

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee.

C.O. 3138 of 2019
IA No. CAN 1 of 2019 (Old No. CAN 10117 of 2019)

ABHISHEK SINGH
VS.
BHOLANATH KUNDU

For the petitioner: Ms. Soma Chowdhury (Bandhu)
 Mr. Abhik Sarkar.

For the opposite party: Abhijit Ray,
 Shubham Gupta

Heard on: **20.12.2021**

Judgement on: **23.12.2021**

Ajoy Kumar Mukherjee, J.

1. CAN 1 of 2019 is disposed of as no question about condonation of delay in filing the present application attracts in the present context.

2. Being aggrieved by an order dated 24.06. 2019 passed by the learned Chief Judge Small Causes Court at Calcutta in the Ejectment Suit No. 351 of

2018, present revisional application has been preferred. By the said impugned order the learned Trial Court was pleased to reject defendants petition under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997(hereinafter referred to 'the said Act of 1997' in short).

3. The backdrop of the case in a nutshell is that, a suit was filed by the opposite party Bholanath Kundu as plaintiff for recovery of Khas possession damage and/or mesne profit against the petitioner/defendant claiming that plaintiff is the owner/landlord of the suit property. The defendant is a monthly tenant under the plaintiff at a rent of Rs. 1600/- per month initially which according to defendant subsequently enhanced to Rs. 1680/- per month in pursuance of tenancy agreement dated 01.04.2014 made by and between the parties. In the said suit for ejectment, the defendants filed written statement. In the plaint it is alleged that the defendant has defaulted in payment of rent since April, 2017. The defendant filed application under Section Sections 7(1) and 7(2) of the said Act of 1997.

4. It is submitted that the defendant paid rent to the landlord at the rate of Rs. 1600/- per month up to March, 2016, thereafter from April, 2016 whenever the petitioner/tenant went to pay the monthly rent, the landlord refused to accept the rent. The defendant in order to prove his bona fide intention, sent total arrear rent from April, 2016 to August, 2018 through money order at a time along with rent for the month of September, 2018 to the landlord who refused to accept the same. Since September, 2018 the defendant has paid rent

up to the current month before the Rent Controller. On 25.01.2019 i.e. on the very next day of appearance before the Court below, the petitioner/defendant filed petitions under Sections 7(1) and 7(2) of the said Act of 1997, for permitting him to deposit rent month by month. According to the defendant/petitioner he never defaulted in payment of rent.

5. The plaintiff/opposite party filed written objection against the said petitions under Sections 7(1) and 7(2) of the said Act of 1997 filed by defendant/petitioner.

6. The learned Trial Court considering the written objection of opposite party has rejected the said two petitions under Section 7(1) and 7(2) of the said Act of 1997. It is submitted on behalf of the defendant/petitioner that only one day delay has been caused in respect of filing aforesaid two applications under Sections 7(1) and 7(2) of the said Act of 1997 but the learned Trial Court became hyper technical in regard to period of limitation for filing the said two applications, while rejecting the same.

7. The petitioner/defendant's further contention is that he received the summon of the suit on 24.12.2018 and appeared before the Court on 24.01.2019 and he filed said two applications under Sections 7(1) and 7(2) of the said Act of 1997 on 25.01.2019 and the Trial Court ought to have considered sympathetically said two applications wherein delay of only one day has been caused and as such the defendant/petitioner has prayed for setting

aside the impugned order and to allow the petitioner/defendant to deposit the rent month by month by allowing his application under Sections 7(1) and 7(2) of the said Act of 1997.

8. On perusal of the order impugned dated 24.06.2019 it appears that the specific observation of the learned Trial Court is that defendant/petitioner Avishek Singh had received summon of the suit which was sent through Registered Post with Acknowledgement due Card on 14.12.2018 and not on 24.12.2018 as claimed by the defendant and it has been reflected from the postal stamp affixed on the reverse side of Acknowledgement Due Card by Esplanade post office. Admittedly, the petition under Sections 7(1) and 7(2) of the said Act of 1997 was filed before the learned Trial Court on 25.01.2019 and as such it is clear that the said application had not been filed within one month from the date of receipt of summon as mandated in Sections 7(1) and 7(2) of the said Act of 1997. At the outset it is to be made clear that though the defendant admitted that there was a delay in filing the said applications but he did not file any application before the Trial Court for condonation of delay.

9. Be that as it may, on perusal of petition filed by the defendant/petitioner under Section 7(1) of the said Act of 1997 and which is made as annexure P4, it appears that prayer made therein is for permitting him to go on depositing the rent from the month of February, 2019 including service charges, month by month and in his application under Section 7(2) of the said Act of 1997, he

contended in his prayer portion for determination whether the defendant is a tenant or not in respect of the suit property.

10. Needless to say that Section 7(1) of the said Act of 1997 saddled the tenant with the imperative obligation to pay to the landlord or deposit all arrears of rent calculated at the rate of which it was last paid and up to the end of the month previous to that in which the payment is made together with an interest at the rate of 10% per annum. Sub-section (2) of Section 7 of the said Act of 1997 deals with the cases where there is dispute as to amount of rent payable by the tenant but in the present case tenant has not raised any dispute about the amount of rent and not only that tenant even admitted that he did not pay rent from April, 2016 to August, 2018 and he further admitted that he has been depositing rent before the controller since 2018. It is curious enough when the amount of rent is not in dispute and when default period and arrear amount has not been disputed rather admitted by the defendant/petitioner, then what prevented him to comply with the mandatory provision under Section 7(1)(a) of the said Act of 1997.

