

Ct. No. 652
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2023

C.O. 488 of 2019
Jagdish Caterar Pvt. Ltd.
-Versus-
Mr. Asgar Hossain

Mr. Surya Prasad Chattopadhyay
Mr. Shib Shankar Das
Mr. Arjun Samanta **...For the Petitioner**

Mr. Tanmoy Mukherjee
Mr. M. Mobinuddin Ansari
Mr. Md. Nauroz Rabber
Mr. Anjana Mehabub
Mr. Mohammed Jawwad **...For the Opposite Party**

This application under Article 227 of the Constitution of India is directed against orders dated 09.8.2017, 21.11.2017 and 06.12.2018 passed by the learned Civil Judge (Junior Division) 2nd Court at Alipore in Ejectment Suit No. 550 of 2009.

Petitioner contended that the plaintiff/petitioner herein filed the aforesaid suit for eviction of premises tenant against the opposite party herein. The opposite party entered appearance in the said suit by filing written statement and denied all material allegations.

Petitioner states that the opposite party herein subsequently filed an application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997, which was finally disposed of on contest by an order dated 2nd May, 2017, wherein the learned Court below was pleased to held that the defendant / opposite party herein is defaulter in payment of rent and directed to pay an amount of Rs. 11,660/- toward arrear rent within one month from the date of the order and to pay further current monthly rent month by month within 15th of each succeeding month. Subsequently, the petitioner herein also filed an application under Section 7(3) of the

West Bengal Premises Tenancy Act, 1997 for non-compliance of the order passed under Section 7(2) of the Act.

The defendant opposite party filed written objection to the said application under Section 7(3) and the Court below by the impugned order dated 06.12.2018 was pleased to reject the said application filed under Section 7(3), with a cost of Rs. 4,000/- to be paid to the plaintiff / petitioner.

Mr. Surya Prasad Chattopadhyay, learned Counsel appearing on behalf of the petitioner submits that the Court below has erred in law in not considering that there was specific direction of the Court to deposit the said adjudicated arrear amount under Section 7(2) of the Act within one month from the date of the order and non-compliance of the said order automatically attracts Section 7(3) of the Act of 1997 and for which even a formal application under Section 7(3) of the Act is not required. Learned Court below also did not consider that the application made by the defendant/opposite party herein was time barred, which was filed on 9th August, 2018. In fact learned Court below extended time for compliance on two occasions without considering the settled time frame laid down in the statute. He has rejected the said application on wrong interpretation of law and he has clearly erred in law in not considering the law that outer time limit given in Section 7(2) of the Act of 1997 cannot be extended beyond the period of two months. Accordingly, petitioner has prayed for setting aside the order impugned.

Mr. Tanmoy Mukherjee, learned Counsel appearing on behalf of the opposite party referred the orders

impugned as well as the earlier orders and contended that the Court below by its order dated 2nd May, 2017 calculated the arrear rent along with interest at Rs. 11,660/- which he directed to pay within a period of one month by bank draft and the next date was fixed on 2nd June, 2017. On 2nd June, 2017 due to resolution by the local Bar, the case was adjourned till 9th August, 2017. On 9th August, 2017 the regular P.O. was on leave and the case was adjourned till 21st November, 2017 for compliance by the defendant. On the same date i.e. on 9th August, 2017 the plaintiff / petitioner herein filed an application under Section 7(3) of the Act of 1997 and on 21st November, 2017 the defendant paid the arrear rent amounting to Rs. 11,660/-. Accordingly, Mr. Mukherjee contended, when the order dated 9th August, 2017 was passed extending the period for payment till 21st November, 2017, no revision was preferred by the petitioner herein and when ultimately by the other impugned order dated 6th December, 2018, the plaintiff/petitioner's application under Section 7(3) of the Act of 1997 stood rejected, only then he has filed the present revisional application by making cumulative challenge of the previous orders dated 9.8.2017 and 21.11.2017 along with order dated 6.12.2018. Mr. Mukherjee in this context strenuously argued that once the petitioner/landlord preferred not to challenge the order dated 9th August, 2017 by which the period was extended further till 21st November, 2017 during intervening period, he is now estopped from challenging the order of extension and as such the Court below was justified in extending the period of time and for which the order impugned does not call for any interference.

