

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 770 of 2021

**Central Kalyani Children Home School
Vs.
Samir Kumar Saha**

For the Petitioner : Mr. Partha Pratim Roy
Ms. Samapti Roy

For the Opposite party : Mr. Balailal Sahoo

Heard on : 31.10.2022

Judgment on : 09.11.2022

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the impugned Order No. 11 dated 03.02.2021 passed by the Learned Civil Judge (Senior Division), Kalyani, Nadia in Title Suit No. 25 of 2019, present application under Article 227 of the Constitution of India has been preferred. The petitioner is defendant/tenant in a suit for eviction filed by opposite party/plaintiff.

2. The petitioner/defendant contended that they appeared in the suit and filed one petition for depositing the arrear rent, inter alia, stating that the petitioner /defendant wanted to deposit the arrear rent of Rs, 1,63,000/-

before the Court as well as current rent month by month. Said application under section 7(1) of the West Bengal Premises Tenancy Act, 1997, was filed being accompanied by a petition praying for condonation of delay, whereby it was inter alia, submitted that there was a delay of 97 days in filing applications for depositing the arrear rent as well as rent for current months. Since the said delay was not intentional, nor was there any laches on the part of the petitioner/Defendant, in filing the petition under section 7(1), it has been prayed that the said period of delay be condoned and the petitioners may be allowed to deposit the rent.

3. After contested hearing learned Trial Court was pleased to reject petition under section 5 of Limitation Act and consequently the petition under section 7(2) of the West Bengal Premises Tenancy Act was rejected and in terms of Section 7(3) of the West Bengal Premises Tenancy Act, the defence of the Defendant is struck off.

4. Mr. Partha Pratim Roy learned Counsel appearing on behalf of the petitioner submits that the suit was filed on 15th March 2019 and application with prayer for deposit of arrear rent was filed by defendant on 1st August, 2019 and prayer for deposit of current rent was filed on 21st August, 2019. Mr. Roy submits that admittedly application under section 7 was not filed within the statutory period but he submits that the tenant school authority was and is always ready to deposit arrear rent of Rs. 1,63,000/- before the court. They are also ready to deposit current rent month by month.

5. Mr. Roy further submits that there was no formal prayer on behalf of the plaintiff/opposite party for striking out defence under section 7(3) of the Act

and learned Trial Court who was supposed to exercise his discretion in this respect, without considering said fact and in the absence of any application under section 7(3) of the Act, arbitrarily passed the impugned order by which defence of the defendant has been struck off. He further submits that the defendant/petitioner has disputed the ownership, which the learned court below did not take into account. In this context Mr. Roy has relied upon judgment of the Apex Court passed in Civil Appeal No. 4682 of 2022 (arising out of SLP Civil Appeal No. 1319 of 2019) (**Asha Rani Gupta Vs. Sri Vineet Kumar**).

6. Mr. Sahoo learned counsel appearing on behalf of the opposite party submits that the settled position of law is that the provisions of sub-section (2) of section 7 are mandatory and required to be scrupulously followed by the tenant, if the tenant has to avoid eviction on account of non-payment of arrears of rent, under section 6 of the Act.

7. Admittedly in the present case the petitioner/tenant has not complied section 7 (1) or 7 (2) of WBPT Act, 1997. **In Bijay Kumar Singh & others Vs. Amit Kumar Chamariya & another** reported in **(2019) 10 SCC 660**, Apex Court has distinguished sub-section 17 (2-A) and (2-B) of section 17 under 1956 Act with section 7 of the present Act of 1996. It has been clearly observed in that judgment that sub-section (3) provides for consequences of non-payment of rent i.e. striking out of the defence against the delivery of the possession and to proceed with the hearing of the suit. Such provision is materially different from sub-section (2-A) and (2-B) which was being examined by the Apex Court in **M/S B.P. Khemka Pvt. Ltd. Vs. Birendra Kumar**

Bhowmick & another reported in **(1987) 2 SCC 407**. Sub-section (2-A) and Sub-section (2-B) of section 17 of 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso to section 7(2) and sub-section (3) of section 7 of the Act. Therefore, Apex Court held that 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. The consequences flowing from non-deposit of rent are contemplated under sub-section (3) of section (7) of the Act.

