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AKG 19-01-2022
Ct.21

C.O. 1719 of 2021
Uttam Kumar Bagaria
Versus
M/s. O. T. Textile Pvt. Ltd.
(VIA VIDEO CONFERENCE)

Ms. Pooja Jewrajka,
...for the Petitioner

Mr. Rishabh Karnani,
Ms. Riya Dutta
...for the Opposite Party

The tenant being aggrieved by the order of striking off his defence under Section 7 (3) of the West Bengal Premises Tenancy Act, 1997 and the rejection of his application dated 17th February, 2018 for modification of the order passed under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 and for extension of time for depositing the determined arrear rent along with interest by the learned Judge, 6th Bench, Presidency Small Causes Court at Calcutta has filed the present revisional application under Article 227 of the Constitution of India.

The background of the case in a nutshell is that the present opposite party being the landlord/owner filed an Ejectment Suit No 280 of 2012 against the present petitioner for his eviction and for recovery of khas possession. The tenant/defendant appeared in the said suit and filed written statement and also filed

a petition under Section 7 (1) of the West Bengal Premises Tenancy Act, 1997 seeking permission to deposit of rent from the month of August, 2012 @ Rs. 661/- per month. Learned court below was pleased to allow such application.

The defendant/tenant also filed an application under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 praying for adjudication of the rate of rent and arrear rent, if any, and to allow the tenant to deposit the same in easy monthly installment, as the landlord has claimed rent to be @ Rs. 2150/- per month while the tenant claims rent to be Rs. 661/- per month.

The learned Court below was pleased to dispose of the application under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 fixing rent of the disputed tenancy @ Rs 2150/- per month and held defendant/tenant to be a defaulter since July, 2010 and thereby directed the defendant/tenant to pay arrear rent of Rs. 1,90,350/- for 89 months and another sum of Rs. 19,035/- towards statutory interest totaling Rs. 2,09,385/- within 30 days from the date of communication of the order. Learned Court below further directed that the tenant to deposit current rent @ Rs. 2150/- by fifteenth of each succeeding month.

Admittedly, the petitioner/tenant has failed to comply the order passed under section 7(3) of the

Tenancy Act of 1997. Rather he has filed an application on 17.02.18 for modification of the order passed under section 7(2) of the Act and time to deposit the actual rent with interest. It has been alleged that calculation made by the learned court below is wrong as Court below has failed to deduct the rent which the tenant has already deposited with the rent controller before institution of the suit and in the Court after institution of the suit @ Rs. 661/- per month from the month of July, 2010 till the November, 2017 amounting to Rs. 57,560/-.

The landlord/plaintiff has also filed a petition under Section 7 (3) of the West Bengal Premises Tenancy Act, 1997 for striking off the defence of the tenant on 17th February, 2018.

Learned Court below heard the application filed by the landlord/tenant under Section 7 (3) of the West Bengal Premises Tenancy Act, 1997 and also the applications filed by the tenant for modification of the order under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 and extension of time for payment on 22nd November, 2019. However, learned Court below after lapse of more than one year of hearing of those applications took trouble to pass the impugned order and whereby rejected the application of the tenant for modification and extension for making deposit of arrear rent and striking off the defence of the defendant by

allowing the application of the landlord under Section 7 (3) of the West Bengal Premises Tenancy Act, 1997.

The petitioner/tenant alleged that the learned Court below passed the impugned order without application of judicial mind and without taking into adjusting the rent which the tenant had deposited with the rent controller and the Court in between July, 2010 and November, 2017 @ Rs. 661/- per month. The petitioner is ready and willing to pay the arrear rent, as determined by the Court but after deduction of the amount which has already been paid by the tenant. Thus, the petitioner has alleged that the Court below has wrongly struck off his defence and prays for setting aside the impugned order.

Learned advocate for the landlord/opposite party submits that tenant should have deposited the amount that was determined by the Court as arrear rent and should have prayed for refund of the excess amount, if any, or could have prayed for adjustment of the excess amount with the future rent payable by the petitioner. He further submits that the petitioner in order to delay the disposal of the eviction suit has adopted dilatory tactics has filed the application for modification of the order and extension for deposit of the determined arrear rent the day, the landlord has filed a petition under Section 7 (3) of the West Bengal Premises Tenancy Act, 1997.

