
CAN 1 of 2019 (Old No. : CAN 1732 of 2019)
(Via Video Conference)**

**The Secretary, Charaktala Consumers Co-operative
Stores Limited
Vs.
Dr. Arun Kumar Giri**

Mr. Rajdeep Bhattacharya ... For the petitioner.

Mr. S. T. Mina,
Mr. I. A. Mina,
Mr. Pratik Saudam ... For the opposite party.

Affidavit of service filed in Court today be kept with
the record.

Re : CAN 1 of 2019 (Old No. : CAN 1732 of 2019)

This is an application for restoration of the
revisional application by recalling the order dated
January 17, 2019 whereby the revisional application
was dismissed for default.

Perused the application.

Sufficient grounds have been shown which
prevented the petitioner from appearing before the
Court when the matter was called on for hearing.

CAN 1 of 2019 (Old No. : CAN 1732 of 2019) is
therefore allowed.

The order dated January 17, 2019 is recalled.

C.O. 4018 of 2016 is restored to its original file and
number.

Re : C.O. 4018 of 2016

The revisional application is taken up for hearing.

The defendant in a suit for ejectment being Ejectment Suit No. 6248 of 2013 pending before the 5th Court of learned Civil Judge, (Junior Division) at Alipore is the petitioner of the present application under Article 227 of the Constitution of India.

The petitioner is aggrieved by the order dated August 29, 2016 passed in the said suit whereby the learned trial Judge has dismissed an application under Section 5 of the Limitation Act, 1963 filed by the petitioner praying condonation of delay in filing the application under Sections 7 (1) and 7 (2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act' in short) on the ground that the explanations offered are not satisfactory.

The Hon'ble Supreme Court in the case of ***Bijay Kumar Singh & Ors. vs. Amit Kumar Chamariya & Ors.*** reported in **(2019) 10 Supreme Court Cases 660** has held that Section 7 of the said Act provides for a complete mechanism for avoiding eviction on the ground of arrears of rent, provided that the tenant takes steps as contemplated under sub-section (2) of Section 7 of the Act and deposits the arrears of rent on determination of the disputed amount. The deposit of rent along with an application for determination of dispute is a pre-condition to avoid eviction on the ground of non-payment of arrears of rent. In view

thereof, tenant will not be able to take recourse to Section 5 of the Limitation Act as it is not an application alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.

In view of the aforesaid proposition of law laid down by the Hon'ble Supreme Court on this issue, the order impugned does not call for any interference.

C.O. 4018 of 2016 is dismissed. No order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)