

07.09.2022
Item No.14
Ct. No.7
CHC
(disposed of)

C.O.1828 of 2022

**Sri Bijay Bhusan Jaiswal
Vs.
Goutam Chandra Dey & ors.**

Mr. Krishna Das Poddar
...for the petitioner

Mr. Abhijit Ray,
Mr. Shubham Gupta,
Mr. Srishendu Bikash Pal
...for the opposite parties

Petitioner assails the order dated 4th May, 2022, passed by learned Judge, 5th Bench, Presidency Small Causes Court, Calcutta, in Ejectment Suit No. 35 of 2021, disposing of petition under Section 7(2) of the W.B.P.T. Act.

Learned advocate appearing for the petitioner upon advertng to paragraph-‘10’ of petition under Section 7(2) of the W.B.P.T. Act submits that the court below has not gone into the facts disclosed in paragraph-‘10’, in particular of such petition, and has proceeded to dispose of the application under Section 7(2) of the W.B.P.T. Act giving precedence to the technicalities for making infraction of the provisions of law as available under Section 7(1)(a) of the W.B.P.T. Act.

It is contended by the petitioner that the petitioner was not given to understand as to whom the rent could be deposited, even after issuance of a notice, dated 2nd

April, 2019, addressed to all the legal heirs of Tarak Nath Dey, since deceased.

It is submitted incidentally that as there is no arrears of rent requiring liquidation, the petitioner has been depositing monthly rent without causing any departure doing adherence to the provisions under Section 7(1)(c) of W.B.P.T. Act.

Per contra, Mr. Ray, learned advocate appearing for the opposite parties disputes with the submission advanced in this case replying that neither in the petition under Section 7(2) of the W.B.P.T. Act, nor anywhere in 7(1) of the W.B.P.T. Act, petitioner has disputed with the relationship of his landlord, and he has never sought for any determination of arrears of rent, nor he has sought for adjudication of any dispute as to the relationship.

It is also submitted by the learned advocate for the opposite parties taking recourse to paragraph '15' of petition under Section 7(2) of W.B.P.T. Act that when the defendant/petitioner has himself disclosed that he was not at all a defaulter at any point of time, the court is not obliged to return a decision under Section 7(2) of the W.B.P.T. Act, when palpably there is no dispute as to the relationship between the parties together with dispute in the arrears of rent, if any.

It is further submitted by the learned advocate for the opposite parties that in paragraph-'3' of 7(1)

petition, the petitioner/defendant has disclosed that the plaintiffs had refused to accept rent from the defendant for the month of January, 2020, but in the prayer portion the petitioner/tenant sought for permission to deposit rent from the month of March, 2021 onwards, which paves the way against the petitioner/defendant to hold him to be defaulter in arrears of rent at least.

According to the submission of the opposite parties, the pleadings already submitted in connection with Section 7(1) and 7(2) of the W.B.P.T. Act, neither can be developed, nor can be improved in any manner whatsoever.

In reply to the submission of opposite parties, Mr. Poddar submits that there has been some inadvertent mistake committed, while drafting petition under Section 7(2) of the W.B.P.T. Act, which should not be critically viewed for the determination of the controversy surfaced at the moment between the parties.

Having considered the submission of both sides, it appears that only dispute raised in this case by the petitioner is against the decision of a petition under Section 7(2) of the W.B.P.T. Act being returned by the court below giving precedence to the technicalities, without adhering to the facts disclosed in paragraph- '10' of petition under Section 7(2) of the W.B.P.T. Act,

though, there is no specific prayer disclosed in the petition under Section 7(2) of the W.B.P.T. Act.

Upon perusal of the impugned order, it appears that the court below has proceeded to dispose of the petition under Section 7(2) of the W.B.P.T. Act without addressing the facts disclosed therein, for not making due adherence to the provisions available under Section 7(1)(a) of the W.B.P.T. Act by the petitioner. In a situation like this, whatever may be the facts disclosed in petition under Section 7(2) of the W.B.P.T. Act, the pertinent facts disclosed require address by the court below in context with the pleadings already filed by the parties. That being the position, there will be no prejudice caused to the opposite parties, if the petition under Section 7(2) of the W.B.P.T. Act be disposed of afresh giving a fresh hearing for the purpose to both the sides.

The impugned order is thus set aside with a direction upon the court below to rehear the same afresh, providing sufficient opportunity of hearing to either of the parties to this, but without granting any unnecessary adjournment, unless it is extremely unavoidable, preferably within four (04) weeks after the Puja Vacation of the court below.

This would not however, prevent the court below remaining in-charge of court of Learned Judge, 5th Bench, Presidency Small Causes Court, Calcutta to

take up this matter, subject to his suitability and convenience.

With this observation/direction, the revisional application stands disposed of.

Parties are directed to make communication of this order to the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)