

07. 16.12.2021
Ct. No.21
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C.O. 1806 of 2021

Shrimati Aparna Samanta @ Aparna Samonto & Ors.

-VS-

Saugata Bhattacharya & Ors.

(Through Video Conference)

Mr. Subrata Goswami,
Mr. Sourav Sen,

...for the Petitioners.

Mr. Sukanta Chakraborty,

...for the Opposite Party.

Assailing the order dated 02.09.2021 passed by learned Civil Judge (Junior Division), 1st Court, Sealdah in Ejectment Suit no. 12 of 2019 disposing the application under section 7(2) of the West Bengal Premises Tenancy Act, 1997 and directing the petitioner defendant to pay sum of Rs. 24,750/- towards arrear rent along with interest the defendants have filed the present revisional application.

Facts of the case necessary for disposal of the present application in gist is that the opposite parties claiming themselves to be the joint owners of the property where the disputed tenancy is located have brought an Ejectment Suit being no. 12 of 2019 against the petitioners/tenants for their eviction on the ground of default and reasonable requirement.

The tenants in such suit filed a petition under Section 7(2) of the West Bengal Premises Tenancy Act,

1997 and where they have claimed that their predecessor was inducted as a tenant by Smt Shibani Chakraborty (since deceased) at a monthly rent of Rs. 50/- which was later enhanced to Rs. 350/- and payable according to English calendar month. That Shibani Chakraborty refused to accept rent since January, 1999 and as such they deposited rent regularly before rent controller from the month of March 1999 to July 2017. After the demise of Shibani Chakraborty they tendered rent to Soma Roy Chowdhury daughter of Shibani Chakraborty, for the month of August 2017, but she refused to accept. Then they deposited the rent from the month of August, 2017 onwards in the name of Soma Roy Chowdhury with the rent controller. They denied the plaintiffs to be the owners/landlords of the disputed tenancy and thereby they have prayed for determination of relationship of landlord and tenant in between them and the plaintiffs. They have also prayed for determination of arrear rent, if any.

The learned Court below by passing the impugned order has been pleased to hold existence of landlord-tenant relationship between plaintiffs and defendants as such issue was already decided in a petition under section 7(2) of the Act of 1997 in another Ejectment Suit No. 85 of 2010 between the parties. It was held the defendants have failed to prove

existence of Soma Roy Chowdhury or she being the only legal heir daughter of deceased Shibani Chakraborty and held alleged deposit of rent with the rent controller in the name of non-existence person to be void and deposit made with the rent controller to be invalid deposit. Thereby held the defendants to be defaulter in payment of rent since December, 1997 and directed the defendant to deposit arrear monthly rent at the rate of Rs.400/- along with interest at the rate of 10% per annum amounting to Rs. 24,750/-.

Now, let see whether the defendants are defaulters since December, 2017?

From the impugned order it is seen the defendants had deposited rent with the rent controller in the name of deceased co-landlord Shibani Chakraborty and after her demise in the name of one Soma Roy Chowdhury. The order dated 30.11.2016 passed in C.O. No. 2629 of 2016 arising out of Ejectment Suit No. 85 of 2010 between the same parties it is apparent the defendants used to deposit rent of the disputed tenancy in the name of Shibani Chakraborty one of the co-owners of the property with rent controller.

From the challans filed by the defendants while hearing the application u/s 7(2) of the Act of 1997, it appears the defendant have made deposit of rent with Rent Controller upto June 2021 in the name of Soma

Roy Chowdhury (a non-existent person as held by the Learned Court below).

Learned Advocate for the plaintiffs/opposite parties have submitted that deposit made with the rent controller after the institution of the suit is invalid as Section 7(1)(a) of the Act of 1997 demands deposit of admitted arrear rent, calculated at the rate at which it was last paid upto the end of the month previous to that in which the payment is made together with interest at the rate of 10% per annum in the Court and Section 7(1)(b) of the Act of 1997, demands such deposit to be made within one month of the service of summon or within one month of appearance before the Court in case no summon was served upon the tenant.

Annexure “B” the copy of Written Statement filed by the defendants/petitioners in the Court below it is seen the same was filed on 17.09.2019 and from Annexure “C” copy of petition under Section 7(2) of the Act, it is seen the same was filed sometime in May, 2019. Such very facts prima facie prove the defendants have put their appearance before the lower court much before May 2019.

Therefore their deposit of rent in the name of Soma Roy Chowdhury with Rent Controller till June 2021 is invalid being in contravention of provision of Section 7(1)(a) and (b) of the Act.

Section 7(1)(a) and (b) of the Act, provides after appearance in the court the tenants are required to make deposit of not only admitted arrear rent but also current rent at the rate at which it was last paid in the Civil Court. Moment an eviction suit is filed against a tenant and in order to enjoy the benefit of statutory protection the tenant is required to discharge the rent liability to the landlord strictly as provided in Section 7 (1) (a)(b) of the Act of 1997.

Further, from the order dated 30.11.2016 passed in C.O. No. 2629 of 2016 arising out of Ejectment Suit No. 85 of 2010, it appears the said suit was filed by the present plaintiffs against the present petitioners/defendants. In the said suit which was later withdrawn by the present plaintiff, it was found that Shibani Chakroborty and present plaintiffs were joint-owners of the suit property. That defendants had made deposit of rent with the Rent Controller in the name of Shibani Chakroborty a joint co-owner.

Such facts also show the defendants/petitioners were and are well aware that the present plaintiffs are joint owners of the disputed property. Therefore, this court holds that defendants/petitioners have willingly and knowingly made deposit of the rent with Rent Controller in the name of non-existent person instead in the names of the plaintiffs/opposite parties after the demise of Shibani Chakroborty.

Therefore, this Court holds defendants to be a defaulter in payment of rent from the month of December, 2017 till date. The order impugned is upheld.

Accordingly **C.O. 1806 of 2021** is hereby dismissed. Connected application, if any, stands dispose of.

Interim order, if any, stands discharged.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Kesang Doma Bhutia, J.)