

S/L. 9.
19.08.2019
MNS

**Calcutta High Court
In The Circuit Bench At Jalpaiguri
Appellate Jurisdiction**

C. O. No. 40 of 2019

Janab Shamim Ahmed
-Vs.-
Smriti Rai Subba

Mr. Akash Dutta,
Mr. Zofar Sultan,
Mr. Sunil Bothra,
Ms. Ritika Somani

...for the petitioner.
Mr. Anand Bhandari,
Mr. Urgen Lama,
Mr. Panthee Rai

...for the opposite party.

The present challenge is directed against an order, whereby the District Judge rejected an application under Section 115A of the code of Civil Procedure on the ground that the same was not maintainable.

Although such observation by the District Judge was correct in law, this Court treats the present challenge to be against the order, which was thus affirmed by the District Judge, being the order dated November 14, 2018 passed by the trial court rejecting the petitioner's application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 and consequentially allowing the prayer of the

plaintiff/opposite party under Section 7(3) of the said Act of 1997, thereby striking out the defence of the petitioner.

The sole premise on which the application under Section 7(2) of the said Act of 1997 was rejected was that, despite being given an opportunity previously, the petitioner did not put in the admitted arrears, which were considered to be a prerequisite for taking up an application under Section 7(2) of the said Act of 1997.

However, such ratio was bad in law, since it is now more or less well-settled that “arrears due” as contemplated under Section 7(2) of the said Act of 1997, also takes within its fold the arrears regarding admitted deposits, as well as other current deposits. When an application under Section 7(2) of the said Act of 1997 is decided by the trial court, the said adjudication has to be on its merits, ascertaining the entire defaults by the petitioner, pre and post suit, and the trial court is mandated to pass a direction on the defendant to deposit such amount. Only upon failure of such deposit could the trial court proceed to strike out the defence of the petitioner.

In view of the application under Section 7(2) of the said Act of 1997, in the instant case,

having not been decided on merits but on a technical flaw, C. O. No. 40 of 2019 is allowed on contest, thereby setting aside the impugned order and directing the trial court to re-adjudicate the petitioner's application under Section 7(2) of the said Act of 1997 on merits, taking into account the arrears of rent due on the part of the petitioner, including the admitted deposits contemplated in the statute, and passing proper direction for deposit of such arrears due as expeditiously as possible, without granting any unnecessary adjournment to the petitioner, positively within three weeks from the date of communication of this order to the court below.

It is further made clear that this Court has not gone into the merits of the application under Section 7(2) of the said Act of 1997 nor the objections raised thereto by the opposite party and the trial court will be free to proceed independently in its adjudication of the said application.

There will be no order as to costs.

Let photostat certified copies of this order, if applied for, be made available to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)