

8.9.2022

17

Ct. no. 652

sb

C.O. 3657 of 2019

Sri Subodh Banerjee

Vs.

Smt. Alaka Mukherjee

Mr. Prabir Adhya ...for the petitioner

Mr. Ratul Das
Mr. S. Bhattacharya ...for the opposite party

Being aggrieved and dissatisfied with the order dated 30.7.2019 passed by the learned Civil Judge (Junior Division), 1st Court, Barasat in Title suit no. 113 of 2014, the present revisional application under Article 227 of the Constitution of India has been preferred.

Background of the dispute is that the defendant/tenant/petitioner herein appeared in the said eviction suit on 11.6.2014 and has deposited his arrear rent since January 2010 to March 2016 i.e. for 75 months along with 8.33% interest totalling Rs. 9750/- by challan on 30.3.2016. The petitioner also filed an application under Section 5 of the Limitation Act for condonation of delay. Learned Trial court after considering the submissions made by both the parties passed the impugned order no. 32 dated 30.7.2019 whereby he was pleased to hold that the deposit of arrear rent by challan dated 30.3.2016 cannot be held to be a valid deposit, since the payment of said arrear rent

within the statutory period is mandatory provision as laid down in Section 7 (1) of the West Bengal Premises Tenancy Act, 1997 and as a consequence all remaining subsequent challans are invalid and learned trial court concluded that the defendant is not protected under the law and his defence against delivery of possession is accordingly struck off after rejecting the defendant's petition Section 7 (1) of the West Bengal Premises Tenancy Act, 1997 read with Section 5 of the Limitation Act.

The petitioner herein contended that after receiving summon, he appeared in the suit on 11.6.2014 and the petitioner filed written statement on 10.7.2015. However his erstwhile advocate who was appearing before the learned trial court on behalf of the defendant/petitioner, all on a sudden returned his brief to the present petitioner on 1.3.2016 and thereafter the petitioner contacted another advocate under whose instruction he filed application under Section 7 (1) of the West Bengal Premises Tenancy Act, 1997 along with arrear rent and interest @ 8.33% before the trial court. Accordingly learned advocate appearing for the petitioner, submits that trial court has wrongly observed that Section 5 of the Limitation Act is not applicable in the instant case and he ought to have condoned the delay in filing application under Section 7 (1) of the West Bengal Premises Tenancy Act, 1997 by the petitioner.

Learned advocate for the opposite party submits that it is well settled law in view of the decision of the Supreme Court and also the judgments passed by this court that Section 5 of the Limitation Act has got no application in respect of an application made under Section 7 (1) of the West Bengal Premises Tenancy Act, 1997. In this context, he relied upon Supreme Court judgment in Bijay Kumar Singh and others vs. Amit Kumar Chamariya and another (2019) 10 SCC 660 and also the judgments passed by Division Bench of this court in C.O. 175 of 2017 with C.O. 689 of 2019 dated 4.10.2021 and another judgment passed by a single bench in C.O. 3138 of 2019 on 23.12.2021. The opposite party further submits that the petitioner admittedly deposited arrear rent after almost two years of his appearance and that too along with interest @ 8.33% per annum but the statute clearly mandates in Section 7 (1) of the West Bengal Premises Tenancy Act, 1997 that he is required to pay arrear rent along with interest @ 10% per annum.

Learned advocate for the opposite party submits reason assigned by petitioner for delay in filing petition under Section 7 (1) of the West Bengal Premises Tenancy Act, 1997 was on the ground that erstwhile advocate who was appearing before the trial court, all on a sudden returned his brief on 1.3.2016 and as he was not instructed to file petition under Section 7 (1) of the West

Bengal Premises Tenancy Act, 1997 by the erstwhile advocate so he could not place it before the court in time but it appears from his application under Section 7 (1) of the West Bengal Premises Tenancy Act, 1997 in paragraph 4 that the learned advocate on or about 1.3.2016 voluntarily returned the brief to the defendant with the expression about his serious engagement with the criminal matters and got no time to conduct civil cases. The opposite party submits that however it is settled position of law that ignorance of law is of no excuse.

Considered the submissions made by both the parties. Before going to further details, Section 7 (1) of the West Bengal Premises Tenancy Act, 1997 may be reproduced below:-

“7. (1) (a) On a proceeding being instituted by the landlord for eviction on any of the grounds referred to in section 6, the tenant shall, subject to the provisions of sub-section (2) of this section, pay to the landlord or deposit with the Controller all arrears of rent, calculated at the rate at which it was last paid and up to the end of the month previous to that in which the payment is made together with interest at the rate of ten per cent per annum. **(b)** Such payment or deposit shall be made within one month of the service of summons on the tenant or, where he appears in the proceeding without the summons being served upon him, within one month of his appearance. **(c)** The tenant shall thereafter continue to pay to the landlord or deposit with the Controller month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.”

