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SK
Ct. No. 18
28.01.2021

**C.O. No. 776 of 2019
(Via Video Conference)**

**Sri Swapan Jati
Vs.
Sri Tapan Chatterjee & Anr.**

Mr. Bhudeb Bhattacharyya, Sr. Adv.,
Mr. Subham Ghosh ... For the petitioner.

Mr. Haradhan Banerjee,
Mr. Amitava Pain,
Mr. S. Datta,
Mrs. Manideepa (Paul) Roy,
Mr. Partha Pratim Mukhopadhyay
... For the opposite parties.

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

The defendant in a suit for ejectment is the petitioner of the instant application under Article 227 of the Constitution of India and is directed against the order dated November 28, 2018 passed by the 7th Court of learned Civil Judge, (Junior Division) at Howrah in Title Suit No. 1841 of 2015.

The petitioner in the said suit by filing an application under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act' in short), invited the learned Trial Judge to decide the dispute as to the existence of the relationship of landlord and tenant between the plaintiffs and the defendant and also to assess the arrear rent, if any, payable.

The learned trial Judge by the order impugned has dismissed the said application for non-deposit of the admitted arrear rent.

The petitioner since has raised a dispute with regard to the relationship between the parties, unless the said dispute is determined, the petitioner cannot be compelled to pay the admitted arrear rent to maintain an application under Section 7(2) of the said Act.

Therefore, the dismissal of the said under Section 7 (2) of the said Act for non-deposit of admitted arrear rent in compliance with the provision of Section 7 (1) of the Act is not justified.

The order impugned for the aforesaid reason is set aside. The learned trial Judge is requested to decide the application under Section 7 (2) afresh in accordance with law on the basis of the evidences already on record and to dispose it of within a period of three weeks from the date of communication of this order positively without granting any unnecessary adjournment to either of the parties.

It is made clear this Court has not gone into the merit of the said application; it is for the learned Trial Judge to decide the same in accordance with law.

C.O. 776 of 2019 is disposed of with the above terms.

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.)