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**C.O. No. 700 of 2021**
**Ramesh Punam Chand Gandhi & Anr.**
**-Vs-**
**Sri Arup Ratan Gooptu**

(Through Video Conference)

Ms. Noelle Banerjee
Mr. Dipak Dey
Mr. Abhijit Roy ... for the petitioners

Mr. Shaunak Ghosh .....for the opposite party.

Assailing the order no. 43 dated 22.02.2021 passed by the learned 4th Judge, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 2 of 2015, the defendant tenant has filed the present revisional application under Article 227 of the Constitution.

From the material in record it is seen the predecessor of the plaintiff/opposite party has moved learned Rent Controller under Section 17 of the West Bengal Premises Tenancy Act, for fixation of fair rent in respect of disputed tenancy under the occupation of the petitioners/defendants. After hearing both landlord and tenants learned Rent Controller was pleased to pass following orders:-

1) Fixed fair rent at Rs. 2,250/- per month from the month of July, 2003.

2) Tenant is liable to pay arrear rent from July, 2003 till the month of January, 2014 in 12 equal months.

3) The tenant is liable to pay maintenance and amenities charges to the landlord at the rate of Rs. 225/- per month.

4) The tenant is liable to pay share of municipal tax as and commercial surcharge as per the provision of the KMC Act, 1980

5) The landlord is bound to issue duly signed receipts for the amount received from the tenant.

6) Landlord is bound to keep tenanted premises in good and tenantable condition and bound to provide essential supply/service in the tenanted premises.

7) The fixed fair rent is subject to automatic increase by 5 per cent every three years.

The defendants tenant being aggrieved by such order of the learned Rent Controller preferred an appeal before L.R.T.T. Learned L.R.T.T in O. A. No. 3489/2014 pleased to modify the order passed by the learned Rent Controller only to the extent that tenant is a defaulter not from the month of July, 2003 as held, but from the month of November 2003 and upheld the other findings of the learned Rent Controller.

It further appears at the time of hearing of application under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 the learned Court below has wrongly assessed the interest on the arrear rent and against which revision was preferred challenging the order dated 04.05.2017. Hon'ble Co-ordinate Bench has allowed the C.O. 612 of 2020 and directed the Court below to assess the interest at the rate of 10 per cent per annum on arrear rent as per provision of section 7 (1) of the Act of 1997.

Now, by passing the impugned order the learned Court below appears to have calculated only interest payable by the defendant tenant on arrear rents @10% as directed by the Hon'ble Co-ordinate Bench of this court. Therefore, the landlord and tenants have come with their own tabulation sheets showing two different figures towards arrear fair rent from the month of November, 2003 till December 2019 with increment at the rate of 5 per cent on every three years, maintenance charge, share in municipal tax and commercial surcharge payable by defendants tenant. Submission of such tabulation sheet showing charges on different heads by both side lawyers indicate the learned Court below has failed to calculate maintenance charge and municipal tax with commercial surcharge as ordered by learned Rent Controller while fixing fair rent and left it to the parties to calculate and accepted the calculation made by one of them. Order impugned too is silent about calculation being made under the head maintenance, municipal tax and commercial surcharge payable by the tenant.

Clause 19 & 20 of the lease agreement executed between the parties on 13.05.1986 clearly provides liability of the tenant to pay occupier share of corporation tax and urban property tax at the rate which would be payable and subject to enhancement.

Therefore, it appears the Learned court without applying its mind has dispose of application under section7(2) of the Act of 1997. The order impugned suffers from illegality and materials irregularity and hereby set aside.

The Court below is once again directed to re-assess the arrear rent at the fixed fair rent form the month of November, 2003 till December 2019 along with interest at 10 per cent per annum on the assess outstanding rent. The fair rent is subject to increment at the rate of 5 per cent every 3 years. The maintenance charge of Rs. 225/- per month from the month of November, 2003 till December 2019. The share of tax and commercial charge payable by the defendant tenant as per provision of KMC Act, 1980. Such calculation of tax and surcharge payable by defendant will be assessed on production of tax and surcharge payment receipts by landlord to KMC in respect of tenanted premises under the occupation of the defendant. **The Court below is directed to dispose of the application under Section 7(2) of the Act 1997 afresh after proper calculation on the different heads mentioned above separately within a month from the date of receipt of communication.**

Accordingly C.O. 700 of 2021 is disposed of.

Connected application, if any, stands disposed of.

Interim order, if any, stands discharged.

In view of the order made above affidavits are not invited. Allegations made shall be deemed be denied.

There will be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for be given to the parties upon compliance of the requisite formalities.

( **Kesang Doma Bhutia, J**.)