

21.04.2022
18
ct. no. 7
sb

C.O 844 of 2022

Sri Debananda Dam

-vs-

Smt. Jayshree Ghosh & Anr.

Mr. Siddheswar Chandra

Mr. Sandip Dutta

...for the petitioner

Mr. Aninda Lahiri

Mr. Manas Malakar

....for the opposite party

The order, dated 24th March, 2022 passed by the learned 5th Judge, Small Causes Court at Calcutta in Ejectment Suit No. 476 of 2017 disposing of an application under Section 7(2) of the West Bengal Premises Tenancy, 1997 with a direction upon the petitioner/defendant/tenant to deposit arrears of rent for 15 months @ Rs. 3,025/- (Rupees three thousand and twenty five) only per month, amounting to Rs. 3,47,875/- (Rupees three lakhs forty seven thousand eight hundred seventy five) only along with statutory interest, within 30 days from the date of order, is subject of challenge in this revisional application.

Upon advertng to the averments of the plaint, pertaining to the grounds available under Section 6 of the West Bengal Premises Tenancy Act, 1997, learned advocate appearing for the

petitioner submits that as per the allegations surfaced against the defendant/petitioner, there was nothing disclosed that the petitioner/defendant/tenant was in arrears of rent, the reference of which, may be had from the observation, made by the learned Judge in the impugned order itself.

The attention of the court is drawn to the application under Section 7(2) of the West Bengal Premises Tenancy, 1997, filed by the petitioner/defendant, wherein the petitioner has prayed for adjustment of Rs. 60,000/- (Rupees sixty thousand) only against the security deposit given to the landlord at the time of inducting the petitioner in the tenanted premises, in the event of petitioner, being held to be in arrears of rent, while making disposal of petition under Section 7(2) of the West Bengal Premises Tenancy, 1997.

It is also contended that there is no reference to his prayer claiming adjustment of security deposit against the arrears of rent, if any, which has caused the petitioner to suffer serious prejudice.

The challans, deposited before the rent controller, have not been duly appreciated in its true context, and thereby causing not only financial hardship to the petitioner, but also

improper assessment of arrears of rent reached by the learned court below.

Per contra, learned advocate appearing for the landlord/plaintiff/opposite party/caveator submits that the amount deposited as security should not be permitted to be adjusted against the arrears of rent, as already assessed by the learned court below in connection with the disposal of a petition under Section 7(2) of the West Bengal Premises Tenancy, 1997.

The challans of rent controller, as produced by the petitioner, were duly considered and after due consideration of which the learned court below was not prepared to accept those challans.

While making elaboration of the points raised, learned advocate for the opposite party submits that there is nothing left to be interfered in the impugned order.

Having considered the rival submission of both sides, it appears that legality and validity of the challans of the rent controller, as produced by the petitioner, and alleged to have been erroneously reached, without taking into account that the challans were deposited in the name of one Alok Ghosh being the father of present opposite parties, substituted plaintiffs, if decided

afresh, the same would not cause any prejudice to either of the parties.

Upon perusal of the impugned order, it appears that regarding the prayer for adjustment against the security deposit, nothing has been reflected in the order impugned, while making disposal of the petition under Section 7(2) of the West Bengal Premises Tenancy, 1997.

As per assessment of the learned court below, the petitioner/defendant was held to be a defaulter from May 2008 to November 2017 i.e. for 115 months. When the petition under Section 7(2) of the West Bengal Premises Tenancy, 1997 filed by the petitioner has already been disposed of, not duly addressing the specific prayer, incorporated in petition under Section 7(2) of the West Bengal Premises Tenancy, 1997, this court is of the view that the petition under Section 7(2) of the West Bengal Premises Tenancy, 1997 needs to be heard out afresh.

The impugned order is thus, set aside by directing the learned court below to hear afresh the petition under Section 7(2) of the West Bengal Premises Tenancy, 1997 in context with the prayer incorporated in the petition under Section 7(2) of the West Bengal Premises Tenancy, 1997, providing sufficient opportunities of hearing to both

the parties, but without granting any unnecessary adjournment to either of the parties, unless it is extremely unavoidable.

This should not prevent the learned court below to reconsider the challans of the Rent controller, as produced by the petitioner, in terms of the objections, to be raised by the plaintiff/landlord.

Upon granting objection hearing to such challans, the legality and validity of such challans may be determined afresh.

Since the next date is fixed on 6th May, 2022 before the learned court below, the petition under Section 7(2) of the West Bengal Premises Tenancy, 1997, as directed to be heard out afresh hereinabove, may be disposed of either on the date scheduled by the learned court below, or if for any reasons whatsoever, the same could not be done, the petition may be disposed of within four weeks thereafter peremptorily.

With this directions and observations, this revisional application stands disposed of.

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

(Subhasis Dasgupta, J.)