

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

**30.11.2021
Crt. No.1.
K.B./b.r.
Item No.11**

C.O. 44 of 2021

***Loden Tenzin Bhutia*
-Vs-
*Kamal @ Kumar Thapa***

**Mr. D. Kundu
.....for the petitioner.**

**Mr. Momenur Hahman
Ms. Bedashruti Bose
..... for the opposite party.**

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

Under challenge in this application is Order No. 21 dated 27.11.2020 in O. C. Suit No. 18 of 2018.

The petitioner herein is the plaintiff and the O.P. to this application is the defendant to the suit.

The suit is for eviction of the defendant/tenant and for a decree of payment of arrear rents and *mesne profits*.

Such position taken by the defendant/tenant in the OC suit is disputed by the petitioner on the ground that the materials on record placed on behalf of the defendant itself would show that the plaintiff is the *bona fide* landlord of the suit premises.

By the order impugned dated 27th November, 2020, the Learned Trial Court being the Learned Civil Court(Junior Division) at Kurseong, Darjeeling was pleased to consider the application of the defendant under Section 7 (1) (a) and 7 (2) of the West Bengal Premises Tenancy Act, 1997 (for short the WBPT ACT).

The Trial Court after considering the detailed evidence produced by the parties for and against the said application was pleased to, *inter alia*, hold that there is a *bona fide*

dispute *inter se* the parties regarding the rate of rent payable by the defendant.

The Learned Trial Court also noted that the rent, including the Municipal taxes and charges payable by the defendant has fallen into arrears, since the plaintiff had not intimated the rate of charges.

Accordingly, in exercise of powers under Section 7 of the WBPT Act, the Learned Trial Court permitted the defendant to deposit the arrear rents along with the interest as well as the fixed current rent to be deposited within the 15th of each succeeding English Calendar month.

Since it was claimed by the defendant that the present plaintiff has not adduced any evidence connected to his status as landlord following the Letter of Attornment of the alleged erstwhile landlord, the relationship of the plaintiff and the defendant respectively as landlord and tenant, was left open to be determined at the subsequent stages of the trial.

The Learned Trial Court concluded by holding the defendant not to be a defaulter.

The plaintiff/the present petitioner relies on the authority of **2018 (1) CHN (CAL) 458; In re: Anwar Hussain vs. Raja Mohammed Amin & Ors.** and submits that on non-compliance of the mandatory provisions of Section 7 of the WBPT Act regarding deposit of rent, the defence of the tenant is automatically liable to be struck off.

To the contrary, Learned Counsel for the defendants, the present O.P. relies upon an order of the Concurrent Hon'ble Single Bench of this Court dated 9.2.2021 in CO 20 of 2021.

Heard.

Considered.

This Court finds the reported judgment *In Re: Anwar Hussain* not to be *apropo* to the present facts since the facts *In Re: Anwar Hussain* involve the issue of deposit the admitted rent.

In the present facts the rate of rent is disputed and therefore the Learned Trial Court has committed no error by re-computing the rent payable along with the Municipal Tax and charges to be so intimated by the plaintiff plus applicable interest and permit the defendant to deposit both the arrears and the current rent.

Such exercise by the Learned Trial Court also does not appear to the mind of this Court to be lacking in infirmity with the provisions of Section 7 of the WBPT Act.

Equally, this Court does not find any infirmity in the order of the Learned Trial Court keeping the question of relationship between the landlord and tenant as plaintiff and defendant respectively based on the Letter of Attornment cited by the defendant open to be adjudicated during the subsequent stages of the trial.

Accordingly, the order of the Learned Trial Court under challenge in this application requires no intervention.

CO 44 of 2021 stands thus **disposed of.**

However, the Learned Trial Court is requested to expedite the hearing of O.C. Suit No. 18 of 2018, subject to its board and preferably not later than a period of nine months from the date of communication of this order.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Subrata Talukdar, J.)