

22.02.2022
Item No.11
Court No.18
AJ.

C.O. 2233 of 2019
(Through Video Conference)

Smt. Lakhmi Pal & Ors.

-Vs-

Smt. Gaytri Jaiswal & Ors.

Mr. Souradipta Banerjee,
Mr. Naba Krishna Das,
Ms. Fatima Hassan.

... for the petitioners.

Mr. Rabindranath Dutta,
Mr. Sumit Ray.

....for the opposite parties.

Affidavit of service filed in Court be kept
with the record.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendants in a suit for ejectment and is directed against Order No. 77 dated April 4, 2019 passed by the learned Judge, 3rd Bench, Small Causes Court at Calcutta in the said suit being Ejectment Suit No. 349 of 2007.

The learned Trial Judge by the order impugned has dismissed an application filed by the petitioners under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as 'the said Act') for non-compliance of the provisions of Section 7(1) thereof.

The plaintiffs/opposite parties in the suit have alleged that the petitioners are defaulters in payment of rent since October, 2007.

The petitioners entered appearance in the suit on May 21, 2008 and filed two applications, one for supply of copy of the plaint so that they can file an appropriate application under Section 7(2) of the said Act and another application under Section 7(1) of the said Act of 1997 praying permission to deposit rent for the month of October 2007 and the current rent on and from May, 2008.

Mr. Banerjee, learned advocate appearing on behalf of the petitioners submits that the petitioners since appearance in the suit have been depositing rent in the Court and in course of hearing of the application under Section 7(2) of the said Act, filed challans of such deposits which although were proved and marked 'Exhibit' in the proceeding but the learned Trial Judge without considering those challans has dismissed the application under Section 7(2) of the said Act holding that the petitioners have not complied with the provisions of Section 7(1) of the said Act.

On perusal of the order impugned it appears that 13 copies of court deposit challans, 5 copies of court deposit challans and 29 copies of court deposit challans were marked as 'Exhibit 8', 'Exhibit 10' and 'Exhibit 13' respectively.

The learned Trial Judge since has not considered the aforesaid exhibits in coming to the

conclusion that the application under Section 7(2) of the said Act is not maintainable for non-compliance of the provision of Section 7(1) thereof, the order impugned is not sustainable and is accordingly set aside.

The learned Trial Judge is requested to consider the application under Section 7(2) of the said Act afresh expeditiously in accordance with law, preferably within a period of four available effective working months of the said Court from the date of communication of this order.

It is made clear that this Court has not gone into the merit of the application under Section 7(2) of the said Act.

C.O. 2233 of 2019 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)