IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 1229 of 2021
Luna Sil & Ors.
Vs.
Nararyan Chandra Ghosh
with
C.O. 571 of 2020
With
CAN1/2021 & CAN 2/2021
Narayan Chandra Ghosh
Vs.
Shyamal Kumar Sil & Ors.

For the Petitioners (C.O. 1229 of 2021) For the O.Ps (C.O. 571 of 2020)	:	Mr. S.R. Das Mr. K.P. Mukhopadhyay Mr. S. Rakshit
For the petitioner (C.O. 571 of 2020) For the O.P. (C.O. 1229 of 2021)	:	Mr. Raghunath Chakraborty Mr. Mahaboob Ahmed
Heard on	:	03.11.2022
Judgment on	:	09.11.2022

Ajoy Kumar Mukherjee, J.

1. CAN 1/2021 relates to application for substitution of legal heirs of respondent No.1, since deceased and CAN 2/2021 relates to application for

condonation of delay in preferring the present revisional application. Both the applications are allowed and disposed of on consent given by the parties.

2. Since C.O. 1229/2021 and C.O. 571/2020 arising out of same proceeding being T.S. 204/2016 and having involved similar type of question of law and fact between the same parties, both the revisional applications are hereby disposed of by this common order. In C.O. 1229/2021 the revisionist/petitioner who is defendant/tenant in a suit for eviction, being aggrieved by order No. 42 dated 06.04.2021 passed in aforesaid Title Suit No. 204/2016 by the Civil Judge (Junior Division) , 1st Court Barasat, North 24 Parganas, preferred said revisional application. By the impugned order dated 06.04.2021 learned trial court was pleased to reject applications under section 7(1), 7(2) and 7(3) of West Bengal Premises Tenancy Act, 1997 (hereinafter called as WBPT Act 1997), as defendants neither taken any step nor appeared before the court on repeated call, when the case was called on for hearing.

3. On the other hand being aggrieved by order No. 28 dated 29.03.2019 passed in self same Title Suit no. 204/2016, by the same Civil Judge (Junior divisions) 1st court Barasat, North 24 Parganas, plaintiff/revisionist filed revisional application being C.O. 571/2020. Here by the impugned order learned Trial Court after going through the petition and written objection and also after hearing the submissions made by both the parties, came to the conclusion that the rigour of section 2(g) of WBPT Act 1997 is not applicable in the instant case, with regard to fact as alleged by the plaintiff.

4. The fact as set out is that opposite party/plaintiff instituted suit for eviction being Title Suit No. 204/2016 against defendant before the 1st Court of

Civil Judge (Junior Division) at Barasat praying for decree of 'khas' possession of suit property. Thereafter on 22.02.2017 the defendant /petitioner of C.O. 1229/2021 filed applications under sections 7 (1) and 7(2) of the said act. By the impugned order No. 42 dated 06.04.2021 Civil Judge (Junior Division) 1st Court, Barasat by passing the impugned order was pleased to reject and disposed of defendant/petitioners application under section 7(1) and 7(2).

5. Mr. Mukhopadhyay learned counsel appearing on behalf of the petitioner submits that the application filed by the defendant/petitioner under section 7(1)and 7(2) of the said act should have been heard and disposed of on merit but the impugned order shows that the order is capricious, arbitrary and perverse and also devoid of any reason . He ought to have allowed applications under section 7(1) and 7(2) of the WBPT Act, 1997 filed by the petitioners/defendants. He further submits that if any delay has been caused in filing the said application, it was due to Covid Pandemic situation and as such trial court should have condoned the delay and allowed those petitions.

6. Mr. Chakraborty Learned Counsel appearing on behalf of the opposite party submits that in view of settled position of law, section 5 of the Limitation Act has got no application in respect of petitions filed by the petitioner under section 7 of the Act.

7. On perusal of record it appears that the suit being T.S. No. 204/2016 was filed by opposite party/plaintiff on 28.03.2016. It further appears from the admission made by petitioner /defendant in his application under section 7(1) and 7(2) of the Act that defendant No. 1 received summon on 29.06.2016 and defendant no. 2 to 6 received summon on 31.08.2016 and filed written

statement on 29.09.2016. However, from the copy of application it appears that defendant filed said application under sections 7(1) and 7(2) of the Act along with an application under section 5 of the limitation Act on 22.02.2017 i.e. long after the statutory period.

8. In **Bijay Kumar Singh and others Vs. Amit Kumar Chamariya and another,** reported in ***(2019) 10 SCC 660,*** the Apex Court has held that sub-section (3) of section 7 provides for consequence of non-payment of rent i.e. striking of the defence against the delivery of possession and to proceed with the hearing of the suit. Such provision is materially different from sub-section (2-A) and (2-B) of section 17 of the earlier Act namely West Bengal Premises Tenancy Act, 1956, (hereinafter called as 1956 Act) which was being examined by the Apex Court in **M/S B.P. Khemka Pvt. LTd. Vs. Birendra Kumar Bhowmick and another** reported in **(1987) 2 SCC 407.** Sub-section (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 circumscribed 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 and the consequences flowing from non-deposit of rent are contemplated under sub-section (3) of section 7 of the Act.

