

15.12.2022
SL No.15
Court No.8
(gc)

**SA 69 of 2019
CAN 1 of 2022
CAN 2 of 2022
CAN 3 of 2022**

**Subhas Ghosh
Vs.
Aloka Ghosh**

Mr. Debasis Kar,
...for the Appellant.
Mr. Sourav Sen,
Ms. Adrisnata Chakraborty,
...for the Respondent.

**Re: CAN 1 of 2022
With
CAN 3 of 2022**

Sufficient cause being shown for non-appearance on 13th December, 2019 when the second appeal was dismissed for default and sufficient explanation has been offered for not being able to file the application for restoration within the period of limitation.

We allow the application for condonation of delay and restore the second appeal to its original file and number.

Accordingly, both the applications stand disposed of.

Re: CAN 2 of 2022

This is an application for substitution of the legal heir of the original appellant who died on 20.04.2020. The applicants claimed to be the sons of the appellant. It is stated that the applicants are major, sui juris and sound mind.

Accordingly, the substitution application is allowed and disposed of.

We direct the department to record the death of the original appellant and substitute the applicants in place and stead of the original appellant in the memorandum of appeal.

Re: SA 69 of 2019

We now propose to hear the second appeal which can be admitted provided there is a substantial question of law involved. It is an admitted position and not disputed from the bar that the arrears amounts have not been deposited in terms of the order passed by the learned Trial Court in connection with the application filed under Section 7(2) of the West Bengal Premises Tenancy Act, 1997. It was contended before the Trial Court as well as the Appellate Court that the original appellant had deposited amount with his Advocate who had failed to deposit the said amount in the Court. It appears from record that on 13th February, 2009 the plaintiff filed a petition under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 and on the next date, that is, on 26th March, 2009, the defendant prayed for adjournment which was allowed as last chance. Thereafter on 18th May, 2009, the defendant did not take any step and ultimately on 6th July, 2009, the defence of the defendant was struck off as none had appeared on behalf of the defendant on that date. The plaintiff was examined on different dates and his examination was closed on 16th March, 2010. Admittedly, there is a non-compliance of the order dated 5th April, 2007 by which the application under Section 7(2) of the West Bengal Premises Tenancy Act was

allowed. The time stipulations mentioned under Section 7(2) read with Section 7(3) of the West Bengal Premises Tenancy Act are held to be mandatory in the judgment in **Vijay Kumar Singh & Ors. Vs. Amit Kumar Chamariya & Anr.** reported at **2019 (10) SCC 660**. It has been specifically stated that Section 7(2) is mandatory in nature and Court lacks the power to extend such time.

It is now well settled that the one month time for deposit of arrear rent along with interest, at the rate at which it was last paid, as envisaged in section 7(1)(b) of West Bengal Premises Tenancy Act is mandatory and the tenant will not be able to take recourse of Limitation act or any other act to deposit said arrear rent beyond that period. In this context reliance has been placed upon paragraph 21 of the Hon'ble Apex Court judgment in **Bijay Kumar Singh And Ors. Vs. Amit Kumar Chamaria & Anr.** reported at **(2019) 10 SCC 660**.

"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."

Admittedly, the appellant committed default and not deposited the admitted amount of rents. The defence was struck off.

We do not find any reason to admit the second appeal as both the Courts have on correct interpretation of law decreed the suit in favour of the plaintiff after the defence was struck off. The plaintiff also otherwise was able to prove his case.

Accordingly, the second appeal stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)