Admittedly in the present context, the defendant/tenant appeared in the eviction suit on 11.6.2014 but he deposited arrear amount of rent along with 8.33% interest by challan on 30.3.2016 and he filed

application under Section 7 (1) of the West Bengal Premises Tenancy Act, 1997 on 27.4.2016. The only issue involved in the present context is whether such delay in filing application under Section 7 (1) of the West Bengal Premises Tenancy Act, 1997 can be condoned under Section 5 of the Limitation Act or not.

In **Bijay Kumar Singh (supra)** it has been specifically held by the Apex court in paragraphs 20 and 21:-

“20. Therefore, sub-section (1) deals with the payment of arrears of rent when there is no dispute about the rate of rent or the period of arrears of rent. Sub-section (2) of Section 7 of the Act comes into play if there is dispute as to the amount of rent including the period of arrears payable by the tenant. In that situation, the tenant is obliged to apply within time as specified in sub-section (1) that is within one month of the receipt of summons or within one month of appearance before the court to deposit with the Civil Judge the amount admitted by him to be due. The tenant is also required to file an application for determination of the rent payable. Such deposit is not to be accepted, unless it is accompanied by an application for determination of rent payable. Therefore, sub-section (2) of Section 7 of the Act requires two things, deposit of arrears of rent at the rate admitted to be due by the tenant along with an application for determination of the rent payable. If the two conditions are satisfied then only the court having regard to the rate at which rent was last paid and for which tenant is in default, may make an order specifying the amount due. After such a determination the tenant is granted one month's time to pay to the landlord the amount which was specified. The proviso of the Act, limits the discretion of the court to extend the time for deposit of arrears of rent. The extension can be provided once and not exceeding two months.

“21. Sub-section (3) provides for consequences of non-payment of rent i.e. striking off the defence against the delivery of the possession and to proceed with the hearing of the suit. Such provision is materially different from sub-sections (2-A) and (2-B) which was being examined by this Court in *B.P. Khemka [B.P. Khemka (P) Ltd. v. Birendra Kumar Bhowmick, (1987) 2 SCC 407]*. Sub-sections (2-A) and (2-B) of Section 17 of the 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso to Section 7(2) and sub-section (3) of Section 7 of the Act. Therefore, the provisions of sub-section (2) are mandatory and required to be scrupulously followed by the tenant, if the tenant has to avoid the eviction on account of non-payment of arrears of rent under Section 6 of the Act. There is an outer limit for

extension of time to deposit of arrears of rent in terms of the proviso to sub-section (2) of Section 7 of the Act. The consequences flowing from non-deposit of rent are contemplated under sub-section (3) of Section 7 of the Act. Therefore, if the tenant fails to deposit admitted arrears of rent within one month of receipt of summons or within one month of appearance without summons and also fails to make an application for determination of the disputed amount of rate of rent and the period of arrears and the subsequent non-payment on determining of the arrears of rent, will entail the eviction of the tenant. Section 7 of the Act provides for a complete mechanism for avoiding eviction on the ground of arrears of rent, provided that the tenant takes steps as contemplated under sub-section (2) of Section 7 of the Act and deposits the arrears of rent on determination of the disputed amount. The deposit of rent along with an application for determination of dispute is a precondition to avoid eviction on the ground of non-payment of arrears of rent. In view thereof, tenant will not be able to take recourse to Section 5 of the Limitation Act as it is not an application alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.”

Accordingly the deposit of rent along with an application for determination of dispute is a precondition to avoid eviction on the ground of non-payment of arrears of rent and such delay in deposit of rent along with application within the statutory period cannot be condoned by taking recourse to Section 5 of the Limitation Act. The Apex court observed that it is not an application alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.

In **Calcutta Gujarati Education Society vs. Sri Ajit Narayan Kapoor (C.O 175 of 2017 and C.O. 689 of 2019)**, a division bench of this court was also of clear view that the Limitation Act, 1963 has no application in respect of an application by a tenant made under Section 7 (1) of the West Bengal Premises Tenancy Act, 1997 for determination of arrears of disputed rent. The opposite

party has also referred a judgment of this court passed in C.O. 3138 of 2019 (Abhishek Singh vs. Bholanath Kundu) where also it was held that the provision under Section 7 of the West Bengal Premises Tenancy Act, 1997 is mandatory and required to be scrupulously followed by the tenant if the tenant has to avoid eviction on account of non-payment of arrears of rent under Section 6 of the Act.

In view of the settled position of law, there is nothing to interfere with the observation made by the trial court in the impugned order no. 32 dated 30.7.2019.

Accordingly, C.O. 3657 of 2019 is dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)