

01.08.2022
(M/L-16)
Ct.-18
(Susanta)

C.O. 3569 of 2019
Sri Gobinda Halder
-Vs-
Sri Samir Kumar Bhandari & Anr.

Mr. Asish Bagchi, Sr. Adv.,
Mr. Satyajit Mondal,
Mr. Amit Bikram Mhata,

... For the Petitioner.

Mr. Tanmoy Mukherjee,
Mr. Sandip Das,
Mr. Souvik Das,
Mr. Rudranil Das,

.... For the Opposite Parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendant/tenant in a suit for ejectment and is directed against the order no. 60 dated January 20, 2017 and the order No.104 dated August 7, 2019 passed by the learned Civil Judge (Junior Division), Second Additional Court at Diamond Harbour in the said suit being Title Suit No. 66 of 2016.

The petitioner in the said suit filed an application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as "the said Act of 1997" in short) praying determination of the relationship of landlord and tenant between the plaintiffs and himself.

The learned Trial Judge by the order impugned No. 60 dated January 20, 2017 disposed of the said application holding that there exists such relationship. The plaintiffs filed an application praying modification of the said order.

The learned Trial Judge by the order no.104 dated August 7, 2019 disposed of the said application permitting the defendant to comply with the order

under Section 7(1) of the said Act of 1997 on deposit of additional 10% along with arrear rent by September 9, 2019, however by the latter part of the said order, allowed the plaintiffs' application under Section 7(3) of the said Act of 1997, thereby struck out the defence of the defendant for non-compliance of the order under Section 7(1) of the said Act of 1997.

Mr. Bagchi, learned senior advocate for the petitioner submits that the learned Trial Judge upon determination of the relationship between the parties under Section 7(2) of the said Act of 1997, is obliged to determine the rate of rent payable but the order no. 60 dated January 20, 2017 is an incomplete order since there is no such determination, he further submits that the defence of the tenant cannot be struck out for not depositing the admitted arrear or current rent in compliance of Section 7(1) of the said Act of 1997.

Mr. Mukherjee, learned advocate for the landlords/opposite parties, responding to the said argument of Mr. Bagchi, submits that the learned Trial Judge by the order No. 63 dated February 13, 2017 directed the defendant to deposit the admitted arrear rent and current rent but the defendant long time thereafter, on September 17, 2019 deposited the arrear rent for the period from 2009 to 2012 along with 10% interest which was not in conformity with the provision of Section 7(1) of the said Act of 1997, as such, the learned Trial Judge allowed the

application of the plaintiffs under Section 7(3) of the said Act of 1997.

Heard learned counsel for the parties, perused the materials-on-record.

The first part of the order no. 104 dated August 07, 2019, when allows the defendant to pay arrear rent along with 10% interest by September 09, 2019, striking out of his defence by the latter part of the said order for non-compliance of the provision of Section 7(1) of the said Act of 1997, at the first blush appears to be not sustainable.

However, on scrutiny of the records, it appears that the defence of the defendant in the suit has been struck out for non-compliance of the order no. 63 dated February 13, 2017, an order passed under Section 7(1) of the said Act of 1997.

This Court, in the aforesaid background, does not find any reason to interfere with the orders impugned.

C.O. 3569 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.)