11. Now, the learned counsel for the defendant submitted that the learned Trial Court has rejected defendant's prayer under Sections 7(1) and 7(2) of the said Act of 1997 mechanically and could have easily condoned the delay for one day or may be for few days. In this context, learned counsel for the plaintiff/opposite party vehemently raised objection and he contended that under Section 7(1)(b) of the said Act of 1997, the deposit as mentioned therein

must have been made within one month of the receipt of summon and there is no scope for condonation of delay, specially when the delay has been caused willingly. So, the question before me is to determine whether delay can be condoned or not, in spite of the fact that petitioner has not filed any petition with a prayer for condonation of delay.

12. In this context, learned lawyer for the plaintiff/opposite party relied upon a judgment passed by a Co-ordinate Bench of this Court in **C.O. 175 of 2017 (*The Calcutta Gujarati Education Society Vs. Sri Ajit Narayan Kapoor*) and C.O. 689 of 2019 (*Dr. Binod Kumar Singh Vs. Maya Banerjee & Ors.*)**. In the said judgment an administrative order dated 5th September, 2021 was made by the Acting Chief Justice on the basis of a note laid in respect of C.O. 175 of 2017 and C.O. 689 of 2019 and said note says, inter alia, on 21st January, 2019 a learned Single Judge had formulated a question of law for adjudication for a suitable Bench to be constituted by the then Acting Chief Justice. The question formulated is that :-

“Does the view of the Division Bench of this Court that Section 5 of the Limitation Act can be applied to condone delay in making applications under Sections (1) and (2) of Section 7 of the West Bengal Premises Tenancy Act, 1997, as held in the Subrata Mukherjee case(supra), survive in view of the decisions of the Hon’ble Supreme Court in the Nasiruddin case (supra), the Ashoke Kumar Mishra case(supra), Manjushree Chakraborty case (supra).”

13. After hearing both the parties learned Division Bench came to the following findings:-

“The Act of 1997 mandates that deposit of rent or where there is dispute regarding quantum of rent, deposit of admitted rent alongwith application for determination of rent, must be made by the tenant within time specified and as extendable under said Act. This is in relation to the suit filed for eviction, where compliance with the deposit mandate will enable the tenant to seek the protection provided. This enabling provision cannot be seen as an assertive right of a tenant, to be enforced. Here, provision in article 137 cannot be made applicable. Furthermore, where it is a requirement of compliance by the tenant to seek protection, mandated by the statute as competently legislated by the State legislature and specifically limiting application of the 1963 Act, there cannot be occasion for application of the period of three years, overriding the period and extension specified by the local law and thereafter condonation of delay as under Section 5.” (Emphasis added)

14. In this context, the observation of the Hon’ble Apex Court in **BIJAY KUMAR SINGH AND ORS. Vs. AMIT KUMAR CHAMARIA & ANR.** reported in **(2019) 10 SCC 660** is also worthy to be quoted. Paragraph 21 of that judgment runs as follows:-

“21. Sub-Section (3) provides for consequences of non-payment of rent i.e. striking off the defence against the delivery of the possession and to proceed with the hearing of the suit. Such provision is materially different from sub-sections (2-A) and (2-B) which was being examined by this Court in *B.P. Khemka*. Sub-sections (2-A) and (2-B) of Section 17 of the 1956 Act confer unfettered power on the Court to extend the period of deposit of rent, which is circumscribe by the proviso to

Section 7(2) and sub-section (3) of Section 7 of the Act. Therefore, the provisions of sub-section (2) are mandatory and required to be scrupulously followed by the tenant, if the tenant has to avoid the eviction on account of non-payment of arrears of rent under Section 6 of the Act. There is an outer limit for extension of time to deposit of arrears of rent in terms of the proviso to sub-section (2) of Section 7 of the Act. The consequences flowing from non-deposit of rent are contemplated under sub-section (3) of Section 7 of the Act. Therefore, if the tenant fails to deposit admitted arrears of rent within one month of receipt of summons or within one month of appearance without summons and also fails to make an application for determination of the disputed amount of rate of rent and the period of arrears and the subsequent non-payment on determining of the arrears of rent, will entail the eviction of the tenant. Section 7 of the Act provides for a complete mechanism for avoiding eviction on the ground of arrears of rent, provided that the tenant takes steps as contemplated under sub-section (2) of Section 7 of the Act and deposits the arrears of rent on determination of the disputed amount. The deposit of rent along with an application for determination of dispute is a precondition to avoid eviction on the ground of non-payment of arrears of rent. In view thereof, tenant will not be able to take recourse to Section 5 of the Limitation Act as it is not an application alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.”

15. So, it is clear that the provision under Section 7 is mandatory and required to be scrupulously followed by the tenant if the tenant has to avoid eviction on account of non-payment of arrears of rent under Section 6 of the Act. In view of the above, I have no other option but to conclude that the learned Trial Court did not commit any mistake in dismissing both the petitions filed by the defendant/petitioner under Sections 7(1) and 7(2) of the said Act of 1997.

C.O. 3138 is accordingly dismissed without any order as to costs.

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

(AJOY KUMAR MUKHERJEE, J.)