9. The aforesaid law laid down in this context was subsequently followed by the High Court in other judgments reported in **2022 (3) ICC 37(Cal)** and **2022 (1) ICC 777 (Cal).** In view of aforesaid settled position of law, learned trial court

should have disposed of the petitions under section 7 on merit and should not have rejected it on the ground of default.

10. As regards the contention made by the petitioner/plaintiff in C.O. 571/2020, it is submitted that the petitioner herein/plaintiff instituted aforesaid Title Suit No. 204/2016 for a decree of 'Khas possession' of the suit property and the petitioner had categorically stated in plaint that the tenancy right of the opposite parties stood extinguished after the expiry of 5 years from the date of death of their father Tarini Sil who was admittedly the tenant in respect of the suit property and the defendant/tenant/opposite party herein in the written statement has categorically admitted that their father Tarini Sil died on 26.04.1996.

11. The learned counsel appearing on behalf of the petitioner submits that with the enactment of West Bengal Premises Tenancy Act 1997, which came into effect on 10th July 2001, the opposite partys' claim of tenancy right in respect of the suit property is only for a period of 5 years from 10th July 2001 and said period of 5 years had expired on 9th July, 2006 and from 10th July, 2006, the opposite parties have no right of any nature whatsoever to enjoy the suit property. Accordingly petitioner/plaintiff filed application for framing and disposing preliminary issue based on section 2(g) of the West Bengal Premises Tenancy Act 1997 and learned court below taken up said petition for hearing on 29.03.2019, when by passing the impugned order, learned court have been pleased to reject the said application.

12. Mr. Chakraborty learned Counsel appearing on behalf of the petitioner further submits that the order impugned is erroneous in law and suffers from

material irregularity and court below has erred in law by observing that the provisions of section 2(g) is not applicable in the instant case and in support of said rejection order learned court below had not assigned any reason. Learned court below further erred in law by not considering that there is no dispute that original tenant Tarini Sil died on 26.04.1996 and as such the tenancy right of the opposite party stood extinguished with the expiry of 5 years, from the date of coming into effect of the present Act of 1997.

13. In this context the petitioner relied upon Division Bench judgment of this court in **Sushil Kumar Jain and others Vs. Pilani Properties Limited,** reported in ***(2017) 4 Cal. L.T. 575 (HC)*** and contended that even if original tenant died prior to the 1997 Act coming into force, the heirs of the original tenant who were covered by the definition of "tenant" under section 2 (h) of the 1956 Act, would not be regarded as original tenant within the meaning of the expression in section 2(g) of the 1997 Act. It was further held in the judgment that section 2(h) of the 1956 Act could not be read to imply that upon the death with original tenant, those residing with him at the time of his death were *ipsofacto* entitled to some form of protection. In view of above the impugned order no. 28 dated 29.03.2019 passed in aforesaid title suit no. 204/2016 is also liable to be set aside, as learned trial court failed to assign any reason in support of the rejection of the said application.

14. Mr. Rakhit learned counsel on behalf of the petitioner submits that after demise of their father, the defendants have inherited the tenancy right as per the provisions of the earlier West Bengal Premises Tenancy Act 1956 by necessary implication of law and tenancy right once vested upon them the

provisions as laid down in section 2(g) of the Act of 1997 cannot divest their tenancy right and as such have no application upon them, since their father died in the year 1996 i.e. before the present Act came into being.

15. Having considered the facts and circumstances of the case and in view of settled position of law as discussed above, the impugned order no. 42 dated 06.04.2021 is hereby set aside. In view of the admitted position that the application under section 7(1) & 7(2) was not filed within the stipulated period the defence against delivery possession, is struck off, in view of section 7 (3) of the Act of 1997. Similarly since no reason has been assigned in the order of rejection, the order no. 28 dated 29.03.2019 passed in same Title Suit No. 204/2016 is also hereby set aside. Learned Trial Court is directed to hear and to dispose of afresh plaintiff's aforesaid application for disposal of the suit on the basis of preliminary issue framed under order XIV, Rule 1 & 2 of Code of Civil Procedure dated 25.02.2019, in view of section 2(g) of the West Bengal Premises Tenancy Act and in the light of judicial pronouncement as quoted above, within a period of twelve weeks from the date of communication of the order.

16. C.O. 1229 of 2021 and C.O. 571 of 2020 are accordingly disposed of. 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.

(AJOY KUMAR MUKHERJEE, J.)