

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present :

THE HON'BLE JUSTICE PARTHA SARATHI SEN

C.O. No.515 of 2019

Parijan Bibi
Vs
Hazra Khatoon & Ors.

For the Petitioner	: Mr. Partha Pratim Roy, Adv.
	: Mr. Sarbananda Sanyal, Adv.
	: Ms. Poulami Chakraborty, Adv.
For the O.Ps.	: Mr. Arijit Sarkar, Adv.
	: Ms. Prajaaini Das, Adv.
Last Heard on:	: 16.01.2023
Judgment on:	: 18.01.2023

Partha Sarathi Sen, J. : –

1. In the instant revisional application under Article 227 of the Constitution of India the Order dated 11.01.2019 as passed by the Learned Civil Judge (Junior Division), Additional Court at Sealdah, South-24-Parganas in Ejectment Suit No.80/2013 has been assailed. By the impugned order learned trial court in a proceeding under the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said 'Act') as filed by the plaintiffs rejected the petition under Section 7(2) of the said Act as filed by the defendant on contest.

2. The defendant felt aggrieved and thus preferred the instant revisional application.

3. In support of the instant revisional application Mr. Roy, learned advocate for the revisionist/tenant/defendant at the very outset draws attention of this Court to the plaint as filed by the plaintiffs/opposite parties under Section 6 of the said Act. It is submitted that since in the said plaint it has been averred by the plaintiffs that the present revisionist was a monthly tenant under them at a monthly rent of Rs.60/- payable according to English Calendar month and since it has been further averred that such tenancy of the present defendant/revisionist has been determined by a notice to quit under Section 6(4) of the said Act, there cannot be any doubt that the present landlords/opposite parties had accepted the present revisionist/tenant as their monthly tenant within the meaning of Section 2(g) of the said Act. It is further argued that since the said suit for eviction under the said Act was filed on the ground of default i.e. for violation of Section 6(1)(b) of the said Act, the present revisionist/tenant after her appearance in the said suit rightly filed a petition under Section 7(2) of the said Act wherein the relationship of landlord and tenant, the extent of tenancy, rate of rent and the period of default have been disputed which ought to have been adjudicated by the learned trial court while passing the impugned order. Drawing attention to the certified copy of the impugned order it is argued by Mr. Roy, that learned trial court while passing the impugned order instead of adjudicating such disputes as raised by the defendant/revisionist wrongly held that the present defendant/revisionist has

lost his protection to continue the possession of the suit property as a tenant in view of Section 2(g) of the said Act and thus wrongly dismissed the said application under Section 7(2) of the said Act. He further submits that the reported decision of **Sushil Kumar Jain & Ors. Vs. Pilani Properties Ltd. as reported in 2018(3)WBLR 295: 2018 (1) CHN 396** have wrongly been interpreted by the learned trial court while passing the impugned order.

4. Mr. Roy thus requests this Court to allow the instant revisional application by setting aside the impugned order.

5. In course of his submission Mr. Sarkar, learned advocate for the opposite parties/plaintiffs however contended that since in her petition under Section 7(2) of the said Act the present defendant/revisionist has clearly disclosed that in respect of the suit property one Md. Shafi (father-in-law of the revisionist /defendant) was the recorded tenant and after his death the son of the original tenant i.e. Asgar Ali (husband of the defendant/revisionist) became the tenant of the suit property and after his death the defendant and the other legal heirs of Asgar Ali had paid the rent of the suit property to the plaintiffs but no rent bill was issued, in view of provision of Section 2(g) of the said Act and in view of the proposition of law as enunciated in the reported decision of **Sushil Kumar Jain**(supra), the present defendant cannot come within the purview of the definition 'tenant' under Section 2(g) of the said Act and thus learned trial court is very much justified in not entertaining the said application under Section 7(2) of the said Act as filed by the defendant/revisionist herein. It is

thus submitted that it is a fit case for dismissal of the instant revisional application.

6. This court has perused the entire materials as placed before this Court including the impugned order. This Court has given due consideration over the submissions of the learned advocates for the contending parties. This Court has also perused the reported decision of **Sushil Jain** (supra).

7. For effective adjudication of the instant revisional application it appears to this Court that a look to the provision of Section 2(g) is necessary and the same is reproduced hereunder:-

“(g) “tenant” means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and 2 [in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family, and were dependant on him or a person authorised by the tenant who is in possession of such premises] but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction:

Provided that the time-limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependent on him and who does not own or occupy any residential premises.

Provided further that the son, daughter parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises 1 [on condition of payment of fair rent]. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.”

Section 6(1) of the said Act is as under:-

“6. Protection of tenant against eviction.- (1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract, no order or decree for the recovery of the possession of any premises shall be made by the Controller in favour of the landlord against the tenant, except on an application made to him by the landlord in the prescribed manner on one or more of the following grounds:--

(a).....

(b) where the tenant has made default in payment of rent for three months within a period of twelve months, or for three rental periods within a period of three years where the rent is not payable monthly;

(c).....

