

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 344 of 2022

Sushila Kumari Raidani & Ors.

VERSUS

American Spring & Pressing works (P) Limited

For the petitioners:

Mr. Ganesh Prasad Shaw, Adv.

for the respondent:

Mr. Moni Sankar Chattopadhyay, Adv.
Ms. Munmun Biswas, Adv.

Judgment on: April 21, 2023

Biswaroop Chowdhury, J:

The petitioner before this Court is the Landlord Plaintiff in a suit for eviction and is aggrieved by the order dated 06-02-2018 passed in Ej – 407 of 2017 by Learned Chief Judge Presidency Small Causes Court Calcutta, allowing the application filed under Section 7(1) of the West Bengal Premises Tenancy Act 1997.

The case of the petitioner/plaintiffs may be summed up thus:

1. One M/S Seth Misree Lal Raidani, proprietor, Ashok Kumar Raidani instituted an ejectment suit being Ejectment Suit No – 407/2017 in Presidency Small Causes Court Calcutta against the respondent/defendant who is a tenant in respect of one room no. 27 located on the ground floor at premises no. 6 A Temple street, P.S. Bowbazar Kolkata – 700072 at a monthly rental of Rs 501/- according to English Calender month.
2. During the pendency of the said Ejectment Suit No. 407 of 2017 the original plaintiff Ashok Kumar Raidani died on 18th July 2021.
3. After the demise of original Plaintiff right to sue survived with the legal heirs of the deceased and as such the petitioners filed an application under Order 22 Rule 3 read with Section 151 of the Code of Civil Procedure 1908 and the Learned Judge 4th Bench Presidency Small Causes Court at Calcutta by Order dated 10th February 2022 allowed the Legal heirs of the proprietor/original Plaintiff to be substituted as plaintiffs in the said ejectment Suit No. 407 of 2017. The petitioners being

the legal heirs of deceased proprietor are now the plaintiffs in the instant suit.

4. The petitioners are now the landlords and the respondent is a tenant in respect of one room no-27. Located on the ground floor at premises no-6A, Temple street, P.S. Bowbazar or Kolkata – 700072 at a monthly rental of Rs. 501/- according to English Calendar Month.
5. The petitioners have filed Ejectment Suit No. 407 of 2017 on the grounds as stated in the plaint on 2-11-2017 against the respondent and the Learned Trial Court was pleased to fix 4.12.2017 for S/R and A/D and appearance of the respondent.
6. By an order dated 4-12-2017 Learned Trial Court held that one postal cover with A/D returned unserved with remark “D/C” in respect of defendants Kolkata address, and neither M/C report nor any postal report from defendants Mumbai address has come.
7. In terms of order dated 4-12-2017, the then recorded Learned Advocate in the Suit initiated proceedings with the local Post Master, Esplanade post office, Kolkata wherein the petitioners

sought information regarding the status report of the consignments despatched to the respondent and whether summons had been served upon the respondent's Mumbai address.

8. In reply to the Learned Advocate's notice dated 29-01-2018 addressed to the post Master, Esplanade Post Office, the Customer Grievance Handling System, India Post stated that summons to the respondent's Mumbai address had been delivered on 11.11.2017.
9. The respondent entered appearance in the said Ejectment suit on 06.02.2018 by filing two separate applications, one application under Section 7(1) of the West Bengal Premises Tenancy Act 1997 and another application under Section 7(2) of the West Bengal Premises Tenancy Act 1997, which were allowed by the Learned Court below.
10. The petitioner pursuant to the order passed by Learned Court below in allowing the application filed by the respondent under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1977 moved an application under Section 151 of

the Code of Civil Procedure which was rejected on the ground that the remedy of the petitioners lies before the higher forum.

The petitioners being aggrieved by the Orders passed by Learned Court below has come up with the present application with a prayer for setting aside order dated 6.2.2018 passed by Learned Court below and for dismissing the petition under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997. It is contended by the petitioner/plaintiff that the Learned Trial Court acted in material irregularity in not taking into account that no date was mentioned in the respondent's application under Section 7(1) of the West Bengal Premises Tenancy Act 1997 as to when the said respondent received Summons in the said ejectment Suit. It is further contended that the Learned Trial Court failed to appreciate that there was delay of 88 days of respondent/defendant in filing their application under Section 7(1) of the West Bengal Premises Tenancy Act 1997. It is also contended that the Learned Court failed to apply mind in rejecting application for recalling order no- 4 dated 06.02.2018

and directing the petitioner to move the higher forum for proper adjudication of the matter.

Heard Learned Advocates for the parties perused the petition filed and materials on record.

Learned Advocate for the petitioner submits that the Learned Trial Judge erred in allowing the application under Section 7(1) of the West Bengal Premises Tenancy Act 1997 when there was delay in filing the said application. Learned Advocate draws attention to the Annexure B, and Annexure 'C' of the petition and submits that the Learned Court below failed to consider the report issued by postal Authority where it appears that the summons were delivered to the defendant/respondent on 11-11-2017.

