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SK
Ct. No. 18
02.03.2021

**C.O. No. 479 of 2021
(Via Video Conference)**

**Sri Samir Kumar Mondal
Vs.
Sri Asis Kumar Samanta & Anr.**

Mr. Saptarshi Guha,
Mr. Pradyut Malakar ... For the petitioner.

The defendant in a suit for eviction is the petitioner of the instant application under Article 227 of the Constitution of India.

The petitioner in the said eviction suit filed an application under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act' in short), inviting the learned trial Judge to determine the arrear rent payable. The petitioner in the said application has alleged that he is in default of payment of rent from July 2014, but not from May 2011 as alleged by the plaintiffs/opposite parties.

The petitioner could not produce any document to substantiate his said claim as such the learned trial Judge by the order impugned being Order No. 21 dated November 02, 2017 has held that the petitioner is a defaulter in payment of rent since May 2011 to June 2014.

Learned counsel for the petitioner submits that the opposite party no. 1 in his cross-examination recorded in course of the trial of the said application under

Section 7 (2) of the said Act has admitted that the rent is payable from July 2014, therefore according to him in view of such admission the learned trial Judge is not justified in holding that the petitioner is in default of payment of rent from the month of May 2011.

The petitioner has invited the learned trial Judge to determine the amount of arrear rent payable. Therefore, burden of proof is upon him to substantiate all of his claims made in the application under Section 7(2) of the said Act, merely because of a statement of a witness of the opposite parties such burden does not get discharged. Therefore, I am unable to accept the said argument of the learned advocate for the petitioner.

C.O. 479 of 2021 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.)