(d)...

(e)...

(f)...

(g)...

(h)...

(i)...

(j)...

(k)...

(l)..."

Section 7 of the said Act is reproduced hereinbelow and the same is hereunder:-

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

(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 Controller 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 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 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)...

(4).....”

In the case of **Sushil Jain** (supra) the Division Bench of this Hon'ble Court has held the following:-

“

Though the present matter primarily hinges on the quantum of rent paid for the residential tenancy by the appellants herein or their predecessor-in-interest, the appellants insist that since the death of father K. C. Jain, the original tenant, in the year 2000 was anterior to the 1997 Act coming into effect on July 10, 2001, a right vested in the joint tenants under the 1956 Act which could not have been taken away by the 1997 Act. Such contention amounts to suggesting that when a rent control legislation creates or confers a right, it cannot be curtailed by a subsequent legislation. Such contention is exceptionable and cannot be countenanced. In a sense, the contention amounts to this: that if the original tenant died prior to the 1997 Act coming into force, the heirs of the original tenant who were covered by the definition of "tenant" in Section 2(h) of the 1956 Act would have to be regarded as original tenants within the meaning of the expression in Section 2(g) of the 1997 Act. Clearly, such an interpretation is impermissible and absurd.”

“

It must also be added that courts ought to be very cautious before finding words used in the statute to be otiose or meaningless. The intention of Section 2(g) of the 1997 Act is to regard heirs of the original tenant who were dependent on him and were residing with him at the time of his death as tenants for a period of five years. That would imply that for a period of five years from the death of the original tenant, the heirs of the original tenant who were dependent on the original tenant and were residing with him will be entitled to the same protection under Section 6 of the 1997 Act as the original tenant. However, such umbrella of protection is removed upon the conclusion of the fifth year from the date of death of the original tenant, in case the original tenant died after the 1997 Act came into

effect. For the similar heirs of the original tenants who had died prior to the 1997 Act coming into force, a period of five years was counted from the date of the 1997 Act coming into operation.....
.....”

8. Keeping in mind the aforementioned legislative enactments and the proposition of law as enunciated in the reported decision of **Sushil Kumar Jain** (supra) a duty is cast upon this Court to come to a conclusion where in the facts and circumstances as involved in the present case, learned trial court is at all justified in rejecting the petition under Section 7(2) of the said Act as filed by the defendant/revisionist before the learned trial court holding that the said defendant had lost her protection to continue in possession over the suit property as a tenant in terms of Section 2(g) of the said Act at the very initial stage of the suit as filed under Section 6 of the said Act on the ground of default of payment of rent without adjudicating the dispute as raised by the defendant/tenant/revisionist by filing a petition under Section 7(2) of the said Act.

9. Admittedly in her petition 7(2) of the said Act the present defendant/revisionist had clearly stated that in respect of the suit property her father-in-law was the recorded tenant and on his death his husband being the son of the original recorded tenant paid rent of the suit property to the plaintiffs and on his death she and the other legal heirs of the tenant duly paid rent in respect of the suit property to the plaintiffs. However, it is to be kept in mind that the Ejectment Suit No.319/2006 has been filed under Section 6 of the said Act where the present defendant/revisionist was declared as a

monthly tenant under the plaintiffs in respect of the suit property and it has also been stated in the plaint that the cause of action for the said suit arose on account of failure of the present defendant/revisionist to comply with the requisition of a notice of eviction as issued under Section 6(4) of the said Act.

10. Such being the position it is preposterous to suggest that the defendant/revisionist in the said suit for eviction under Section 6 of the said Act would be prevented to raise disputes under Section 7(2) of the said Act ignoring legislative mandate in this regard. On conjoint perusal of Sections 6 and 7 of the said Act it appears to this Court that it is the legislative intention that whenever a suit for eviction is filed by a landlord against a tenant on any of the grounds referred to in Section 6 of the said Act it is obligatory on the part of the tenant/defendant to take appropriate steps under Sections 7(1) and 7(2) of the said Act which in the instant lis has been rightly done by the present revisionist before the learned trial court. Such being the position this Court is of the considered view that the learned trial court is not at all justified in rejecting the petition under Section 7(2) of the said Act as filed by the defendant/revisionist herein without adjudicating the dispute as raised in the said petition on the plea that she has lost the protection to continue her possession in view of the provision of Section 2(g) of the said Act.

11. As a result the instant revisional application succeeds. The impugned order dated 11.01.2019 as passed by Learned Civil Judge (Junior Division), Additional Court at Sealdah, South-24-Parganas in Ejectment Suit No.80/2013 is hereby set aside.

12. The matter is remanded to the learned trial court for hearing of the petition as filed by defendant/revisionist under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 afresh after giving an opportunity to the plaintiffs to file written objection as against the said application, if not, filed in the mean time.

13. It is further directed that the said application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 shall have to be disposed of within a fortnight from the date of communication of this order without granting unnecessary adjournment to either sides.

14. Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

(Partha Sarathi Sen, J.)