

IN THE HIGH COURT AT CALCUTTA
CIVIL RIVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Arindam Sinha

And

The Hon'ble Justice Sugato Majumdar

C.O. 175 of 2017

The Calcutta Gujarati Education Society

versus

Sri Ajit Narayan Kapoor

AND

C.O. 689 of 2019

Dr. Binod Kumar Singh

Versus

Maya Banerjee & ors.

For petitioner : Mr. Suvadeep Sen, Adv.
(in C.O. 175 of 2017)

For opposite party : Mr. Manas Kumar Ghosh, Adv.
(in C.O. 175 of 2017) Ms. Susmita Dey (Basu)

For petitioner : Ms. Monika Kalra, Adv.
(in C.O. 689 of 2019) Mr. Farhan Ghaffar, Adv.
Md. Wasim Akram, Adv.

For opposite party : Mr. Shuvasis Sengupta, Adv.
(in C.O. 689 of 2019) Mr. Balarko Sen, Adv.
Mrs. Subhra Das, Adv.

Heard on : 27.09.2021 & 04.10.2021

Judgment on : 04.10.2021

Arindam Sinha, J. : Administrative order dated 15th September, 2021 made by the Acting Chief Justice was on a note laid in respect of **C.O. 175 of 2017 (The Calcutta Gujarati Education Society -vs.- Sri Ajit Narayan Kapoor)**

and **C.O. 689 of 2019 (Dr. Binod Kumar Singh -vs.- Maya Banerjee & ors.)**. The note says, inter alia, on 21st January, 2019, a learned single Judge had formulated a question of law for adjudication by a suitable Bench to be constituted by the then Acting Chief Justice. The question formulated is reproduced below:

“Does the view of the Division Bench of this court that section 5 of the Limitation Act can be applied to condone delay in making applications under sub-sections (1) and (2) of section 7 of the West Bengal Premises Tenancy Act, 1997, as held in the Subrata Mukherjee case (supra), survive in view of the decisions of the Hon'ble Supreme Court in the Nasiruddin case (supra), the Ashoke Kumar Mishra case (supra), Manjushree Chakraborty case (supra).”

Said administrative order dated 15th September, 2021 directed placing above question arising in the two revision petitions (clubbed together), to be placed before us.

On 27th September, 2021 we had, on hearing the parties, passed following order:

*“Mr. Sen, learned advocate appears on behalf of petitioner in CO 175 of 2017. He hands up instruction letter dated 27th September, 2021 saying that petitioner does not wish to proceed further in the matter as the issue stands covered by judgment of Supreme Court **Bijay Kumar Singh v. Amit Kumar Chamariya** reported in (2019) 10 SCC 660.*

*Mr. Ghaffar, learned advocate appears on behalf of petitioner in CO 689 of 2019 and submits, adjournment be granted for him to consider **Bijay Kumar Singh** (supra).*

The special assignment is a reference. We are called upon to answer the question referred. Non – prosecution of the revision petition itself may be a reason to not require this Court to answer.

List on 4th October, 2021”

Today Mr. Gaffar submits, his client wants to prosecute the revision petition.

It is necessary, for answering the question, to look at provisions, particularly in section 7 of West Bengal Premises Tenancy Act, 1997 and relevant provisions in Limitation Act, 1963. Sub-section (1) in section 7 mandates, subject to provisions in sub-section (2), defendant/tenant to pay to the landlord or deposit with the civil Judge, all arrears of rent calculated and with interest as provided. Clause (b) in sub-section (1) mandates the payment or deposit to be made within one month of service of summons or where the tenant appears before summons being served, within one month of appearance. This much in sub-section (1) of section 7 is relevant for the purpose.

Sub-section (2) provides for situation where there is dispute as to the amount of rent. In such a case also the tenant is required to deposit amount admitted by him in terms of sub-section (1). A Further requirement is accompaniment of the deposit by application for determination of rent payable. The proviso says, having regard to circumstances of the case an extension of time may be granted by the civil Judge only once. Such period of extension shall not exceed two months.

Limitation Act, 1963 provides in clause (j) of definitions section 2 that 'period of limitation' means the period of limitation prescribed for any suit, appeal or application by the schedule and 'prescribed period' means the period of limitation computed in accordance with provisions of the Act. The 'periods of limitation' are provided by three divisions in the schedule. First division provides for suits, second division for appeals and third division for applications. Articles 118 to 136 in third division relate to applications, in

respect of which the periods of limitation are provided. Article 137 provides for period of limitation in respect of any other application, not having period of limitation provided elsewhere in the division.

A three-Judge Bench of the Supreme Court in **Nasiruddin vs. Sita Ram Agarwal** reported in **(2003) 2 SCC 577** considered similar provision in Rajasthan Premises (Control of Rent and Eviction) Act, 1950. Facts in **Nasiruddin** (supra) were that there was order dated 9th September, 1991 made directing the tenant to deposit the arrears as also current rent in Court, the landlord having had filed the suit for eviction. Tenant did not deposit within the period directed. Amongst others, there was an application filed by the tenant for condonation of delay. It was dismissed, inter alia, on the ground that same was not filed within time. In the subsequent case of **Bijay Kumar Singh** (supra), the Supreme Court (two-Judge Bench) dealt with the appeal arising out of order dated 10th August, 2011, whereby application filed by the tenant under section 7(2) was allowed. By the application the tenants had prayed for determination of arrear rent and asserted, they paid rent up to June, 1993, to the receiver. However, the receiver had not informed them as to the person having authority to collect rent. Therefore, they could not pay it.

