

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**C.O. 449 of 2019
Pushpa Madan & Ors.
Vs.
M/S. Jagadish Caterar Pvt. Ltd.**

For the petitioners : Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. K.R. Ahmed
Mr. Rudranil Das

For the opposite parties : Mr. Aniruddha Chatterjee
Mr. Sib Sankar Das

Heard on : 08.08.2023

Judgment on : 17.08.2023

Ajoy Kumar Mukherjee, J.

1. Order dated 29th November, 2018 passed by the Learned Civil Judge (Senior Division) 2nd Court, Alipore in Ejectment Suit No. 353 of 2009 (subsequently renumbered as Ejectment Suit No. 6201 of 2014) has been assailed by filing the present application under Article 227 of the Constitution of India. Plaintiff/ opposite party herein being land lord filed aforesaid suit for Ejectment of premises tenant against the petitioner herein. The petitioners appeared in the said suit on 06.06.2014 and also filed their written statement. The petitioner further submits that as per the advice of

the learned Advocate for the petitioner the petitioners were depositing rent regularly before the Rent Controller at Alipore till January 2016. Thereafter the petitioner changed their previous Advocate and only then they were advised by the new advocate to deposit rent of June, 2014 to January 2016 before the court below and as per the said advice the petitioners again deposited the total rent for the said period with statutory interest before the court below and thereafter has been depositing the current rent up to date before the court below. The petitioner had no intentional laches in depositing the rent for the said period before the Rent Controller and for which the petitioner also filed an application under section 5 of the Limitation Act 1963 read with section 151 of the Code of Civil Procedure for condonation of delay in filing the applications under section 7(1) and 7(2) of the Act of 1997. The aforesaid applications filed under section 5 of the limitation Act for condonation of delay along with applications under section 7(1) and 7(2) of West Bengal Premises Tenancy Act 1997 were heard by the court below on 29.11.2019, but the court below rejected the tenant/defendant's application under section 5 of the Limitation Act and has been pleased to record that since the prayer for condonation of delay has been rejected, as a consequence the petition under section 7(1) and 7(2) which was filed beyond stipulated period, have also become redundant and thereby rejected.

2. Mr. Tanmoy Mukherjee learned counsel appearing on behalf of the petitioner submits that a common litigant totally goes by the advice and guidelines of the learned advocate and in the instant case the non-deposit of the rent before the learned court below by the defendant/petitioner was not

due to negligence or *malafide* intention of the petitioner but due to the inadvertence/wrong advice or *bonafide* mistake on the part of the learned advocate for which the petitioner cannot be made to suffer. The learned court below in fact failed to appreciate that the petitioner had deposited rent from May 2007 to July 2016 before the Rent Controller Kolkata and thereafter before the Additional Rent Controller at Alipore. Learned court below further failed to appreciate that the plaintiff had with an ulterior motive to evict the defendant/petitioner, had refused to accept the rent personally and also the rent which was sent through money order. Petitioner thereafter is depositing rent before the court continuously. Accordingly the court below ought to have considered that the *bonafide* mistake of counsel is “sufficient cause” under section 5 of the Limitation Act of 1963 and as such the delay in filing application under section 7(1) and 7(2) in the instant case should have been condoned. In support of his contention the petitioner has relied upon the Division Bench judgment of this court in ***Subrata Mukherjee Vs. Bishal Das*** reported in **2002 (3) CHN (cal) 423** and another unreported judgment of Co-ordinate Bench of this court in ***Bahadur Singh Khaturia Vs. Smt. Purbi Basu*** being **C.O. 2575 of 2022**.

3. Mr. Anirudha Chatterjee learned counsel appearing on behalf of the opposite party vehemently opposed the said prayer and contended that the judgment passed in C.O. 2575 of 2022 is *per incuriam* and cannot be relied in the present context. He further contended that admitted position in the present case is that the defendant have appeared in the suit on 06.06.2014 and they have filed application under section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 after about 1 ½ year i.e. on 13.01.2016

in gross violation of the mandatory time schedule which is within one month from the date of service of summon upon the defendant, or where the summon has not been served upon the defendant within one month from the date of appearance. In this context Mr. Chatterjee has relied upon Paragraph 21 of the judgment passed by the Apex Court in ***Bijay Kumar Singh and others Vs. Amit Kumar Chamariya and another*** reported in (2019) 10 SCC 660.

