

04.12.2023
Court No. 19
Item no.12
CP/GB

C.O. No. 240 of 2023

Smt. Suvra Mitra

Vs.

Sri Arun Kumar Das & anr.

Mr. Abhilash Chatterjee

.....for the petitioner.

The petitioner is the defendant/tenant in Ejectment Suit No. 130 of 2017. The petitioner is aggrieved by the order dated September 21, 2022, passed by the learned Civil Judge (Junior Division), 3rd Court, Alipore, South 24 Parganas. By the order impugned, the learned court rejected an application filed by the petitioner praying for modification of the order dated November 12, 2018, under Section 151 of the Code of Civil Procedure. The petitioner prayed that the order should be modified to the extent that the question of default should be adjudicated by the learned court.

The plaintiffs/opposite parties filed a written objection to the said application, inter alia, stating that the order dated November 12, 2018 by which the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as 'the said Act') was rejected, had been challenged by the petitioner in a revision before the learned

Additional District Judge, 11th Court at Alipore. The said revisional application was dismissed with liberty to the petitioner to approach the correct forum. Instead of challenging the order dated November 12, 2018 passed under Section 7(2) of the said Act before this court, the petitioner filed an application under Section 151 of the Code of Civil Procedure, praying for modification of the order dated November 12, 2018.

Upon hearing the learned advocate for the respective parties, the learned court held that the proper course of action for the petitioner would have been to challenge the order passed on November 12, 2018, before the appropriate forum. Secondly, the application suffered from suppression. The fact that the petitioner had approached the revisional court under Section 115A of the Code of Civil Procedure and an order was passed therein, rejecting such application, had been suppressed by the petitioner in the application for modification of the order.

The Court was of the view that the order dated November 12, 2018 ought to have been challenged before the appropriate forum by way of revision, which was not done. The modification application was filed as an afterthought. The modification application was thus, rejected.

Mr. Chatterjee, learned advocate for the petitioner submits that the present case was a changed brief and the erstwhile learned advocate did not conduct the case properly. Further, the issue of default ought to have been decided by the learned court below, while adjudicating the application under Section 7(2) of the said Act. Instead of deciding whether arrear rents were payable, the trial judge rejected the application under Section 7(2) of the said Act, in a mechanical manner. Reliance has been placed on a decision of a learned coordinate Bench of this Court in the matter of ***Sunil Kumar Mishra versus Shatrughna Prasad Singh*** reported in ***2015 ICC (4) CAL 668***. Mr. Chatterjee vehemently urges the Court to follow the said judgment and direct re-adjudication of the application for modification of the order dated November 12, 2018. Reliance has been placed on paragraphs 19 to 22 of the said decision. The petitioner also relies on the decision of this Court in the matter of ***Lal Bahadur Singh versus Sri Amit Kumar Chamaria & Anr.*** reported in ***2018 CHN (CAL) 689***

The facts of the case, in a nutshell are that the opposite parties filed a suit for eviction under Section 6 of the West Bengal Premises Tenancy Act, 1997. The plaintiffs averred that the tenancy was determined by a notice to quit and the plaintiffs were

entitled to a decree of recovery of khas possession and mesne profit. That the defendant was in wrongful possession of the premises on and from May 1, 2017.

The defendant/petitioner filed a written statement and contested the proceedings. The defendant also filed applications under Sections 7(1) and 7(2) of the said Act.

In the application under Section 7(1) of the said Act, it was categorically stated that the defendant/petitioner had already filed an application under Section 7(2), praying for suspension of the rent till the filtered water connection was restored. That the defendant/petitioner intended to deposit the monthly rent only after the application under Section 7(2) of the said Act was disposed of. Further, it was contended that rents payable from April 2017 and May 2017, had been deposited before the learned Rent Controller. The petitioner prayed for permission to deposit the rent from June 2017, month by month every month, but only after the application under Section 7(2) of the said Act was disposed of. The application under Section 7(2) of the said Act was filed before the learned court below, with a prayer to allow the petitioner to deposit the arrear rent, till the filtered water connection was restored by the landlord.

The said application under Section 7(2) was rejected by the learned court below on the ground that a prayer of such nature could not be allowed in the said application, as the law under Section 7 of the West Bengal Premises Tenancy Act mandated that the defendant could seek protection from eviction, only upon compliance of the provisions of Sections 7(1) and 7(2) of the said Act.

According to the learned trial court, neither any dispute with regard to the relationship between landlord and tenant nor any dispute with regard to the amount of rent, had been raised.

