

08.01.2021
(S/L-03)
Ct.-18
(Susanta)

C.O. 580 of 2020

Smt. Ratna Mandal
-Vs-
Sri Tarun Kanti Roy

Mr. Akmam Khan,
..... For the Petitioner.

Mr. Akmam Khan, learned Counsel appearing on behalf of the petitioner files affidavit of service which is taken on record.

None appears on behalf of the opposite party to oppose this application in spite of service.

Petitioner is the defendant in a suit for eviction being Title Suit no. 993 of 2015 pending before the 3rd Court of learned Civil Judge (Senior Division) Barasat, District 24 Parganas (North).

The opposite party is seeking eviction of the petitioner from the suit property describing him as a licensee under him.

The petitioner in such a suit filed two applications; one under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as “the said Act” in short) and another under Section 7(2) of the said Act.

The petitioner by the application under Section 7(1) of the said Act prayed permission of the learned Trial Judge to deposit the current

rent in Court and by the second application she invited the learned trial Judge to assess the arrear rent payable.

The learned Trial Judge by the order impugned being order no. 19 dated July 19, 2019 has dismissed the application under Section 7(2) of the said Act holding that the same has been filed beyond the prescribed period of limitation and the delay in filing the said application cannot be condoned and has struck out the defence of the petitioner against delivery of possession for her failure to deposit the admitted arrear rent in terms of Section 7(1) of the said Act.

The suit not being a suit under Section 6 of the said Act, Section 7 thereof has got no manner of application in the present suit.

The learned Trial Judge, therefore, has committed serious error in exercise of his jurisdiction in striking out the defence of the petitioner for non-deposit of admitted arrear rent in compliance of the provision of Section 7(1) of the said Act.

The order impugned for the aforesaid reasons is not sustainable and is accordingly set aside. The applications under Section 7(1) & 7(2) of the said Act are dismissed as misconceived.

The learned Trial Judge is requested to decide the suit expeditiously in accordance with law.

C.O. 580 of 2020 is disposed of with the above terms.

There shall be 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.)