Learned Advocate for the respondent submits that his client was not served at Calcutta office and had to come from Bombay upon receipt of the summons. Learned Advocate submits that although the defendant could not appear on the 1st day fixed by Court but he appeared on the 2nd date fixed. Learned Advocate

also submits that the petitioner filed this application after a long period thus it should not be entertained.

Before proceeding to decide the merits of this Revisional Application this Court is of the view that at the very outset it is necessary to consider the delay in filing this application.

It appears that although the impugned Order of Learned Trial Court is on 06/02/2018, this Revisional Application is filed after a period of 4 years, without giving any explanation. Although the petitioner/plaintiff has come up with the instant application after a period of 4 years from the date of passing of the impugned order but considering the grounds of challenge, and the relevant statutory provision governing the disposal of application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997, this Court is of the view that this application should be decided on merits. It is held in different Judicial decision that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction to keep the subordinate Courts and tribunals within

the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used to meet the ends of justice.

In the instant application the grievance of the petitioner/plaintiff is that the Learned Court below was pleased to allow the petition filed by the defendant/respondent under Article 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 although the said applications were filed beyond the statutory period and thus being barred by Limitation.

Before proceeding to enter into the validity of the order dated 6.2.2018 passed by the Learned Court below in application under Section 7(1) and Section 7(2) of the West Bengal Premises Tenancy Act 1997 it is necessary to consider the provisions contained in sub-Section 1, and 2 of Section 7 of the West Bengal Premises Tenancy Act 1997 Section 7 of the West Bengal Premises Tenancy Act 1997 provides as follows:

1. (a) on a [suit] 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 Civil Judge] all arrears of rent calculated at the rate at which it was last paid and upto 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 [suit] 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 Civil Judge] month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate.

2) if in any [suit] 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 from the date of such order pay to the Landlord the amount so specified in the order. Provided having regard to the circumstances an extension of time may be granted by [the Civil Judge] only once and the period of such extension shall not exceed two months.

Thus the provision contained in Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act provides the obligation of deposit of rent by a tenant upon receipt of the summons of a suit instituted by Landlord on any of the grounds referred to in Section 6 of the said Act. It also provides the time limit within which tenant shall deposit rent from the date of receipt of summons.

Upon perusal of the order dated 06-02-2018 passed by the Learned Trial Court it appears that the Learned Court observed that the petition under Section 7(1) of the West Bengal premises

Tenancy Act 1997 is within time and allowed the defendant/respondent to deposit arrear rent, without specifying as to when the defendant/respondent received the summons and the date when the defendant filed application under Section 7(1) of the West Bengal Premises Tenancy Act. In absence of particulars it is not clear as to how the Learned Trial Judge came to the findings that the application under Section 7(1) of the West Bengal Premises Tenancy Act is within time. Moreover the objections filed by the plaintiff/petitioner to the petition under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 were also not considered before arriving at the decision. Thus the order of the Learned Trial Judge cannot be sustained and the same should be set aside by remitting the matter to the Learned Trial Court to reconsider and decide on the point of limitation of the application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997, and pass necessary orders upon hearing both the parties. The objection filed by the plaintiff/petitioner to the application under Section 7(1) of the West Bengal Premises Tenancy Act shall also be taken into consideration before arriving at any decision. In the event the defendant/respondent intends to file reply to the objection he may

file the reply which also should be considered. In the Judgment of Bahadur Singh Kathotia vs Smt Purabi Basu being C.O. 2575 of 2022 dated January 06, 2023 delivered by this Court it was observed that by virtue of Section 40 of the West Bengal Premises Tenancy Act 1997 Law of Limitation is applicable under proceedings made in Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act. Thus liberty is given to the defendant/respondent to file application under Section 5 of the Limitation Act if the defendant/respondent thinks fit and if so advised along with supplementary affidavit giving necessary particulars to the application under Section 7(1) of the West Bengal Premises Tenancy Act 1997. In the event such application for condonation of delay and supplementary affidavit is filed the plaintiff/petitioner will be entitled to file objection to the same and the defendant may file reply if any. It is however made clear that in the event the Learned Court below comes to a finding that the application under Section 7(1) and 7(2) was filed within the period of Limitation, or there is ground to condone the delay further direction of payment of rent may not be issued and the earlier direction made in Order dated 6/2/2018 and 2/07/2018 shall continue.

In the event Learned Court finds that the application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997, is not filed within period of limitation and there is no ground to condone delay necessary orders may be passed in accordance with law.

This revisional application stands disposed by remitting the matter to the Learned Trial Court for re-considering the application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 in Ejectment Suit No-407 of 2017 now pending before Learned 4th Bench Presidency Small Causes Court Calcutta in accordance with the observation made hereinabove.

As the suit for eviction is pending from the year 2017, learned Trial Court is requested to expedite the hearing of the suit.

Biswaroop Chowdhury,J