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C.O. 2276 of 2022

**Smt. Kakali Kundu & Ors
Vs
Sri Sreeram Jaiswal**

Mr. Ganesh Prasad Shaw,
Mr. Gaurav Kumar,

... For the petitioners.

Mr. D. K. Mukherjee,
Mr. D. K. Chandra,

... For the opposite party.

While assailing the impugned order dated 6th May, 2022 and 24th June, 2022 passed by learned Chief Judge, Presidency Small Causes Court, Calcutta in Ejectment Suit No. 363 of 2018, Mr. Ganesh Prasad Shaw, leaned advocate appearing for the petitioners submits that application praying for condonation of delay in an Ejectment suit instituted taking the grounds of Section 6 of the West Bengal Premises Tenancy Act, has been allowed, in the absence of the petitioners/plaintiffs initiating eviction suit against the opposite party/defendant.

It is contended by the learned advocate for the petitioners that there is no scope of application of Section 5 of the Limitation Act, in view of the inbuilt mechanism provided in Section 7 of the West Bengal Premises Tenancy Act, prescribing a specific limitation therein, and as such the application praying for

condonation of delay in filing application under Section 7 (1) and 7 (2) of West Bengal Premises Tenancy Act, has been improperly decided making infraction of the settled proposition of law, and the further direction setting those applications for hearing of 7(1) and 7(2) of West Bengal Premises Tenancy Act, is an unauthorised exercise undertaken by the court below.

Reliance is placed by the learned advocate for the petitioners on a decision reported ***in (2019) 10 SCC 660*** delivered in the case of ***Bijay Kumar Singh and Ors. Vs. Amit Kumar Chamariya and Ors.*** to submit that Section 7 of West Bengal Premises Tenancy Act having provided a complete mechanism prescribing a specific limitation therein, there is no scope of application of Section 5 of Limitation Act in such state of affairs.

Upon assailing the impugned orders, learned advocate appearing for the petitioners further submits that opposite party/defendant entered his appearance on 30th January, 2019, upon receiving summons, and then filed a petition under Order 7 Rule 11 of the Code of Civil Procedure, which was ultimately rejected by the Court below on 23rd December, 2021.

Thus neither any application seeking condonation of delay, nor any application under Section 7(1) and 7(2) of West Bengal Premises Tenancy Act, could be filed by the opposite party, doing strict adherence to the

provisions mentioned in Section 7 of the West Bengal Premises Tenancy Act.

Per contra, Mr. D. K. Mukherjee, learned advocate for the opposite party/defendant submits that defendant was put to a dilemma, to whom the rent could be deposited for a change in the circumstances, when a Special Officer has been appointed in connection with an administrative suit.

Regarding the applicability of the judgment referred by the petitioners Mr. D. K. Mukherjee submits that when 7(1) and 7(2) application has not yet been finally disposed of, there is hardly any scope of application of such decision.

Having considered the submission of both sides, it appears that mere filing of a petition under Order 7 Rule 11 C.P.C. would not extend automatically the time period for preferring an application under Section 7(1) and 7(2) immediately after entering appearance in the pending eviction suit.

Order 7 Rule 11 appears to be not controlled by the provisions incorporated in Section 7 of West Bengal Premises Tenancy Act.

It is not in dispute between the parties, that defendant/opposite party entered his appearance on 30th January, 2019. Therefore, opposite party/defendant ought to have taken recourse to Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, if there be any

in accordance with limitation prescribed in the Act itself, which has been propounded in the Apex Court by the case of ***Bijay Kumar Singh(supra)***, as rightly referred by the petitioners.

In view of such settled proposition of law, there may not be any efforts undertaken to unsettle the settled proposition of law.

The law being thus specific and clear that there is no application of Section 5 of the Limitation Act, under Section 7 of the West Bengal Premises Tenancy Act, the impugned orders allowing condonation of delay, thereby permitting the defendant/opposite party to file 7(1) and 7(2) application at a belated stage, making infraction of law, and subsequently setting those two applications for hearing, is not according to law. The condonation application thus not being decided in accordance with law, and being in absence of the petitioners, the same is also set aside with a direction upon the court below to hear out the same within fortnight from the date of communication of this order, providing a chance to the petitioners to file written objection against such prayer for condonation of delay, if not already filed in the meantime, and decide the same read with Section 7(1) and 7(2) of West Bengal Premises Tenancy Act, in accordance with law, so that the proposition of law propounded by the Apex Court, as referred hereinabove may be duly considered in accordance with law.

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

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)