8. Mr. Roy contended that even if it can be presumed that section 7(2) of the Act of 1997 has not been complied here, even then the petitioner/ plaintiff is required to file formal application with a prayer for striking out defence and it is the discretion of the court to allow or to reject such prayer, considering the fact as to whether the delay caused was intentional or not.

9. I am not agreeable to the aforesaid contention made by Mr. Roy. The language stipulated in section 7(3) is clear that if the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) of section 7 within the specified period, the court shall order the defence against delivery of possession to be struck out and there is nothing in the statute that for this purpose a formal application is required to be filed by the plaintiff/opposite party. Even in an earlier decision under Bihar building (Letting, Rent and eviction) ordinance, 1982 in **Manju Choudhary and another Vs. Dulal Kumar Chandra**, reported in **(1988) 1 SCC 363** the Apex Court was of the view that

there is a duty cast on the court to strike out the defence if there is a failure of the tenant to deposit arrears of rent within stipulated period.

10. When the court is satisfied that the tenant has admittedly did not comply with sections 7(1) and 7(2) of the Act, then the court can strike out the defence without any formal application for filing by the plaintiff/landlord and there is no bar to the court concerned to strike out the defence even in the absence of any formal application because sub-section (3) of section 7 clearly indicates that if the tenant fails to deposit or pay any rent referred to in sub-section (1) or sub-section (2) within specified period, the court shall order defence against delivery of possession to be struck off.

11. From the contents of the applications filed by the petitioner/defendant under section 7(1) and 7(2) of the Act, there is nothing to show that the petitioner/defendant/tenant has challenged and or disputed the land-lordship of the plaintiff. Petitioner has only stated in his applications that after demise of original land lord Satyen Biswas, the subsequent land lady informed them that his nominated attorney will collect rent from the defendant/school. But no one came to school authority to collect rent and school authority after waiting for a considerable period, got information that said landlady had transferred suit property in favour of third party but she did not disclose the name of the transferee. It is alleged further that said land lady informed them that litigation is pending before Hon'ble High court Calcutta and for that reason the new land lord has failed to collect the rent and on good faith defendant/school did not take any steps for deposit of rent. In the meantime Smt. Reena Das came to the tenanted portion claiming herself as land lady and requested

defendant/school to pay rent to her. Subsequently the defendant/school in utter surprise received legal notice that one Samir Saha /plaintiff claimed himself as a landlord in the tenanted portion. But the plaintiff failed to produce any document till date in support of his ownership, though school authority had expressed it's desire to pay rent if he succeeds to produce the document in support of his ownership in respect of the suit property.

12. Needles to say, even if said contentions made by the defendant be taken as gospel truth even then the defendant/school had a remedy under section 21 of the said Act of 1997 which it did not avail and cannot absolve it's duty to pay rent on that pretext.

13. Mr. Roy in support of his contention relied **Asha Rani Gupta's (Supra)** case which was filed under different context under different statute, but even then in the said case the Apex Court in Para 13 has reiterated that in a suit where the defendant otherwise has not denied his status as being the lessee, it was rather imperative for him to have scrupulously complied with the requirements of law and to have deposited the arrear of rent together with interest on or before the first date of hearing and in any case, as per the second part of Sub-Rule (1) of Rule 5 of order XV C.P.C., he was under the specific obligation to make regular deposit of the monthly amount due, whether he was admitting any such dues or not.

14. In the present context defendant/school neither denied their tenancy right in respect of the suit property nor disputed the rate of rent or arrear of rent but in spite of that they did not deposit arrear rent within the period. In their application under section 5 of the Limitation Act they have contended

that they have received summon of the suit in the last week of March 2019 but as because Headmistress was on leave and also due to professional involvement of their Advocate on record, they could not deposit arrear rent within stipulate period.

15. In view of above discussion and settled position of law in this context as held in **Bijay Kumar Singh (supra)** case and also in view of the specific language of the statute as framed by the legislature in section 7(3) of the Act, I find nothing to interfere with the ultimate finding of the trial court, where in view of non-compliance of section 7(2) of the said Act the trial court was pleased to strike out the defence under section 7 (3) of the Act.

16. C.O. 770 of 2021 is accordingly dismissed.

However 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.

(AJAY KUMAR MUKHERJEE, J.)