

October 4, 2023
Sl. No.17
Court No.19
s.biswas

CO 56 of 2023

Prashant Kumar Didwania

vs.

Rajib Kumar Hari

Mr. Souradipta Banerjee

Ms. Deblina Chattaraj

Ms. Fatima Hassan

... for the petitioner

Affidavit of service filed by the petitioner is taken on record.

This revisional application arises out of an order dated November 25, 2022 passed by the learned Judge, 11th Bench, City civil Court at Calcutta in Title Suit No.1786 of 2022. The suit is for eviction on the ground of Section 2(g) of the West Bengal Premises Tenancy Act (hereinafter the said Act). The tenant filed an application for deposit of current rent by filing an application under Section 7(1) of the said Act. The learned court allowed the said application and permitted the tenant to deposit the regular monthly rent with the court as prayed for in the said application, at his own risk.

It also appears that an application under Section 7(2) of the said Act is pending.

Considering the fact that the suit is under Section 2(g) of the said Act and recovery of possession from the defendant who was treated to be a trespasser, the provision of Section 7 of the said Act would not give any protection to the tenant.

Section 7 of the Act is quoted below:-

“7. When a tenant can get the benefit of protection against eviction.-

(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.

(2) If in any proceeding referred to in sub-section (1), there is any dispute as to the amount of the rent payable by the tenant, the tenant shall, within the time specified in that sub-section, deposit with the Civil Judge the amount admitted by him to be due from him together with an application for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. On receipt of the application, the Civil Judge shall, having regard to the rate at which rent was last paid and the period for which default may have been made by the tenant, make, as soon as possible within a period not exceeding one year, an order specifying the amount, if any, due from the tenant and, thereupon, the tenant shall, within one month of the date of such order, pay to the landlord the amount so specified in the order:

Provided that having regard to the circumstances of the case, an extension of time may be granted by the Civil Judge only once and the period of such extension shall not exceed two months.

(3) If the tenant fails to deposit or pay any amount referred to in subsection (1) or subsection (2) within the time specified therein or within such extended time as may be granted, the Civil Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.”

Sections 7(1) and 7(2) of the Act provide a mechanism by which the tenant can seek protection from eviction on any of the grounds mentioned under Section 6 of the said Act by payment of rent and arrear rent. The said provision does not come into operation when a suit for eviction on the ground of 2(g) has been preferred.

Mr. Banerjee, learned advocate for the petitioner, submits that the learned court misguided itself in passing the order impugned and in allowing the tenant to deposit the monthly rent.

Mr. Bhattacharya, learned advocate for the opposite party, submits that in a proceeding before the learned Rent Controller, the petitioner was adjudicated as tenant.

In my opinion, it is for the plaintiff to prove his case of eviction under Section 2(g). In the alternative, if the defendant establishes his claim of being a premises tenant, the suit will automatically fail.

Under such circumstances, the order impugned is set aside. Any money that may have been deposited pursuant to the order of the court, can be withdrawn by the opposite party. The pending

proceeding will continue. The petitioner can pray before the learned court below for immediate disposal of the pending application.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)