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09.02.2021
p.b./rrc

CO 22 of 2021
(Sri Loden Tnzin Bhutia Vs. Smt. Hema Ghising)

Ms. Parna Roy Chowdhury
Mr. Debjit Kundu
Mr. Sankar Acharya Majumdar
....For the petitioner

Mr. Bikramaditya Ghosh
Mr. Ujjwal Luksom
....For the opposite party

The petitioner has assailed an order dated 27th November, 2020 passed by the learned Civil Judge (Jr. Division), Kurseong in respect of two applications filed by the opposite party/tenant under Sections 7(1)(a) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (the 'Act'). Both the applications were made in a suit filed by the petitioner/landlord against the tenant for eviction being OC No. 19 of 2018.

By the impugned order, the opposite party was directed to deposit arrears of rent together with the statutory rate of interest within one month of the date of the impugned order. Both the applications filed by the opposite party (tenant in the suit) under Section 7(1)(a) and 7(2) of the Act were disposed of, holding that the opposite party/tenant is not a defaulter at the stage of filing the application under Section 7(2).

Learned counsel for the petitioner submits that the application under Section 7(2) of the Act was not

maintainable as there was no dispute between the petitioner/landlord and the opposite party/tenant and further that the application under Section 7(2) was filed only to delay the proceedings in the suit filed by the petitioner. Counsel further submits that the opposite party had failed to pay rent for at least five years before the suit for eviction was filed by the petitioner.

Learned counsel for the opposite party/tenant submits that the opposite party has complied with the order impugned by depositing the arrears of rent within the time frame as directed along with the statutory rate of interest and continues to deposit rent as directed. Counsel places the grounds of challenge contained in the instant petition and submits that the petition is misconceived.

Upon hearing learned counsel appearing for the parties, the primary ground of challenge appears to be that the opposite party did not include municipal taxes, maintenance charges, etc. in the rent deposited. A ground has been taken that the term "rent" under Section 7 of the Act would include the amounts payable in terms of the mandatory provisions of Section 5(7) and (8) of this Act. On perusing materials on record, it is evident that the petitioner/landlord has not indicated the rate of municipal taxes or maintenance charges which are allegedly payable anywhere in the pleadings. If a ground is to be taken that the opposite party has

not included the proportionate rate of municipal taxes etc. in the rent deposit, the onus to state the quantum of the agreed municipal taxes etc. lies squarely upon the petitioner which the petitioner has failed to discharge in the present case. Second, with regard to the contention that the word “rent” includes municipal taxes etc., this Court is of the view that sub-sections (7) and (8) of Section 5 provides for the obligation on a tenant to pay maintenance charges and municipal taxes in accordance with the statutes mentioned in Section 5 (8). The word “rent” under Section 7(1)(a) has been used in respect of the obligation on the part of a tenant to pay to the landlord or deposit with the Civil Judge all “arrears of rent”, subject to the provisions of Section 7(2) of the Act.

It is hence clear that Section 7 does not specify that rent would also include maintenance and other charges. Notably, the term “rent” does not find a place in the definition section of the 1997 Act.

The opposite party/tenant has also complied with the directions in the impugned order, namely, deposit Rs.20,286/- as arrear rent together with the statutory rate of interest at 10% within a month from the date of passing of the impugned order. This Court is of the view that the essential ingredients of Section 7(2) are (i) raising of a dispute by the tenant and (ii) depositing of the admitted arrears together with the statutory rate of

interest. On a conjoint reading of Section 7(1)(a) and 7(2), it is also clear that upon making an application under Section 7(2), a Civil Judge has to adjudicate the rate of rent to be deposited by the tenant within a specified time frame and pass an order to that effect. The situations contemplated under Section 7(1)(a) and 7(2) hence culminate in the adjudication of the Civil Judge under that provision. Once such adjudication is done, factors with regard to the previous defaults of rent on the part of the tenant or any other dispute raised between the parties, accordingly become irrelevant.

The petitioner, in this case, has urged that the opposite party has failed to pay the agreed rent for five years prior to the suit being filed by the petitioner. This fact is no longer relevant after the adjudication made by the learned Civil Judge in the impugned order and after due compliance of such by the opposite party.

In view of the above, this Court does not find any jurisdictional error or erroneous application of the law or any material irregularity in the impugned order which would persuade this Court to interfere with the directions passed.

C.O. 22 of 2021 is accordingly dismissed on contest without any order as to costs.

Since it has been submitted on behalf of the petitioner that there is every likelihood that the hearing

of the suit may be delayed, the learned court below is requested to expedite the hearing of the suit.

(Moushumi Bhattacharya, J.)