Bijay Kumar Singh (supra) is, inter alia, interpretation of law declared in **Nasiruddin** (supra). In paragraph 16 it was said as follows:

“16. While examining as to when the provision of a statute is to be treated as directory or mandatory, this Court held in Nasiruddin case that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences thereof are specified.”

Further, in paragraphs 21 and 22 the Court said as follows:

“21. ... 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.

22. In view of the judgment in Nasiruddin, we do not find any error in the order passed by the learned Single Judge. The Trial Court shall proceed with the suit in accordance with law. The appeals are dismissed.”

In paragraphs 46 and 47 of **Nasiruddin** (supra), the larger Bench of the Supreme Court said as follows:

“46. The matter may be examined from another angle. The deposit by the tenant within 15 days is not an application within the meaning of Section 5 of the Limitation Act, 1963. Since the deposit does not require any application, therefore, the provisions of Section 5 cannot be extended where the default takes place in complying with an order under sub-section (4) of Section 13 of the Act.

47. The provisions of Section 5 of the Limitation Act must be construed having regard to Section 3 thereof. For filing an application after the expiry of the period prescribed under the Limitation Act or any other special statute, a cause of action must arise. Compliance with an order passed by a court of law in terms of a statutory provision does not give rise to a cause of action. On failure to comply with an order passed by a court of law, instant consequences are provided for under the statute. The court can condone the default only when the statute confers such a power on the court and not otherwise. In that view of the matter we have no other option but to hold that Section 5 of the Limitation Act, 1963 has no application in the instant case. ”

Facts in **CO 175 of 2017** are that an application for condoning delay to deposit under section 7(1) was allowed. Facts in **CO 689 of 2019** are, there was order made determining arrears and deposit. The tenant did not deposit in time and the landlord filed for striking out defence. The tenant then

deposited by challan and made application for condonation of delay. Latter case facts are similar to facts in **Nasiruddin** (supra).

Deposit of rent under section 7, calculated on rate at which it was last paid upto end of the month previous to that in which payment is made, is mandated to be paid to the landlord or deposited with the civil Judge. This deposit does not include requirement of application and therefore provisions in section 5 of Limitation Act cannot be extended as declared in **Nasiruddin** (supra). It is only when admitted rent is sought to be deposited, the deposit must be accompanied by application for determination of arrears. The time specified is by sub-section (1) in section 7. Said sub-section mandates deposit, subject to sub-section (2). In sub-section (2), there is proviso, which says that extension can be granted by the civil Judge only once and the period of such extension shall not exceed two months. Sub-section (3) in section 7 provides for failure of tenant to deposit, attracting peril of striking out defence. In **Bijay Kumar Singh** (supra) it was said that 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 as well.

The question referred mentions two other decisions of the Supreme Court, **Ashok Kumar Mishra v. Goverdhan Bhai** reported in **(2018) 12 SCC 533** and **Manjusree Chakraborty v. M. Ahmed Bhuyan & Co.** reported in **(2018) 12 SCC 551**. We have perused the decisions. Applicability of Limitation Act, 1963 to rent restriction laws was not under consideration in them. Apart, there is also reference to judgment of a Division Bench of this Court in **Subrata Mukharjee vs. Bishakha Das** reported in **2012 (3) CHN (CAL) 423**. By the judgment, view taken was time limit for payment or deposit

of admitted rent is directive and not mandatory, by virtue of section 40 in the 1997 Act and section 29(4) in Limitation Act, 1963, section 5 provisions would be applicable and **Nasiruddin** (supra) was inspiration for aforesaid view that the time specified is directory. Here, we with respect observe that the Supreme Court in **Nasiruddin** (supra) said, if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory. The tenant cannot be said to be a public functionary. Also sub-section (2) in section 29, Limitation Act, 1963 saves application of period of limitation prescribed by special or local laws.

Seventh schedule in the Constitution provides for matters in the State list. Entry 18 says as follows:

*“18. Land, that is to say, right in or over land, land tenures **including the relation of landlord and tenant, and the collection of rents**; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.”*

(Emphasis supplied)

West Bengal Premises Tenancy Act, 1997 is an Act of the State legislature providing for period of limitation in respect of deposit and determination of rent. Section 6 in the Act has the non-obstante clause on application of other laws, regarding eviction. Section 40 makes applicable Limitation Act, 1963 subject to provisions in the Act relating to limitation.

The application for determination of rent not having prescribed period of limitation anywhere else in the third division, article 137, if applied, will provide for it to be made within three years from when the right to apply accrues. In case of such an application it is not the right of the tenant that would accrue, to make such an application. The Act of 1997 mandates that deposit of rent or where there is dispute regarding quantum of rent, deposit of

admitted rent alongwith application for determination of rent, must be made by the tenant within time specified and as extendable under said Act. This is in relation to the suit filed for eviction, where compliance with the deposit mandate will enable the tenant to seek the protection provided. This enabling provision cannot be seen as an assertive right of a tenant, to be enforced. Here, provision in article 137 cannot be made applicable. Furthermore, where it is a requirement of compliance by the tenant to seek protection, mandated by the statute as competently legislated by the State legislature and specifically limiting application of the 1963 Act, there cannot be occasion for application of the period of three years, overriding the period and extension specified by the local law and thereafter condonation of delay as under section 5.

We answer the question referred to say that Limitation Act, 1963 has no application in respect of an application by a tenant, made under section 7 for determination of arrears of disputed rent. We are aware our answer to the question referred gives rise to conflicting views of two Division Benches of this Court. However, we have answered the question pursuant to direction made in said administrative order.

The files be sent back on the reference answered and disposed of.

(Arindam Sinha, J.)

(Sugato Majumdar, J.)