

(26 & 27)
04.02.2021
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

(Via Video Conference)

**CO 1557 of 2020
With
CO 2562 of 2019
(IA No : CAN 1/2019)(Old No : CAN 9709/2019)**

Sm. Chhaya Sen & anr.

-versus-

Biplab Roy Chowdhury & ors.

Mr. Sibasis Ghosh,
Mr. Pratip Chatterjee,
Mr. Kiron Saha,

... for the petitioners.

Mr. Partha Pratim Roy, ... for the opposite parties.

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

The issues in these two revisional applications are
interlinked as such taken up for analogous hearing.

The defendants in a suit for ejectment being Ejectment
Suit No. 137 of 2018 pending before the Learned Judge, 2nd
Bench, Small Causes Court, Calcutta are the petitioners of the
instant applications under Article 227 of the Constitution of
India.

The petitioners in the said suit filed an application under
Section 7(1) of the West Bengal Premises Tenancy Act, 1997
(hereinafter referred to as the said Act, in short) along with an
application for condonation of delay.

The said application for condonation of delay was
allowed by the consent of the parties and the prayer of the

petitioners to deposit the admitted arrear rent was also allowed vide order no. 6 dated July 19, 2018

The plaintiffs/opposite parties took out an application under Section 7(3) of the said Act for striking out the defence of the petitioners against the delivery of possession for not depositing the admitted arrear rent in terms of the said order dated July 19, 2018.

The learned Trial Judge by the order no. 14 dated April 24, 2019 has allowed the said application.

The said order is under challenge in **CO 1557 of 2020**.

The petitioners thereafter filed an application for recalling of the said order dated April 24, 2019. The learned Trial Judge by the order no. 17 dated July 23, 2019 has dismissed the said application.

The said order is under challenge in **CO 2562 of 2019**.

Mr. Sibasis Ghosh, learned counsel appearing for the petitioners, submits that the petitioners have filed an application under Section 7(2) of the said Act, inter alia, raising a dispute with regard to their relationship with the plaintiffs of tenant and landlord and so long the said dispute is not decided, they are not obliged to deposit the admitted arrear rent in terms of Section 7(1) of the said Act. Therefore, according to him the learned Trial Judge is not justified in striking out the defence of the petitioners against delivery of possession for not complying the order dated July 19, 2018.

Mr. Partha Pratim Roy, learned counsel appearing on behalf of the plaintiffs/opposite parties, refuting such contention of Mr. Ghosh submits that the petitioners admitting the

plaintiffs as their landlords sought permission of the learned Trial Judge to deposit the admitted arrear rent in the suit to the credit of the plaintiffs in terms of Section 7(1) of the said Act. The plaintiffs after obtaining such permission cannot avoid the consequence of non-compliance of the said order as by virtue of Section 7(3) of the said Act striking out the defence against delivery of possession is the natural consequence for the non-compliance of an order under Section 7(1) of the said Act.

Heard the learned counsel appearing for the parties.
Perused the materials on record.

The provision of Section 7(1) of the said Act does not contemplate any application but for the convenience and as a matter of practice the defendant/tenant files such application in a suit under Section 6 of the said Act seeking permission of the Court to pay to the landlord or deposit with the Court all arrear rents together with interest at the rate of ten percent per annum. Such payment or deposit is subject to the provision of subsection (2) of Section 7 thereof.

The petitioners in their application under Section 7(2) of the said Act has raised a specific dispute with regard to the relationship of landlord and tenant between the plaintiffs and the defendants. The determination of the said dispute is necessary before the payment of arrear rent to the plaintiffs or deposit of the same in the suit to the credit of the plaintiffs.

In the facts and circumstances of the present case non-compliance of the order passed under Section 7(1) of the said Act is not fatal.

This Court is of the considered opinion that the learned Trial Judge is not justified in striking out the defence of the petitioners for not depositing the admitted arrear rent in terms of the order passed on the said application under Section 7(1) of the said Act pending adjudication of the said application of the petitioners under Section 7(2) of the said Act.

The order no. 14 dated April 24, 2019 for the aforesaid reason is not sustainable and is accordingly set aside.

CO 1557 of 2020 is allowed. No order as to costs.

In view of setting aside of the said order dated April 24, 2019 challenge to the order no. 17 dated July 23, 2019 has become infructuous, as such, **CO 2562 of 2019** is dismissed.

The connected application for vacating the interim order being CAN 9709 of 2019 is also dismissed as infructuous.

However, there shall be no order as to costs.

The learned Trial Judge is requested to expedite the hearing of the application under Section 7(2) of the said Act and to make all endeavour to dispose of the same within the period of four weeks from the date of communication of this order without granting any unnecessary adjournment to either of the parties.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)