

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE SOUMEN SEN
&
THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

SAT 26 of 2022
CAN 1/2022

Arsala Khan
Vs.
Land & Bricks & Entertainment Ltd.

For the petitioner	:	Mr. Rohit Banerjee
	:	Mr. Sarothi Das Gupta
	:	Mr. Vikash Singh
	:	Ms. Sneha Singh

Order dated: 20th April, 2022

Ajoy Kumar Mukherjee, J. (oral):

1. The Appellant is represented. We take up the matter for hearing to find out whether any substantial question of law is involved in favour of admission of appeal. Accordingly we have heard learned counsel for the appellant Mr. Rohit Banerjee.

2. This appeal has arisen against the judgment and decree dated 14th February, 2022 passed by the Judge, Bench II, City Civil Court, Calcutta, in Title Appeal No. 88 of 2017. By the impugned judgment, Learned First Appellate Court was pleased to affirm the judgment and decree passed by

Judge, 6th Bench, Small Causes Court, Calcutta in Ejectment Suit No. 518 of 2009.

3. Plaintiff's case in a nutshell is that plaintiff is absolute owner of the suit premises and defendant was a tenant in respect of 1060 sq.ft. area at a monthly rental of Rs. 1332/- which includes rent of Rs. 1026/-, maintenance charge of Rs. 103/- and KMC tax of Rs. 203/-, payable according to English calendar month. The defendant is a defaulter in payment of rent from October 2008 till filing of the suit i.e. October 2009 and has also defaulted in payment of corporation tax and other maintenance charges. Plaintiff sent a notice of eviction on 04.08.2009 which was duly served upon the defendant but inspite of service of notice, defendant failed to quit and vacate the suit premises in terms of notice. Hence the suit.

4. Defendant contested the suit by filing written statement contending *inter-alia* that the rent in connection with the suit premises is Rs. 1026/- but the defendant was forced to pay Rs. 103/- as service charges and Rs. 203/- as property tax. Defendant has also alleged that in spite of tender of rent by the defendant to the plaintiff, plaintiff refused to accept and ultimately, ld. Advocate for the defendant advised the defendant to tender rent vide money order, so the defendant tendered rent for the month of May 2009 through money order and on being refused by the plaintiff in accepting rent, sent through money order, defendant started depositing rent before the rent controller. Notice to quit never served upon defendant and plaintiff having influence on postal peon managed the A/D card signed by some other person

and as such plaintiff has no cause of action to file the said suit and accordingly defendant prayed for dismissal of the suit.

5. On the basis of the pleading of the parties learned trial Court framed as many as seven (7) issues. During evidence plaintiff had filed Resolution of the Minutes of the Board of Directors marked as Exhibit-1, notice of eviction as Exhibit -2, Certificate of posting in connection with despatch of eviction notice is marked as Exhibit-2/1. Postal receipt is marked as Exhibit -2/2. Letter given by postal department in support of service of eviction notice is marked as Exhibit-3. Delivery information is marked as Exhibit-3/1 and acknowledgement card is marked as Exhibit 4. Plaintiff examined one Praveen Kumar Popat one of the Directors of the plaintiff company as PW1. No evidence was tendered on behalf of the defendant.

6. Be it also mentioned that initially summon of the suit could not be served upon defendant and as per the courts order , newspaper publication was made in terms of Order V Rule 20 C.P.C. on 28.03.2011. Defendant appeared in the suit on 19.08.2011 and on the same date he filed application under section 7(1) & 7(2) of the West Bengal Premises Tenancy Act along with the written statement. Thereafter on 16.01.2012 defendant's application under section 7(1) of the West Bengal Premises Tenancy Act was allowed vide order No. 25. Defendant's application under section 7(2) was also disposed of with a direction upon defendant to deposit the arrear rent. Thereafter due to non-payment of rent in time plaintiff filed an application under section 7 (3) of the West Bengal Premises Tenancy Act and vide order No. 51, plaintiff's application

under section 7 (3) of the West Bengal Premises Tenancy Act was allowed and defence of the defendant was struck off.

7. Learned Trial Court held that the defendant is defaulter in payment of rent and his defence has already been struck off and as such he is not entitled to get protection under section 7(4) of the West Bengal Premises Tenancy Act. Learned Trial Court further held that the notice to quit is legal, valid and has been duly served upon the defendant and as such decreed the suit in favour of plaintiff.

8. Being dissatisfied with the judgment and decree passed in Ejectment Suit No. 518/2009, defendant /tenant preferred first appeal before City Civil Court, Calcutta and said First Appeal came up for hearing before Judge-II Bench, being Title Appeal No. 88/2017. Learned First Appellate Court also pleased to affirm the judgment and decree passed by Ld. Trial Court and directed defendant/appellant to hand over khas vacant possession of the suit property within 30 days from the date of the judgment.