The said order was subject to revision by the High Court, but the petitioner, in spite of having been granted that liberty by the learned Additional District Judge, 11th Court at Alipore, in Civil Revision No.01 of 2019, by order dated March 9, 2021, did not avail of such procedure. Instead, an application under Section 151 of the Code of Civil Procedure was filed on April 7, 2021 for modification of the order by which the application under Section 7(2) of the said Act was rejected. Thereafter, the petitioner filed an application for modification of the order dated November 12, 2018.

This Court finds that in the application under Section 7(1) of the said Act, the petitioner stated that rent had been deposited in the office of learned Rent

Controller and the petitioner was liable to pay rent from June 2017, subject to the disposal of the application under Section 7(2). In the application under Section 7(2) of the said Act, the petitioner categorically stated that there were no arrears and the petitioner should be permitted not to deposit the current rent before the water connection was restored. Neither did the petitioner raise any dispute with regard to the relationship of landlord and tenant nor did the petitioner dispute the rate of rent. Rather, it was the contention of the petitioner that the current rent was not payable by the petitioner, until restoration of the filtered water supply. There is not a single averment that the rate of rent was disputed and the arrears payable had to be decided by the court. The petitioner had also not averred whether the admitted arrears had been deposited.

In the decision of ***Bijay Kumar Singh & Ors. versus Amit Kumar Chamariya & Anr.*** reported in ***(2019) 10 SCC 660***, the Hon'ble Apex Court held as follows:-

19. Sub section (1) of Section 7 of the Act relieves the tenant from the ejectment on the ground of non-payment of arrears of rent if he pays to the landlord or deposits it with the Civil Judge 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. Such payment or deposit shall be made within one month of the service of summons on the tenant or, where he appears in the suit

without the summons being served upon him, within one month of his appearance.

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 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 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 (2A) and (2B) which was being examined by this Court in B.P. Khemka. Sub sections (2A) and (2B) of Section 17 of 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso of sub sections (2) and (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 pre-condition 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."

Thus, it was incumbent on the petitioner to deposit the admitted arrear rent, if any, along with 10% statutory deposit, which was not done. Rather, it was the petitioner's contention that there were no arrears. Secondly, in the application under Section 7(2), the petitioner ought to have raised a dispute with regard to the rate of rent/arrear rent/default, if any, by urging the court to decide such issue. Such issue was not raised. Instead, the petitioner prayed for an order declaring that the petitioner was not

required to pay the current rent, till the filtered water supply was restored.

Thus, the Court rightly rejected the application under Section 7(2), *inter alia*, holding that the petitioner's application was misconceived. In terms of the provisions of Section 7 of the said Act, the compliance of Section 7(1) and 7(2) were mandatory for the tenant to seek protection from eviction in a suit filed under Section 6 of the said Act. By filing the modification application after three years from rejection of the application under Section 7(2), the petitioner cannot seek determination of arrear rents, contrary to the pleadings, as a specific stand was taken that there were no arrears. Moreover, the compliance of Section 7(1)(c) with regard to payment of current rent, is also not available with the records.

The petitioner/tenant is now urging the court to decide the question of default and pass necessary orders. It has been judicially settled that a belated application for determination of arrears of rent payable by the tenant cannot be entertained.

A Division Bench in the **Calcutta Gujarati Education Society vs Sri Ajit Narayan Kapoor** decided in **C.O. 175 of 2017**, answered a reference in view of conflicting decisions and held that Section 5 of the Limitation Act, could not be applied to condone delayed deposit.

Although, the modification application has been couched as one for modification of the order of rejection of the application under Section 7 (2), this Court is of the view that the question of modification of the order would not arise in this case, as in that event, the court would be asked to determine a dispute to be decided in an application under Section 7(2) of the said Act which ought to have been filed within the time prescribed by law with necessary pleadings, upon deposit of the admitted arrears and with 10 % statutory interest.

The decision in Sunil Kumar Mishra (*supra*) will not help the petitioner, inasmuch as, in the said case that the court failed to take into account certain challans deposited by the defendant/tenant and held that the defendant was a defaulter. By an application under Section 151 of the Code of Civil Procedure, a rectification was sought. The application was rejected and the High Court directed the trial court to look into those challans and decide the application for rectification. The decision in Lal Bahadur Singh (*supra*) will also not apply in this case, in view of the decision in Amit Kumar Chamariya (*supra*).

The application for modification talks about the failure on the part of the learned court below to determine the default. Whereas, in the application itself, there is not a single averment that the court

was required to determine the arrear rent or that the petitioner had disputed either the relationship between the parties or the amount of rent. Thus, the question of modification of the order would not arise.

Under such circumstances, the order impugned does not call for any interference.

Accordingly, the revisional application is dismissed.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)