On reading of Section 7 (2) of the West Bengal Premises Tenancy Act, 1997, it appears while disposing the petition under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997, the Court shall specify the amount, if any, due from the tenant and direct the tenant pay to the landlord the amount so specified in the order within one month of the date of such order.

The proviso to such sub-section provides tenant can seek for extension of time for making payment of determined arrear rent with interest and the Court may grant the extension only once and the period of such extension shall not exceed two months.

It is apparent and also admitted position the Learned Court below while calculating arrear rent under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 has failed to adjust a sum of Rs. 57,507/- already deposited by the tenant in the account of the landlord with the rent controller and the court. Therefore, the order passed under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 appears to be erroneous and defective.

It is also admitted position that the tenant has filed a petition for modification of such erroneous order along with a petition pray for extension of time for depositing the actual arrear rent along with interest on 17th February, 2018, but somehow the impugned order is silent about any prayer made by the

defendant/tenant regarding modification of the order under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997. The Court has considered the application to be only for extension of time and rejected the same on the ground of non compliance of the Court's order dated 21st November, 2017 and thereby allowed the petition under Section 7 (3) of the landlord/plaintiff.

The proviso of Section 7 (2) clearly provides that the Court can extend time for making payment of determined arrear rent with interest for another two months. But in the present case, the Court below has failed to adhere to the proviso of Section 7 (2) of the West Bengal Premises Tenancy Act, 1997.

In the present case, the order under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 was passed on 21st November, 2017 and application for extension with modification was made on 17th February, 2018. Therefore it is seen the petitioner has filed application for modification with extension within three months from the date of passing of the order u/s 7 (2) of the Act.

The Co-ordinate Bench of this Court in ***Sri Amitava Sen Vs. Sri Anup Kumar Dey & Ors.***, reported in ***2018 SCC OnLine Cal 3970*** has observed :-

“As held in Subrata Mukherjee’s case,

the power to grant such extension flows from Section 5 of the Limitation Act conjointly with the enabling stipulation in the proviso to Sub-Section(2) of Section 7 of the 1997 Act. However, the Court does not have any power to extend such time for deposit/payment beyond three months from the date of the order under Section 7(2). Any deposit/payment directed to be made under Section 7(2) can be made within such three months, subject to the Court allowing an application for extension/condonation of delay in making the same, if deposited after one months from the date of such order under Section 7(2) of the 1997 Act. As such, the time limit for filing such application for extension/condonation in the present scheme in the 1997 Act, also has to be three months from the date of the order under Section 7(2).

In the light of the above discussions, it can readily be inferred from the specific provisions of the proviso to Sub-Section (2) of Section 7 of the 1997 Act read in the light of Nasiruddin's case, that the last limit for depositing the arrears as directed under Section 7(2) is three months from the date of the order passed under Section 7(2) in view of the stipulation in Section 7(2) that the tenant shall, within one month of the date of the order passed under the said sub-section, pay to the landlord the amount so specified in the

order read with the proviso, which says that the period of the single extension which may be granted by the Court shall not exceed two months. Hence, the one month outer limit of the initial order under Sub-Section (2), in conjunction with the last stretchable limit of a further two months, takes the outer periphery of payment/deposit, as well as the last date for making an extension application to a maximum of three months from the date of the order passed under Sub-Section (2) of Section 7 of the 1997 Act.”

In the light of the above discussions, the order passed under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 on 21.11.2017 and subsequent impugned order dated 09.04.2021 are hereby set aside.

The lower Court is directed to reassess the arrear rent after taking into consideration, the rent already paid by the tenant for the period from July 2010 to November 2017 @ Rs. 661/- per month.

On such fresh determination, the tenant will make deposit of the arrear rent with statutory interest within a month of the passing of the order and no extension will be granted to the tenant for making deposit of such determined arrear rent with interest. If tenant fails then his defence shall stands struck off.

From the record, it is seen that the eviction suit is

pending since 2012 and the Court below is directed to dispose of the suit as expeditiously as possible, preferably within a year from the date of communication of this order.

Accordingly, the revisional application being **C.O. 1719 of 2021** is allowed.

Connected application, if any, are disposed of.

Interim orders, if any, stands discharged.

There will be no order as to costs.

In view of the order made above affidavits are not invited. Allegations made shall be deemed to be denied.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Kesang Doma Bhutia, J.)