

11.04.2022
Item No.20
Court No.18
AJ.

C.O. 2754 of 2019

Subhankar Samaddar
-Vs-
Debasish Ghosh & Ors.

Mr. Aril Ali.
....for the petitioner.

Mr. Kaushik Dey.
.....for the opposite parties.

The petitioner is the defendant of the ejectment suit being Ejectment Suit No. 225 of 2002, pending before the learned Judge, 5th Bench of the Presidency Small Causes Court at Calcutta.

The petitioner in terms of Section 7(1) of the West Bengal Premises Tenancy Act, 1997 was depositing the current rent in the suit but failed to deposit the current rent for the period from October, 2017 to April, 2018.

The learned Trial Judge by the order impugned being order no. 71 dated December 06, 2018 has dismissed an application filed by the petitioner for acceptance of the current rent for the said period upon condonation of delay holding that there is no scope to enlarge the time fixed under Section 7(1)(c) of the said Act of 1997 for deposit of the admitted current rent in the suit.

The petitioner in the said application has alleged that although he had handed over the rent to his erstwhile landlord for depositing the same within the time but the said learned advocate failed to deposit it.

A co-ordinate Bench of this Court by an order dated January 21, 2019 passed in **C.O. 175 of 2017 (THE CALCUTTA GUJARATI EDUCATION SOCIETY - VS- SRI AJIT NARAYAN KAPOOR)** and in **C.O. 689 of 2019 (DR. BINOD KUMAR SINGH -VS- MAYA BANERJEE & ORS.)** formulated the following question of law for determination by a suitable Bench:-

“Does the view of the Division Bench of this court that section 5 of the Limitation Act can be applied to condone delay in making applications under sub-sections (1) and (2) of section 7 of the West Bengal Premises Tenancy Act, 1997, as held in the Subrata Mukherjee case (supra), survive in view of the decisions of the Hon’ble Supreme Court in the Nasiruddin case (supra), the Ashoke Kumar Mishra case (supra), Manjushree Chakraborty case (supra).”

The Hon’ble Division Bench of this Court by the judgment and order dated October 04, 2021 has answered the said question as follows :-

“We answer the question referred to say that Limitation Act, 1963 has no application in respect of an application by a tenant, made under section 7 for determination of arrears of disputed rent.”

In view of the aforesaid answer to the reference the order impugned does not call for any interference.

C.O. 2754 of 2019 is dismissed 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.)