

S/L 45
22.12.2022
Court. No. 12
Suwayan

CO 1869 of 2022

**Sri Ashok Kumar Parmar @ Sri Ashok Parmer
Vs.
Sri Samar Ray & Ors.**

*Mr. Souradipta Banerjee
Ms. Fatima Hassan
Mr. Anam Zafar*

...for the petitioner.

*Mr. Ramesh Chandra Paul
Ms. Riya Dutta*

...for the opposite parties.

In this revisional application Order No. 95 dated 21.04.2022 as passed in Ejectment Suit No. 200 of 2008 by the learned Judge, 5th Bench, Presidency Small Causes Court at Calcutta has been assailed. By the impugned order learned Trial Court rejected the defendant/tenant's application to deposit of arrears of rent for the period of September 2006 to May 2008 after disposal of the application under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 hereinafter refer to as the 'said Act'.

In support of the instant revisional application, Mr. Banerjee, learned Advocate for the defendant/petitioner draws attention of this Court to the impugned order as well as to the order passed by the learned Trial Court on 17.05.2016 while disposing the petition under Section 7 (2) of the said Act. It is contended that due to *bona fide* mistake the arrear of rent could not be deposited prior to or along with the filing petition under Section 7 (2) of the said Act. It is, thus, argued that for the aforesaid reason

the present petitioner before the learned Trial Court has filed an application under Section 151 of the Code of Civil Procedure on 26.09.2016 for granting permission to deposit the said arrear of rent, that is, for the period of September 2006 to May 2008 at his own risk. It is further contended on behalf of the petitioner that learned Trial Court while passing the impugned order failed to visualize that in the event such an application is allowed by the said Court that would not touch the legality and veracity of the Order No. 56 dated 17.05.2016 as passed by the Trial Court. It is, thus, submitted that the instant revisional application be allowed by the setting aside the impugned order permitting the present petitioner to deposit the arrear of rent as discussed above.

In course of his submission, Mr. Pal, learned Advocate for the plaintiffs/opposite parties, however, opposes such contention. It is submitted by him that the Order No. 56 dated 17.05.2016 as passed by the learned Trial Court in the aforesaid suit has been assailed before a co-ordinate Bench of this Court and the same was upheld. It is contended further that for the non-compliance of provision of Section 7 (1) of the said Act, the present plaintiffs/opposite parties has already filed an application under Section 7 (3) of the said Act before the learned Trial Court and the same is still pending. It is further argued that in the event the present defendant/petitioner is permitted to deposit the arrear of rent as prayed for that would demolish the plaint case of the present opposite party/plaintiff as well as the same will also affect the

petition under Section 7 (3) of the said Act as pending before the Trial Court. In support of his contention, Mr. Pal has placed his reliance upon the two reported decisions namely **“Bijay Kumar Singh & Ors. Vs. Amit Kumar Chamariya & Ors.”** reported in **2020 (1) Indian Civil Cases 664 (S.C.) Supreme Court of India** and **“Anwar Hussain Vs. Raja Mohammed Amin & Ors.”** as reported in **2018 (1) ICC 361 (Cal.)**.

This Court has meticulously gone through the impugned order as passed by the learned Trial Court as well as the entire materials as placed before this Court. This Court has also given due consideration over the submission over the learned Advocate for the contending parties, this Court has also gone through the provision of Section 7 of the said Act.

For effective adjudication of the instant revisional application this Court considers that the relevant portion of the reported decision of Bijay Kumar Singh (Supra) may be looked into and the same is reproduced herein verbatim:

“21. Sub-section (3) provides for consequences of non-payment of rent i.e. striking off the defence against the delivery of the possession and to proceed with the hearing of the suit. Such provision is materially different from sub sections (2A) and (2B) which was being examined by this Court in B.P. Khemka. Sub-sections (2A) and (2B) 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 of sub sections (2) and (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. There is an outer limit for extension of time to deposit of arrears of rent in terms of the proviso to sub section (2) of Section 7 of the Act. The consequences following from non-deposit of rent are contemplated under sub section (3) of Section 7 of the Act. Therefore, if the tenant fails to deposit admitted arrears of rent within one month of receipt of summons or within one month of appearance without summons and also fails to make an application for determination of the disputed amount of rate of rent and the period of arrears and the subsequent non-payment on determining of the arrears of rent, will entail the eviction of the tenant. Section 7 of the Act provides for a complete mechanism for avoiding eviction on the ground of arrears of rent, provided that the tenant takes steps as contemplated under sub section (2) of Section 7 of the Act and deposits the arrears of rent on determination of the disputed amount. The deposit of rent along with an application for determination of dispute is a pre-condition to avoid eviction on the ground of non-payment of arrears of rent. In view thereof, tenant will not be able to take recourse to Section 5 of the Limitation Act as it is not an application alone which is required to be filed by the tenant but the

tenant has to deposit admitted arrears of rent as well.”

The relevant portion of the reported decision of Anwar Hussain (Supra) is as under:

“22. Let us now consider as to whether, in the present case, the application on behalf of the petitioner and the defendant no. 4 under Section 151 of the Code for deposit of the admitted arrear rent from January 2008 to March, 2013 was maintainable. I have already upheld the decision of the learned Single Judge rejecting the application filed on behalf of the defendants in the suit under Section 7(2) of the Act 1997 on the ground of their default to deposit the admitted arrear rent. The time for filing an application under Section 7 (2) of the Act of 1997 has been stipulated in the said section itself read with Section 7(1) of the Act. Of course as held by the decision of the Division Bench of this Court in the case Subrata Mukherjee v. Bishakha Das, (2012) 3 CHN (Cal) 423: [2012 (2) RLR (Cal.) (D.B.) 427: 2012 (4) ICC (Cal) (D.B.) 826]. Section 5 of the Limitation Act applied to an application under Section 7 (2) of the Act of 1997. It is settled law that when a statute provides for a specific remedy in a particular case the Court does not have any inherent power under Section 151 of the code for granting the same remedy. Therefore, in the instant case when the application of the petitioner and the defendant no. 4 under Section 7 (2) of the Act of 1997 was rejected for not being accompanied by the deposit of the arrear rent their subsequent application under

Section 151 of the Code for deposit of admitted arrear rent was not maintainable. Though it is a fact that the learned Court below had first rejected the prayer of the petitioner for condonation of delay in filing the said application under Section 151 of the Code was not maintainable, I do not find any reason to interfere with the impugned second order of the learned Court below rejecting the application under Section 5 of the Limitation Act.

For all the foregoing reasons, there is no merit in the present revisional application and the same is stands rejected.”

On conjoint perusal of the provisions of Section 7 of the said Act and the aforesaid proposition of law as enunciated by the Hon’ble Supreme Court of India as well as by a co-ordinate Bench of this Court, it appears to me that the Hon’ble Apex Court in unequivocal terms made it clear that the out limit for extension of time to deposit the arrears of rent as per provision of Section 7 (2) of the said Act is mandatorily to be maintained and, therefore, in the event the tenant fails to deposit the admitted arrears of rent within one month of the receipt of summons or within one month of appearance without summons and at the same time failed to make an application for determination of the disputed amount of rate of rent and the period of arrears rent as well as the subsequent non-payment on determining the arrears of rent that will entail the tenant from being evicted from the suit property.

In view of such mandatory provision of law as incorporated in the provision of Section 7 of the said Act and as observed by the Hon'ble Supreme Court of India, this Court has got no hesitation to hold that the present revisional application is devoid any merit.

In considered view of this Court the learned Trial Court is very much justified in refusing to allow the present petitioner/defendant to deposit the arrear of rent for the month of September 2006 to May 2008 since such an application has been filed beyond the statutory time limit.

With the aforementioned observation the instant revisional application being CO 1869 of 2022 is dismissed.

The impugned Order No. 95 dated 21.04.2022 as passed in Ejectment Suit No. 200 of 2008 by the learned Judge, 5th Bench, Presidency Small Causes Court at Calcutta is hereby affirmed.

Parties to act on the server copy of this order.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)