

AD. 46.
June 28, 2021.
MNS.

C. O. No. 1162 of 2021
(Via video conference)

Smt. Manjushree Mandal and another
Vs.
Sri Jagannath Prasad Ghosh and others

Mr. Debdutta Sen,
Ms. Suchismita Chatterjee,
Mr. Malay Kumar Seal,
Mr. Prasun Ghosh
... for the petitioners.

Mr. Sanjoy Bose,
Mr. Priyankar Basu Mallick,
Mr. Koushim Chowdhury

...for the plaintiffs/opposite parties.

Affidavit-of-service filed in Court today be
taken on record.

Both the contesting parties are
represented through learned counsel.

Learned senior counsel appearing for the
petitioners contends that the learned trial judge
proceeded on a basic misconception of Section 7
of the West Bengal Premises Tenancy Act, 1997
(hereinafter referred to as 1997 Act), as well as
the judgments cited before the said court, in
deeming the restriction governing Section 7(1) to
be amenable to Section 5 of the Limitation Act,

1963 (hereinafter referred to as the "Act of 1963").

Learned senior counsel argues, although Section 40 of the 1997 Act stipulates that applicability of Section 5 of the Act of 1963 is subject to the other provisions of the 1997 Act, since there is no specific stipulation in Section 7(3), which is the penal clause in the section, as to the time limit under Section 7(1) being mandatory and in view of the trial court having taken up the applications both under Section 7(2) as well as 7(1) of the 1997 Act, the court proceeded on an erroneous legal footing in holding that Section 5 of the Act of 1963 was not applicable even to Section 7(1) of the 1997 Act.

Learned counsel appearing for the plaintiffs-opposite parties controverts such submissions and argues that the specific language of Section 7(1) is itself clear as regards the mandatory nature of the said sub-section. That apart, upon placing reliance on the judgments cited before the trial court, learned counsel further argues that the Supreme Court specifically found such time limit to be mandatory, not being amenable to Section 5 of the Act of 1963.

A conjoint reading of the various sub-sections of Section 7 of the 1997 Act makes it very clear that Section 7(1) of the 1997 Act pales into insignificance once a dispute/determination is raised/sought under sub-section (2) of Section 7 of the 1997 Act by the tenant. Even the language of Section 7(1) makes it clear that the same is subject to the provisions of sub-section (2).

That apart, the question of applicability of Section 7(1) comes into play only if the tenant does not dispute the arrears of rent.

Once the arrears are disputed, sub-section (2) of Section 7 comes into play and the scope of Section 7(1) loses its force and merges into the adjudication under Section 7(2) of the 1997 Act.

Although generally applications are filed accompanying deposits under Section 7(1) as well, such applications are mere formalities and not contemplated by the statute at all. The same is for administrative convenience and is not even envisaged by Section 7(1) of the 1997 Act. Rather, Section 7(1) contemplates only a deposit and does not even speak about any accompanying application for Section 5 of the Act of 1963 to be or not to be applicable thereto.

In the present case, although both the applications under Section 7(1) and 7(2) of the 1997 Act were taken up for adjudication, no adjudication as such is required within the ambit of Section 7(1). The question of determination comes only when a dispute is raised under Section 7(2) of the 1997 Act. In the present case, since a determination was sought under Section 7(2) the time limit for deposit, as confirmed by the Supreme Court report, was mandatorily one month from the date of receipt of summons.

It may be clarified in this context that the two references to sub-section (1) in sub-section (2) of Section 7 of the 1997 Act pertain only to the respective proceedings and time specified in the prior sub-section, in order to avoid unnecessary multiplicity of language. The “proceeding” referred to in sub-section (1) is, obviously, a proceeding under Section 6 of the 1997 Act and the time specified in sub-section (1) is, patently, one month from the date of receipt of summons (as in the present case). As such, any application under sub-section (1) is not a precondition, from any perspective, for adjudication under Section 7(2) of the 1997 Act. The latter sub-section

stands on an independent footing once a challenge is taken out to the arrears.

Hence, since the tenant jumped the stipulated time as specified in sub-section (2) of Section 7, which merely refers to sub-section (1) in that limited context, the trial judge was absolutely justified in rejecting the applications of the petitioners.

Hence, there is no scope for interference with the impugned order.

Accordingly, C. O. No. 1162 of 2021 is dismissed on contest, however, without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)