

01.12.2022
Item No.15
Ct. No.7
CHC
(disposed of)

C.O.2256 of 2022

**Mithu Pal
Vs.
Subhasis Kundu**

Mr. Samim Ahammed,
Ms. Gulsanwara Pervin
...for the petitioner

Mr. Sibasis Ghosh,
Ms. Anandamoyi Ghosh
...for the opposite party

Subject-matter of challenge in this case is against the order dated 22nd April, 2022, passed by learned Civil Judge (Junior Division), 1st Court, at Chandernagore, Hooghly, in Title Suit No.92 of 2020, rejecting the application under Section 7(2) of the W.B.P.T. Act, thereby paving the way for application of Section 7(3) of the W.B.P.T. Act against the petitioner/defendant.

Mr. Ahammed, learned advocate appearing for the petitioner without disputing with the provisions of law enunciated in Section 7(1) and 7(2) of the W.B.P. T. Act submits that the court below while making rejection of application under Section 7(2) of the W.B.P.T. Act has not gone into a significant aspect, wherein limitation has stopped running, because of the amnesty shown by the Apex Court as well as by this Court up to 28th

February, 2022, because of the surge of COVID-19 and its proliferation.

Admittedly, petitioner entered her appearance in Title Suit No.92 of 2020, on 9th September, 2020. On the same date, two petitions one under Section 7(1) and another under Section 7(2) of the W.B.P.T. Act were filed.

There is admittedly disclosure in the contents of the petition under Section 7(2) of the W.B.P.T. Act that defendant intended to deposit arrears of rent to the court from the month of August, 2019.

Further admitted position is that subsequently, no step was taken by the petitioner to deposit arrears of rent as already admitted in Section 7(2) petition as well as the written statement filed by the petitioner/defendant.

Surprisingly, a challan is found passed relatable to admitted monthly rent of the petitioner at the rate of Rs.250/- per month from September, 2020. In 7(2) petition, a further dispute was raised with regard to the rate of rent, allegedly claimed by the opposite party/plaintiff.

Upon furnishing such inputs, Mr. Ahammed, learned advocate appearing for the petitioner tries to impress upon this Court that amnesty shown by the Apex Court as well as by this Court, and put up in the website of the court, extending the period of limitation

up to 28th February, 2022 could not be gone into by the court below, while making rejection of the prayer under Section 7(2) of the W.B.P.T. Act, merely upon visualizing the inbuilt limitation prescribed in such legislation.

Mr. Ghosh, learned advocate appearing for the Caveator/opposite party submits that this is the point raised first time before this Court, but it was not raised before the court below.

More so, when there is no ambiguity in 7(1) and 7(2) of the W.B.P.T. Act, there is no scope for making any application of Section 5 of the Limitation Act.

It is further contended that when there has been admission with regard to the arrears of rent, and no step was since thereafter taken to deposit the arrears of admitted rent doing adherence to the requirement of law, there cannot be any mercy shown in aid of the amnesty being extended by the Apex Court as well by this Court upon extending the period of limitation up to 28th February, 2022.

It is further contended that there has been misdescription of suit number in the referred application under Sections 7(1) and 7(2) of the W.B.P.T. Act, and further that there is no such disclosure with regard to the argument now raises in the averment of the petitions under Sections 7(1) and 7(2) of the W.B.P.T. Act.

Without any controversy, the petitioner entered her appearance on 9th September, 2020. There is admission with regard to the arrears of rent, as disclosed in petition under Section 7(2) of the W.B.P.T. Act. There is challan passed from September, 2020, for depositing the monthly rent at the rate of Rs.250/-, without any order of this Court.

Upon perusal of the impugned order, it appears that there is no reference in the order impugned as to the applicability, or non applicability of the extended period of limitation, as per amnesty shown by the Apex Court as well as by this Court upon extending the period of limitation till 28th February, 2022.

A fresh hearing of such application is thus felt obligatory by the court below. The revisional application is thus disposed of without entering into the merits of the case, and without prejudice to the rights and contentions of the parties.

The impugned order is thus set aside with a direction upon the court below to hear out the petitions under Section 7(1) and 7(2) of the W.B.P.T. Act afresh, giving a chance to the petitioner to raise the point, now raised before the court below, and if such point is raised, the same shall be resolved by the court below providing an opportunity of hearing to both the parties. Such exercise may be completed within four

(04) weeks from the date of communication of this order.

With this direction/observation, 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.)