

25,DL,Ct.18
23.02.2021
AJ.

C.O. 3554 of 2019
(Via Video Conference)

Sri Debi Prosad Chakraborti
-Vs-
Smt. Ranu Ghosh & Anr.

Mr. Aniruddha Chatterjee,
Mr. Iftekar Munshi.
... for the petitioner.
Mr. Tarak Nath Halder.
....for the opposite parties.

Mr. Halder, learned advocate appearing on behalf of the opposite parties raises the preliminary objection regarding maintainability of the present application under Article 227 of the Constitution of India on the ground that since the application has been filed in the year 2019 to challenge the order dated December 14, 2017, it is barred by limitation.

The petitioner files supplementary affidavit disclosing that he is a cancer patient and his ailment prevented him from filing the instant application within a reasonable time. The medical papers regarding treatment of the petitioner are annexed with the supplementary affidavit.

The delay has been properly explained as such condoned. The preliminary objection of Mr. Halder is overruled.

The instant revisional application is at the instance of the plaintiff in a suit for eviction being Ejectment Suit No. 10 of 2009 pending before the 1st Court of the learned Civil Judge (Junior Division) at Sealdah.

The learned Trial Judge by the order impugned has disposed of an application filed by the defendants/opposite parties under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act' in short) holding that there is no arrear of rent payable by the defendants/opposite parties.

On perusal of records it appears that the petitioner in the plaint has alleged that the defendants/opposite parties are defaulters in payment of rent since the month of June, 2007. The opposite parties, on the other hand, in their application under Section 7(2) of the said Act has claimed that they have paid rent for the period from June, 2007 to October, 2007 directly to the petitioner, but he did not issue any rent receipt. The defendants/opposite parties in the said application have further claimed that from November, 2007 till the date of filing of the suit they deposited the rent to the rent controller and thereafter have been depositing the same in the suit.

It is incumbent upon the learned Trial Judge to investigate the veracity of the claim of the opposite parties that they have paid rent to the petitioner but he did not issue rent receipt to them and also to scrutinize the validity of the deposits of rent with the rent controller before coming to the conclusion that there is no arrear rent payable.

On perusal of the order impugned it appears that aforesaid exercises have not been carried out by the learned Trial Judge before coming to the aforesaid conclusion.

The application under Section 7(2) of the said Act for the aforesaid reasons requires to be decided afresh.

The order impugned is set aside with a direction upon the learned Trial Judge to decide the application under Section 7(2) of the said Act in accordance with law on the basis of evidences already on record.

The application under Section 7(2) of the said Act is pending since 2009. It is, therefore, necessary that the learned Trial Judge shall make all endeavour to dispose of the said application within a period of three weeks from the date of communication of this order and in doing so, shall not grant any unnecessary adjournment to either of the parties.

C.O. 3554 of 2019 is disposed of with the above terms. No order as to costs.

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

(Biswajit Basu, J.)