9. Feeling aggrieved by the judgment and decree dated 14.02.2022 passed in aforesaid T.A. No. 88/2017, Defendant/tenant sought to prefer present second appeal which came up before us for admission. We have already pointed out that defendant in his written statement in paragraph 6 has clearly admitted that the monthly rent in connection with the suit property is Rs. 1026/- but at the same time he has stated that he has been forced to pay Rs. 103/- as service charge and Rs. 203/- as property tax. In his application under section 7 (2) of the West Bengal Premises Tenancy Act he also admitted in Paragraph 1 that the appellant /defendant is a tenant in respect of the suit

property at a rental of Rs. 1026/- towards rent, maintenance /service charge @ Rs. 103/- and property tax @ Rs. 203/- total Rs. 1332/- per month. Even if for a moment if it is presumed that the service charge of Rs. 103/- and property tax of Rs. 203/- had been collected by the plaintiff from the defendant against his will, then also the fact remains that there is no dispute that the rate of rent for the suit premises is Rs. 1026/- payable according to English calendar month. Defendant in his said application under section 7(2) has further admitted in paragraph 6 that he is a defaulter from October 2008 and in paragraph 7 he has further stated that he started to deposit rent with rent controller from May 2009 to July 2011. In view of aforesaid admissions made in the petition under section 7(2) of the act and also in the absence of any document, it is clear that defendant admittedly had not deposited rent anywhere from October 2008 to April 2009.

10. In this context let us reproduce section 7 of the West Bengal Premises Tenancy Act

“7. When a tenant can get the benefit of protection against eviction.—

(1)(a) On a (suit) 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 Civil Judge) all arrears of rent, calculated at the rate at which it was last paid and upto 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 (suit) 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 Civil Judge) month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.

(2) If in any (suit)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 Civil Judge) 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 Civil Judge) shall, having regard to the rate at which rent was last paid and the period for 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 Civil Judge) only once and the period of such extension shall not exceed two months.

(3) If the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, (the Civil Judge) shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the (suit).

(4) If the tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant, shall be made by (the Civil Judge), but he may allow such cost as he may deem fit to the landlord:

Provided that the tenant shall not be entitled to any relief under this sub-section if, having obtained such relief once in respect of the premises, he again makes default in payment of rent for four months within a period of twelve months or for three successive rental periods where rent is not payable monthly.”

In view of aforesaid provision of law it is quite clear that when a suit has been instituted by the landlord for eviction of the tenant on any of the grounds referred to in section 6, the tenant shall subject to the provision of sub-section (2) of section 7, pay to the landlord or deposit with all arrears of rent calculated at the rate at which it was last paid and upto the end of the month

previous to that in which the payment is made, together with interest at the rate of 10% per annum and such payment or deposit shall be made within one month of the service of summons and tenant where he appears in the suit without the summons being served upon him, within one month of his appearance.

11. In the present case defendant's contention is that summon was not served upon him. However, there is no dispute that defendant appeared in the suit on 19.08.2011. Accordingly in view of aforesaid provisions of law, defendant was required to deposit within one month of his appearance the admitted arrear rent at least at the admitted rate of Rs. 1026/- per month along with statutory interest from October 2008 to April 2009, because defendant himself admitted in his petition under section 7 (2) of the Act which he filed on the date of his appearance, that he is defaulter in payment of rent since October 2008 and he has deposited rent before rent controller from May 2009 to July 2011.

12. 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.”

13. As in the present case defendant has not deposited the admitted amount of rent and as he has also not document that he has paid rent from October 2008 to April 2009, within the statutory period, so learned Trial Court was quite justified in striking out the defence for non-compliance of section 7(1) of the said Act. In view of above there is nothing to interfere with the observation

of the learned Courts below that the defendant is a defaulter in payment of rent and for which he is liable to be evicted from the said premises.

14. Defendant /Appellant though contended that he has not received notice to quit but plaintiff has filed and proved the notice of eviction and also the A/D card in support of service of notice along with letter dated 18.09.2009 given by the postal department which are marked as Exhibit 2, 3 and 4 and in the absence of any contrary document or evidence, the learned Courts below were justified in reaching to conclusion that notice to quit was duly served upon the defendant /appellant and no illegality in the said notice is brought to our notice during the hearing of the appeal.

15. In view of above facts and circumstances of the case, we have no hesitation to conclude that no question of law, far from substantial question of law, is involved in the present context and as such the prayer for admission of second appeal is liable to be dismissed.

16. SAT 26 of 2022 is dismissed.

There will be no order as to costs .

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

Let the copy of the order be send to the Judge, 6th Bench, Small Causes Court, Calcutta.

I agree

(Soumen Sen, J.)

(Ajoy Kumar Mukherjee, J.)