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C.O. 641 of 2022

**Sri Asim Mukherjee
Vs**

Sri Shayantan Ghosh alias Sayantan Ghosh

With

C.O. 643 of 2022

**Sri Avik Mukherjee
Vs.**

Sri Shayantan Ghosh alias Sayantan Ghosh

Mr. Saptangshu Basu, Sr. Adv
Mr. Udaynarayan Betal,
Mr. Mriganka Patra, ... For the petitioner.

Mr. Sayantan Bose, ... For the Opposite Party.

For a common law point being involved in both the revisional applications referred hereinabove, these two applications are taken up together for hearing on the prayer of the parties.

Petitioner of both applications assails order dated 24th February, 2022, passed by learned Judge, 6th Bench, Presidency Small Causes Court, Calcutta in Ejectment Suit No. 303 of 2018, and Ejectment Suit No. 304 of 2018, striking out the defense of the petitioner/defendant/tenant upon rejecting the application filed by the petitioner under Section 151 of the Code of Civil Procedure, praying for recalling of order passed under Section 7(2) of the West Bengal Premises Tenancy Act.

Mr. Saptangshu Basu, learned Senior Advocate appearing for the petitioner/defendant/tenant submits that there has been no delay caused in filing petitions under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, at the instance of the petitioner/defendant.

Admittedly, the petition under Section 7(2) filed by the defendant/petitioner was disposed of on consent, with the observation that the rent was due and payable by the petitioner/defendant for the month of June and July, 2018. A direction was there, requiring petitioner/defendant to pay the rent for the defaulting period, mentioned in the order under Section 7(2) of the West Bengal Premises Tenancy Act, with statutory interest, as applicable within one month from the date of this order.

An application under Section 151 of the Code of Civil Procedure was then filed by the petitioner on 24th September, 2021 for recalling of the order passed under Section 7(2) of the West Bengal Premises Tenancy Act.

According to Mr. Basu, the application under Section 151 of the Code of Civil Procedure had to be filed by the petitioner/defendant for improper quantification of arrears of rent liable to be deposited by the petitioner within the period mentioned in the order. Mr. Basu submits that petition under Section 151 of the Code of Civil Procedure was filed with some late but it

was due to surge of Covil-19, and such delay was not intentional, deliberate, and would not cause any infraction of law, as embodied in the proviso appended to Section 7(2) of the West Bengal Premises Tenancy Act. Such petition was rejected by the order dated 24th February, 2022 by the trial Court, holding that such petition was devoid of any merits. By the same order, the trial Court allowed the petition filed under Section 7(3) of the West Bengal Premises Tenancy Act at the instance of opposite party/landlord thereby striking out the defence of the petitioner/defendant against delivery of possession.

Adhering to the provisions shown in the proviso, appended to Section 7(2) West Bengal Premises Tenancy Act, Mr. Basu contends that even the statutory right to get extension of time could not be utilised for want of specific quantification of arrears of rent, while disposing of the petition under Section 7(2) of the West Bengal Premises Tenancy Act.

This has caused deprivation to the petitioner/defendant, and as such the limitation mentioned in the proviso of Section 7(2) West Bengal Premises Tenancy Act can not be construed to have commenced in the facts and circumstances of the case, Mr. Basu argues.

Per contra, Mr. Sayantan Bose, learned advocate appearing for the opposite party strenuously submits

that the petitioner has not challenged the order passed by the Court below, declining to recall the order passed under section 7 (2) West Bengal Premises Tenancy Act. As regards the conduct of the petitioner/defendant, learned advocate for the opposite party submits that petition for recalling, not for quantification, was filed on 24th September, 2021, i.e., about six months after the disposal of petition under Section 7 (2) West Bengal Premises Tenancy Act. Since the petitioner/tenant has committed departure in making due compliance of the order passed under Section 7(2) of the West Bengal Premises Tenancy Act, within the period mentioned therein, a petition under Section 7(3) of the West Bengal Premises Tenancy Act was rightly filed, and the Court has allowed the same thereby striking out the defence of the petitioner/tenant against the delivery of possession upon adhering to the appropriate provisions of the law.