In this context he relied upon the judgment delivered by a coordinate Bench of this Court on 14th

September, 2018 in the case of *Sri Asit Kumar Kundu @ Asit Kundu* (C.O. 1283 of 2018) wherein this Court held that once the extension has been accepted by the plaintiff, it is immaterial whether the defendant has been able to pay the entire amount within the specific period or not and such deposit cannot be called as invalid deposit.

I have considered the submissions made on behalf of both the parties. Before going to further details Section 7(1), 7(2) and 7(3) of the West Bengal Premises Tenancy Act may be reproduced which runs as follows :-

“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 Controller 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 Controller shall, having regard to the rate at which rent was last paid and the period for When a tenant can get the benefit of protection against eviction. 331 The West Bengal Premises Tenancy Act, 1997. [West Ben. Act (Chapter IV.—Recovery of immediate possession.—Sections 8, 9.) 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 Controller 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 sub-section (2) within the time specified therein or within such extended time as may be granted, the Controller shall order the defence against delivery of

possession to be struck out and shall proceed with the hearing of the proceeding.”

In view of the aforesaid provisions it is quite clear that when there is a dispute as to the amount of rent payable, the defendant is at liberty to prefer an application under Section 7(2) of the Act of 1997 for ascertainment of the arrear amount, which in the present case has been done by the defendant/tenant/opposite party by filing an application under Section 7(2) and the Court below also calculated the arrear amount and directed to pay the said amount within one month. The Proviso to Section 7(2) makes it clear that having regard to the circumstances of the case an extension of time for payment of arrear rent may be granted only once and the period of such extension shall not exceed two months.

In the present case the Court below by the order dated 2nd May, 2017 calculated the arrear amount as Rs. 11,660/-, which he directed to pay by 2nd June, 2017. However, according to the said Proviso, the Court below is authorized to extend the period but that must not extend more than two months. Accordingly, the Court below was authorized under Section 7(2) of the Act of 1997 to extend the period upto 2nd August, 2017. However, it appears from the order sheet that on 9th August, 2017 the Court below has extended the period of such deposit for a further period of more than three months and he fixed next date for such payment by 21st November, 2017. The defendant also admitted in his objection against the petition under Section 7(3) that the bank draft for payment of arrear rent was prepared only on 21st November, 2017. It further appears from the record that on 9th August, 2017 the plaintiff/landlord filed the said application under Section

7(3) for striking out the defence as the defendant/tenant has not paid the arrear amount of rent as ordered by the Court within the statutory period i.e. by 2nd August, 2017.

Now, the question before this Court is whether by extending the period for payment of the arrear amount of rent vide order dated 9th August, 2017, the Court below has exceeded its jurisdiction which call for interference by this Court, exercising supervisory jurisdiction under Article 227 of the Constitution of India or not.

I have already stated that the Proviso to Section 7(2) states that the Court can extend time only once and period of such extension shall not exceed two months and accordingly extension for payment of the arrear rent beyond 2nd August, 2017 was against the statutory provision laid down under Section 7(2) of the Act of 1997 and thereby the Court below has exceeded its jurisdiction in extending the period of deposit even without any proper prayer for extension made by the defendant/opposite party herein within the statutory period.

In the case of *Bijay Kumar Singh Vs. Amit Kumar Chamariya*, reported in (2019) 10 SCC 660 it has been specifically held in paragraph 21 that the provisions of sub-section (2) of Section 7 are mandatory and required to be scrupulously followed by the tenant. Paragraph 21 of the said decision runs 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.”

In the aforesaid facts and circumstances of the case I have no hesitation to conclude that by the order impugned dated 9th August, 2017 the Court below has exceeded its jurisdiction, which calls for interference by this Court. Since the defendant/tenant has not complied the mandatory provisions as laid down in the provisions of Section 7(2), the provision under Section 7(3) attracts automatically even in the absence of any formal application.

In such view of the matter, the orders impugned dated 9th August, 2017 (in connection with Section 7(2) application), 21st November, 2017 and 6th December, 2018 are hereby set aside. The plaintiff / petitioner’s application under Section 7(3) of the Act of 1997 is thus allowed. The defence against the delivery of possession in respect of the

suit premises is struck out.

The revisional application, being C.O. 488 of 2019 is accordingly allowed.

The Court below is directed to make all endeavour for expeditious disposal of the suit, since the suit is pending more than a decade.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)