

28.03.2022
Item No.8
Ct. No.7
CHC
(disposed of)

**C.O.767 of 2020
(Physical Hearing)**

**Anil Kumar Shaw alias Anil Shaw
Vs.
Smt. Rebarani Mondal (Jana)**

Mr. Pinaki Ranjan Mitra
...for the petitioner

Mr. Ramchandra Guchhait,
Mr. Safikul Mandal
...for the opposite party

Petitioner seeks to assail the order dated 17th February, 2020, passed by learned Civil Judge (Junior Division), Fourth Court, Howrah in Title Suit No.1901 of 2015, rejecting the petitioner's prayer for depositing arrear of rent along with interest in application of the provisions under Section 114 of the Transfer of Property Act.

Admittedly, petitioner/defendant entered appearance in this case on 21st April, 2017 to contest the case. A written statement was accordingly thereafter filed. Plaintiff/opposite party in connection with the pending suit for eviction of defendant/petitioner with a prayer for khas possession has already adduced his evidence, and the case is awaiting for evidence to be led by petitioner/defendant since 2nd November, 2019.

It is on 15th February, 2020, when the case was posted for defence witness, the petitioner/defendant suddenly woke up expressing his intention to deposit arrears of rent along with interest by filing a petition.

The learned court below has rejected the prayer for depositing the arrears of rent along with interest holding therein that there is no provision in the Transfer of Property Act authorising petitioner/defendant to deposit arrear of rent along with interest in a suit for eviction of tenant with recovery of khas possession under Section 106 of the Transfer of Property Act.

Mr. Pinaki Ranjan Mitra, learned advocate appearing for the petitioner submits that the petitioner filed the instant petition seeking permission to deposit arrears of rent with interest in application of the provisions under Section 114 of the Transfer of Property Act.

Reliance is placed accordingly by the learned advocate for the petitioner on a decision reported in **(1969) AIR (SC) 1349** delivered in the case of ***Praduman Kumar vs. Virendra Goyal (Dead) by L. RS.*** providing relief against the forfeiture for non payment of rent, which, according to petitioner, must be extended by the court of first instance.

Per contra, Mr. Ramchandra Guchhait representing the plaintiff/opposite party disputes with

the submission raised by the learned advocate for the petitioner submitting that the proposed relief is not applicable in a suit for eviction of tenant under Section 106 of the T.P. Act with a prayer for recovery of possession. Suit has been instituted upon prior notice to the defendant/petitioner. Disputing with the applicability of the decision, referred by the petitioner, learned advocate for the opposite party places his reliance upon a decision reported in **2009 1 CAL LT 290** delivered in the case of ***Gopinath Mukherjee vs. Uttam Bharati*** that in a suit for eviction of a tenant under the Transfer of Property Act, on termination of relationship between the landlord and tenant by serving a notice under Section 106 of the T.P. Act upon the tenant, there is no provision under which a tenant may be permitted to deposit arrear of rent in such suit.

Upon perusal of the averments contained in the pleadings, annexed with the instant revisional application, it goes without saying that it is basically a suit for eviction of tenant with recovery of khas possession, wherein relationship between the parties has already been terminated upon serving a notice under Section 106 of the T.P. Act. It is not the case of defendant/petitioner that petitioner/defendant was inducted as a lessee upon execution of a registered lease for a stipulated period of time, and it is for the failure of the lessee to make payment of rent, the suit

has been filed for recovery of possession of the lessor on the ground of forfeiture of lease for non-payment of rent before the expiry of period of lease.

The situation is thus very clear. The provisions regarding the applicability of Section 114 of the T.P. Act are quite different, and as such, the provisions of Section 114 of the T.P. Act are in no way applicable over the present texture of the suit under reference. There lies nothing to be interfered with. The impugned order must go unaltered.

The revisional application thus stands disposed of with a direction upon the learned court below to dispose of the suit expeditiously as possible providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

With this direction/observation the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)