While making elaboration of the objection raised in this case, it is submitted by the learned advocate appearing for the opposite party that the mandate of statutory provisions should not be allowed to be misused taking a fictitious plea like surge of Covid-19.

In reply to the submission of opposite party, Mr. Bose submits that the petition under Section 7(2) of the West Bengal Premises Tenancy Act was disposed of on consent, but it is due to inaccurate specification of arrears of rent, the petitioner/tenant has been made to

suffer confusion, and as such he could not comply the order, and instead thereof filed an application for specific quantification of the arrears of rent with some delay, but such delay is not within the meaning of the period of extension, as envisaged under the proviso appended to Section 7(2) of the West Bengal Premises Tenancy Act.

Having considered the submissions of both the sides, it appears that the application under Section 7 (3) of the West Bengal Premises Tenancy Act filed by the plaintiff/landlord/opposite party was allowed by operation of law and also at the instance of landlord/plaintiff.

Without any controversy, the petition under Section 7(2) of the West Bengal Premises Tenancy Act was disposed of on consent. From the order impugned, it appears that there has been observation made by the learned Court below that **“it is the duty of the Court to mention the arrears of rent with exact specification, the defendant is under the statutory obligation to follow and comply with the order of the Court so that he can avail the benefit, enshrined under Section 7(4) of the Act.”**

The obligation thus supposed to be discharged by the petitioner/tenant is subject to the specification/quantification of arrears of rent, to be assessed by the trial Court, while making disposal of

petition under Section 7(2) of the West Bengal Premises Tenancy Act.

True, it is that the petition under Section 7(2) of the West Bengal Premises Tenancy Act has been disposed of on consent. The defaulting period is admittedly for two months. Still it is the statutory obligation of the trial Court to ascertain and/or specify/quantify the arrears of rent together with statutory interest, required to be deposited within the period granted, adhering to the provisions mentioned under Section 7 (2) of the West Bengal Premises Tenancy Act.

Though there has been laches or misconduct on the part of the petitioner/defendant/tenant in taking out application much earlier, than 24th September, 2021, but that should not be treated to the one and only ground to reject the petition under Section 151 of the Code of Civil Procedure, filed by the petitioner, because there has already been improper or inaccurate quantification of arrears of rent, what has been observed conspicuously in the order impugned.

The conduct thus established on the part of the petitioner should not be condoned in the manner, as proposed to be done, taking the plea of surge of Covid-19. The harassment, hardship thus caused to the plaintiff/landlord has to be adequately compensated, otherwise the objective purpose of legislature, as

enshrined under Section 7(2) of the West Bengal Premises Tenancy Act would be frustrated.

Taking into the account of conduct of the petitioner/defendant, a compensatory cost of Rs. 20,000/- is thus required to be paid by the petitioner for each of the cases within ten (10) days, from the date of communication of this order to the learned Court below, to landlord/plaintiff.

When there has been inaccurate quantification of arrears of rent, the rejection of the prayer for recalling and/or reconsideration of order passed under Section 7 (2) West Bengal Premises Tenancy Act, with the aid of Section 151 of the Code of Civil Procedure is thus not sustainable.

The order is thus set aside.

As a corollary therefor, striking out defence of defendant/petitioner against delivery of possession is also not sustainable and the same is also set aside.

Accordingly, petitioner is directed to deposit Rs. 20,000/- as compensatory cost for each of the cases, mentioned hereinabove, to landlord/opposite party within ten days from the date of communication of this order to the learned Court below.

Upon such deposit being made within the period mentioned hereinabove, the learned Court below shall hear out the petition under Section 7(2) of the West Bengal Premises Tenancy Act afresh with an aim to

specify and/or quantify the arrears of rent together with statutory interest, so as to determine the arrears of rent within the meaning of Section 7 (2) of the West Bengal Premises Tenancy Act, within six weeks from the date of communication of this order.

While endeavouring such exercise, it is desirable that an opportunity of hearing must be ensured to both the parties in this case, but without granting unnecessary adjournments, unless it is extremely unavoidable.

With this observation and direction, the revisional applications stand disposed of.

(Subhasis Dasgupta, J)