4. In ***Bijay Kumar Singh and others (Supra)*** the Apex Court was pleased to observe in paragraph 21 as follows:-

“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.”

5. Learned Trial Court after considering the submission of the parties came to a finding that on perusal of the record it appears that defendant

appeared in the suit by filing the Vokatnama on 06.06.2014 and they have filed their written statement on 09.07.2015 and filed the application under section 7(1) and 7(2) on 13.01.2016. He further observed that application under section 5 of the Limitation Act would be allowed only when sufficient reasons shown, but in this case defendant had hopelessly failed to prove that there are sufficient reason for filing the petitions under section 7 (1) and 7(2) after almost 1 ½ years from the date of appearance in the suit. Learned court below further held that it is not acceptable that learned advocate had given him wrong advice for which he deposited rent before the Rent Controller, even after appearing in the suit through a lawyer. Learned court further noticed even after appearing in the suit the defendant got several opportunities for filing the petition but they failed to do so and accordingly court below observed that the plea of ignorance of law is of no excuse and when the statute is very specific about the time within which the petition under section 7(1) and 7(2) of the Act of 1997 is to be filed then there is no option before the court below but to follow the same and accordingly the court below rejected all the aforesaid three applications including application seeking condonation of delay.

6. Having considered facts and circumstances of the case it appears that observation of the court below, in view of law laid down by Apex Court in the judgment of **Bijay Kumar Singh Case (Supra)** cannot be said to be perverse nor it can be said that the observation made by the court below that ignorance of law is of no excuse is against the law.

7. In a catena of judgments it has been reiterated that jurisdiction under Article 227 of the Constitution of India cannot be taken as a right of appeal

to the aggrieved party and the order of the Trial Court cannot be interfered as a matter of routine . There is no dispute in the proposition of law that section 7(1) and 7(2) provides that the tenant shall subject to the provisions of the sub-section (2) of section 7 pay to the landlord or deposit with the civil judge all arrears of rent calculated at the rate which it was last paid together with interest at the rate of 10% per annum and the tenant shall thereafter continue to pay to the landlord or deposits with the court month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate. Now if the defendant fails to comply the said provision for whatever reason including the reason that his Advocate's alleged wrong advice, if any, for which the court declared such deposits as invalid deposit, such finding cannot be said to be perverse.

8. The power of High Court under Article 227 of the Constitution of India is supervisory in nature and it is intended to ensure that court below confirms to law when he passed the order or in other words High Court while exercising supervisory jurisdiction must confine itself to the limited sphere that the order of the court below is in accordance with law i.e. whether any illegality has been committed in passing the order impugned. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the court below on the facts is so unreasonable that no court should have reached such a finding on the materials available.

9. It is not in dispute here that defendant/tenant appeared in the suit on 06.06.2014 and filed application under Section 7(1) and 7(2) on 13.01.2016. there was a delay of nearly 1 ½ years in filing the applications in

compliance with mandatory statutory provision as laid down in section 7. It was argued by the counsel for the petitioners that it happened due to a wrong advice given by previous counsel. Arguments are also addressed by Mr. Mukherjee that High Court while exercising its power of superintendence under Article 227 of the constitution of India can, condone in such case, where grave injustice has caused to the party.

10. In view of statutory mandate laid down in section 7 and following ratio laid down by Apex Court in **Bijay Kumar Sing (supra) case**, I do not agree with the submissions made by Mr. Mukherjee, firstly because the justification given by the petitioners about wrong advice does not help the case of the petitioners in view of nature of the case in hand. Secondly the long delay occurred in compliance of section 7(1) & (2) of the Act is a serious matter, which cannot be condoned in routine manner as compared to other civil cases, otherwise the very purpose of provisions of the Act would be frustrated. Accordingly I find no error in ultimate conclusion of the court below as it does not reflect any perversity or overstepping of jurisdiction.

11. In such view of the matter the ultimate conclusion of the trial court does not call for any interference, since by no means such observation can be called as perverse and the statute has given him power to deal with the applications under section 7 in accordance with the mandate of the statute and for which it cannot be said that he has exceeded his jurisdiction.

12. In view of above C.O. 449 of 2019 is dismissed.

There will be no order as to the costs.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJOY KUMAR MUKHERJEE, J.)