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SK
Ct. No. 18
12.04.2021

**C.O. No. 255 of 2021
(Via Video Conference)**

**Bahauddin Reza & Anr.
Vs.
Rabiuddin Ahmed**

Md. Nure Zaman,
Mr. Jahangir Badsha ... For the petitioners.

Mr. Rabiuddin Ahmed ... In person.

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

The plaintiffs in a suit for eviction being Ejectment Suit No. 58 of 2016 pending before the 2nd Court of learned Civil Judge (Junior Division) at Alipore District. 24-Parganas (South) are the petitioners of the present application under Article 227 of the Constitution of India.

The application is directed against the Order No. 29 dated February 29, 2020 passed in the said suit whereby the learned Trial Judge has disposed of an application filed by the opposite party under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act' in short).

The earlier decision of the learned Trial Judge on the said application was set aside in C.O. 2845 of 2019 filed by the plaintiffs and the matter was remanded back for a fresh look.

The learned Trial Judge by the order impugned has held that the defendant is not a defaulter in payment of rent @ Rs. 1330/- per month since August, 2016 as alleged by the plaintiffs.

The learned Advocate for the petitioner submits that the defendant in his application under Section 7(2) of the said Act has only prayed for determination of the question whether he is a defaulter since August 2016 or not as alleged by the plaintiffs without raising any dispute with regard to rate of rent.

Heard learned advocate for the parties, perused the materials-on-record.

The learned Trial Judge has committed an error in segregating the maintenance charges from the rent as the maintenance charges is a part of the rent, the tenancy agreement between the parties suggests the rent @ Rs. 2000/- per month including the maintenance charges.

The defendant in his application under Section 7(2) of the said Act has not raised any dispute with regard to the rate of rent, therefore, enquiry as to the rate of rent in the present case is completely irrelevant.

The application under Section 7(2) of the said Act needs to be decided afresh and the question of validity of the deposits with the rent controller by the defendant are required to be reviewed on the basis of the rent @ Rs. 2000/- per month.

The order impugned for the aforesaid reason is not sustainable and is accordingly set aside.

The learned Trial Judge is directed to decide the said application under Section 7(2) of the said Act afresh in the light of the observations made hereinabove within a period of four weeks from the date of communication of this order.

The learned Trial Judge shall not entertain prayer of the parties for any unnecessary adjournment.

C.O. 255 of 2021 is thus disposed of without any 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.)