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Ct. 18
01.04.2022

C.O. No. 252 of 2022
Narendra Kumar Rajada
Vs.

Rukmini Devi Pareek & Ors.

Mr. K. C. Garg,
Ms. Sunita Agarwal ... For the petitioner.

Mr. Subhasis Sengupta,
Mr. Navneet Misra,
Mr. Rahul Singh ... For the opposite parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendant in a suit for ejectment and is directed against the orders dated February 20, 2020 and December 03, 2021 passed by the learned Civil Judge(Junior Division), 3rd Additional Court at Alipore, District – 24 Parganas (South) in the said suit being Ejectment Suit No. 338 of 2018.

The petitioner disputing the landlord and tenant relationship between the parties to the suit and the period of default alleged by the plaintiff in the plaint, filed an application under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 (herein after referred to as the 'said Act' in short).

In the said application, the petitioner alleged that the plaintiffs/opposite parties prior to this suit filed another suit for eviction wherein he deposited rent upto July 2018, as such, the petitioner is not a defaulter in payment of rent as alleged.

The learned Trial Judge by the first order impugned herein i.e. order dated February 20, 2020 disposed of the said application under section 7(2) of the

said Act holding that the petitioner is a defaulter in payment of rent since July 2011 to July 2015 i.e. for 48 months and directed the petitioner to pay a total sum of Rs. 1,26,466/- on account of arrear rent for the said period and the statutory interest thereon.

The learned Trial Judge in the said order although has recorded that the petitioner could not file the challans relating to the rent from July 2011 to July 2015 but immediately thereafter has held that *the point for determination in(sic) the period of default which after considering the civil deposit challans, defendants are held defaulter for payment of rent for the period from July 2011 to July 2015.*

The petitioner filed an application seeking recall of the aforesaid order particularly on the ground that he had filed the challans under which he deposited the rent for the period for which he has been declared a defaulter in payment of rent.

The learned trial Judge by the second order impugned i.e. by the order dated December 03, 2021 has dismissed the said application holding that there is no challan in the record claimed to have been filed by the petitioner.

Mr. Garg, learned advocate for the petitioner submits that he is not seriously pressing the dispute sought to be raised by the petitioner in his application under section 7(2) of the said Act regarding the landlord-tenant relationship between the parties but he emphatically submits that the petitioner in the earlier suit deposited rent upto July 2018 and after

appearance, has deposited the admitted arrear rent along with interest in the present suit.

Mr. Garg drawing my attention to a 'firisti' annexed with the revisional application and a letter of the learned Advocate Ms. Sunita Agarwal dated December 21, 2019 submits that under the said 'firisti', the said challans were filed in connection with the said application under section 7(2) of the said Act and copy of those challans were served upon the learned advocate for the plaintiffs under the aforementioned covering letter of Ms. Agarwal but the learned Trial Judge without considering the said challans has declared the petitioner as a defaulter in payment of rent for the aforesaid period.

Mr. Subhasis Sengupta, learned advocate for the plaintiffs/opposite parties disputes the claim of Mr. Garg that copy of the said challans were served upon his counterpart in the Court below but after going through the photocopy of the said challans, supplied to him by Mr. Garg in course of hearing of the present revisional application submits that prima facie it appears that some rents were deposited under the said challans but he cannot confirm the validity of those deposits.

Having heard the learned advocate for the parties and on perusal of the records it appears that the petitioner has deposited rent for certain period in the earlier suit and in the present suit. The abovementioned firisti prima facie indicates filing of the said challans in the present suit. The finding of the learned Trial judge in the impugned order dated February 20, 2020 that considering the civil deposit challans, defendants are

held defaulter for the payment of rent for the period from July 2011 to July 2015 also signifies availability of the said challans on record.

However, in the order impugned dated December 03, 2021, the learned Trial Judge records that *after perusing the record it is seen that no challan for the above mentioned date has been filed by the defendant in this Court till date.*

Findings of the learned Trial Judge in the two orders under challenge in the present revisional application regarding the existence of the said challans in the record are contradictory.

The said challans are relevant in deciding the application under Section 7(2) of the said Act but the same since has been disposed of without considering the said challans, the orders impugned are not sustainable and are accordingly set aside.

The learned Trial Judge after taking into consideration of the said challans, shall decide the said application afresh in accordance with law.

If the defendant is able to prove filing of the said challans in the suit, the learned Trial Judge shall take all steps to trace out the said challans and in the event, those challans cannot be traced out, the defendant shall be given an opportunity to reconstruct the said challans on the basis of the photocopies thereof and to rely on those reconstructed challans in support of his case made in the application under Section 7(2) of the said Act.

In terms of the mandate of Section 7 (2) of the said Act of 1997, an application under the said provision

is required to be disposed of as soon as possible within a period not exceeding one year from the date of its filing, keeping in view of the said mandate of the said provision and keeping in view that the plaintiffs are seeking the eviction of the petitioner, inter alia, on the ground of their reasonable requirement of the suit property, the learned Trial Judge is requested to dispose of the said application as expeditiously as possible preferably within one effective available working month of his Court from the date of communication of this order and in doing so shall not grant any unnecessary adjournment to either of the parties and after disposal of the said application, to make all endeavour to expedite the disposal of the suit.

C.O. 252 of 2022 is allowed with the above terms without any 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.)