

23.9.2022
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Ct. no. 652
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C.O. 57 of 2021

**Smt. Jyotsna Dhar & Anr.
Vs.
Sri Sukanta Ghosh & Ors.**

Mr. Chittapriya Ghosh
Mr. Sandipan Pal ...for the petitioners

Mr. Sounak Bhattacharjee
Mr. Sounak Mondal ...for the Opposite party

Being aggrieved with the order no. 20 dated 9.1.2020 passed by the learned Civil Judge (Senior Division), at Sealdah in connection with Ejectment suit no. 3 of 2018, the present revisional application has been preferred. By the impugned order learned Trial court has been pleased to allow plaintiff/landlord's petition under Section 7(3) of the West Bengal Premises Tenancy Act, 1997, thereby defence of the defendant has been struck off.

The petitioner's contention is that the opposite party/plaintiff filed an ejectment suit being E.C. no. 3 of 2018 before the learned Civil Judge (Senior Division), at Sealdah, seeking eviction of defendants and recovery of khas possession. The petitioners/defendants entered their appearance in the said suit and filed written statement. Subsequently, the opposite party/plaintiff

moved an application under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 stating inter alia that the petitioners have not complied with the provisions of Section 7 of the West Bengal Premises Tenancy Act, 1997.

Learned trial court after hearing the parties passed the impugned order, allowing the prayer made by the plaintiffs/opposite parties.

Learned counsel for the petitioner submits that after the death of original land lady, plaintiff became landlords and they refused to accept the rent from petitioners/defendants, so they started to deposit rent before rent controller. After that petitioners/defendants moved a revisional application before the Hon'ble High Court being C.O. 1792 of 2014 for enhancement of rent and by an order dated 4.9.2014, Hon'ble court directed the petitioner to pay arrears rent by the end of the year. However, the opposite party/plaintiffs preferred a review of that order dated 4.9.2014, being RVW 267 of 2014 and on 19.12.2014, this High Court held that amount would be deposited with the rent controller and the monthly rent of Rs. 540/- would be effective from January 2015. Since then the petitioners/defendants have been depositing the enhanced rent to the rent controller and they are not defaulter in payment of rent. However, the learned trial court had erred in allowing plaintiff's petition under Section 7(3) of the West Bengal

Premises Tenancy Act, 1997, by which the learned trial court had struck off the defence of the petitioner/defendants. Said order has been passed by the trial court in whimsical manner and as such liable to be set aside.

In this context, the petitioner relied upon the judgment of **Madhabi Mukherjee vs. Dipali Mitra** reported in **2012(4) CHN (Cal) 154**.

Learned counsel for the opposite party submits that plaintiff filed suit for eviction inter alia on the ground of default and defendant after receiving summon had entered appearance on 7.5.2018 and had prayed for time for filing written statement and thereafter they have filed written statement on 24.7.2018. Admittedly the defendants had not filed any application under Section 7(1) or 7(2) of the West Bengal Premises Tenancy Act, 1997 nor they have deposited arrear rent along with 10% interest and as such the learned trial court was justified in allowing the plaintiff's petition under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 for non-compliance of mandatory provision laid down in Section 7(1) of the Act and there is no scope to interfere with the order impugned by this court.

Before going into the further details, let me reproduce Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 which is reproduced below:

“7. (1) (a) On a proceeding being instituted by the landlord for eviction on any of the grounds referred to in

section 6, the tenant shall, subject to the provisions of sub-section (2) of this section, pay to the landlord or deposit with the Controller all arrears of rent, calculated at the rate at which it was last paid and up to the end of the month previous to that in which the payment is made together with interest at the rate of ten per cent per annum. (b) Such payment or deposit shall be made within one month of the service of summons on the tenant or, where he appears in the proceeding without the summons being served upon him, within one month of his appearance. (c) The tenant shall thereafter continue to pay to the landlord or deposit with the Controller month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.

(2) If in any proceeding referred to in sub-section (1), there is any dispute as to the amount of the rent payable by the tenant, the tenant shall, within the time specified in that sub-section, deposit with the Controller the amount admitted by him to be due from him together with an application for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. On receipt of the application, the Controller shall, having regard to the rate at which rent was last paid and the period for which a tenant can get the benefit of protection against eviction. 331 The West Bengal Premises Tenancy Act, 1997. [West Ben. Act (Chapter IV.—Recovery of immediate possession.—Sections 8, 9.) which default may have been made by the tenant, make, as soon as possible within a period not exceeding one year, an order specifying the amount, if any, due from the tenant and, thereupon, the tenant shall, within one month of the date of such order, pay to the landlord the amount so specified in the order: Provided that having regard to the circumstances of the case, an extension of time may be granted by the Controller only once and the period of such extension shall not exceed two months.”

In view of the provision laid down in Section 7(1) of the Act, it is clear that said provision 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.

This issue also came up before the Supreme Court in **Bijay Kumar Singh & Others vs. Amit Kumar Chamariya and another** reported in **(2019) 10 SCC 660** where their lordships passed to observe 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 [B.P. Khemka (P) Ltd. v. Birendra Kumar Bhowmick, (1987) 2 SCC 407]*. 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 circumscribed 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.”

These observations of the Apex court, subsequently followed by this court in various judgments. A division bench of this Court while disposing C.O. 175 of 2017 and C.O. 689 of 2019 was pleased to held :-

“Deposit of rent under section 7, calculated on rate at which it was last paid upto end of the month previous to that in which payment is made, is mandated to be paid to the landlord or deposited with the civil Judge. This deposit does not include requirement of application and therefore provisions in section 5 of Limitation Act cannot be extended as declared in Nasiruddin (supra). It is only when admitted rent is sought to be deposited, the deposit

must be accompanied by application for determination of arrears. The time specified is by sub-section (1) in section 7. Said sub-section mandates deposit, subject to sub-section (2). In sub-section (2), there is proviso, which says that extension can be granted by the civil Judge only once and the period of such extension shall not exceed two months. Sub-section (3) in section 7 provides for failure of tenant to deposit, attracting peril of striking out defence. In Bijay Kumar Singh (supra) it was said that 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 as well.”

Accordingly in the absence of an application within the statutory period along with deposit of not only admitted arrear amount of rent, but also interest at the rate of 10%, Section 7(3) of the Act will automatically come into play.

In view of the above, I find no merit in this revisional application and there is no scope to interfere with the impugned order made, in view of the mandatory provision of Section 7(1) of the West Bengal Premises Tenancy Act, 1997.

Accordingly, the application being C.O. 57 of 2021 is dismissed.

Learned trial court is requested to expedite the hearing of the suit and dispose of the same preferably within a period of one year from the date of communication of this order.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)