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Ct. 18
02.05.2022

C.O. No. 3722 of 2019

Sri Asarfi Roy
Vs.
Smt. Shila Saha & Ors.

Mr. Gopal Chandra Ghosh ... For the petitioner.

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal ... For the opposite parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the tenant/defendant in a suit for eviction and is directed against orders dated August 06, 2019 and August 04, 2017 passed by the 3rd Court of learned Civil Judge, (Junior Division) at Alipore, District – 24 Parganas (South) in the said suit being Ejectment Suit No. 44 of 2014.

The learned Trial Judge by the first order impugned being order dated August 04, 2017 has disposed of an application filed by the petitioner under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act' in short) thereby holding that the petitioner is defaulter in payment of rent since December 2012 to August 2014.

The petitioner filed an application seeking recall and/or modification of the said order.

The learned Trial Judge by the next order impugned being order dated August 06, 2019 has also dismissed the said application.

The plaintiffs have alleged that the petitioner is defaulter in payment of rent since December 2012. The petitioner in the application under Section 7(2) of the said Act of 1997 disputed the said allegation of the plaintiffs and by the said application prayed determination of the arrear rent payable.

The petitioner alleged that one Bablu Saha (since deceased), husband of the plaintiff no. 1 and father of plaintiff no. 2 inducted him as a tenant in the suit property and granted him rent receipts upto the month of April 2013. The petitioner further alleged that after the death of the said Bablu Saha he tendered the rent for the month of June 2013 to the plaintiffs by money order, but the plaintiffs refused to accept the same, the petitioner thereafter started depositing the rents with the Rent Controller on and from June 2013 to the credit of the plaintiffs.

The learned Trial Judge disposed of the application under Section 7(2) of the said Act of 1997 holding that deposit of rents with the Rent Controller are not valid since those deposits were not preceded by a valid tender and held that the petitioner is defaulter in payment of rent for the period from December 2012 to August, 2014.

The petitioner to prove the validity of the said deposits with the Rent Controller filed the postal receipts of the money order through which the rent for the month of June 2013 was tendered to the plaintiffs

along with an application seeking recall of the said order dated August 4, 2017.

The learned Trial Judge dismissed the said application on the grounds that those documents were not filed at the relevant point of time and the order disposing the application under Section 7(2) of the said Act of 1997 has not been challenged in any higher forum.

The petitioner is claiming that he has deposited the rent with the Rent Controller for the period for which he has been declared a defaulter, his such claim was not accepted by the learned Trial Judge as those deposits were found to be not valid for want of valid tender prior to such deposits.

The petitioner wants to produce document to substantiate his claim that those deposits were preceeded by a valid tender, such opportunity should not be denied to the petitioner for his failure to assail the earlier order disbelieving his said claim in higher forum. That apart, the issue whether payment of rent to said Bablu Saha is of any benefit to the petitioner is required to be addressed, particularly in view of the dispute raised by the plaintiffs regarding their relationship with the said Bablu Saha.

The application under Section 7(2) of the said Act of 1997, for the aforesaid reasons requires a fresh consideration, the orders impugned therefore are set aside.

The learned Trial Judge is requested to decide the application under Section 7 (2) of the said Act of 1997 afresh in accordance with law.

The nature of the application demands its expeditious disposal, the learned Trial Judge is requested to expedite the disposal of the said application in accordance with law without granting any unnecessary adjournment to either of the parties.

C.O. 3722 of 2019 is disposed of with the above terms 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.)