

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.O. 383 of 2019
With
C.O. 4347 of 2015
With
C.O. 487 of 2018

Anil Kumar Ghosh
-Versus-
Bimal Kumar Hore

For the Petitioners : **Mr. Dyutiman Banerjee**
Mr. Arnab Sinha
Mr. Amartya Basu

For the Opposite Parties: **Mr. Soumen Dutta**
Mr. Aniket Mitra

Heard on : **24th August, 2023**

Judgment on : **29th August, 2023**

Ajoy Kumar Mukherjee, J.:

1. The opposite party herein as plaintiff filed Ejectment suit no. 180 of 2009 seeking eviction and recovery of Khas possession against the petitioner. Petitioner herein filed written statement denying all material allegations made in the plaint. Petitioner also filed an application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 for determination of the arrear rent. Learned Court below disposed of the

said application by the impugned order dated 12th June, 2013 directing the petitioner to pay Rs. 21,229/- as arrear rent in two instalments and also to deposit current rent month by month from June 2013.

2. Opposite party thereafter filed an application under Section 7(3) of the Act of 1997 for striking out the defence of the defendant. Learned Court below vide another impugned order dated 20th April 2016 allowed the said prayer for striking out defence against delivery of possession for alleged non-compliance of order dated 12th June, 2013.

3. Petitioner further states that on 4th October, 2018 he filed another application under Section 151 of the Code of Civil Procedure seeking stay of all further proceeding of the suit but the Court below by another impugned order No. 55 dated 7th January, 2019 was pleased to reject the said application.

4. Being aggrieved by the aforesaid order passed by the Court below being Order No. 24 dated 12th June, 2013, the petitioner herein preferred aforesaid revisional application being C.O. 4347 of 2015. Thereafter, being aggrieved by the aforesaid order passed by the said learned Court below being order No. 35 dated 20th April 2016, the other revisional application being C.O. 487 of 2018 has been preferred. Thereafter, being aggrieved by the other order being No. 55 dated 7th January, 2019 as above, C.O. 383 of 2019 has been preferred.

5. Since, the issue involved in all the three revisional applications are inter connected, the three revisional applications are being disposed of by this common order.

6. As stated above C.O. 4347 of 2015 has been preferred against order No. 24 dated 12th June, 2013. By the said order the Court below held that the relationship of landlord tenant between the plaintiff and the defendant and the amount of monthly rent are admitted. The only dispute is about the method of calculation of arrear amount.

7. After scrutinizing the materials available in the record, the Court below held that the petitioner filed application under Section 7(2) of the Act of 1997 beyond the statutory period. However, ignoring the said fact the Court below held that admittedly the defendant is a defaulter in payment of rent since March, 2000 to December, 2010. He further held that he did not find any document on record to show that the defendant has paid the rent for the months of January, 2011 and April, 2013. Accordingly, held that the defendant is a defaulter for 133 months. The Court below further held that civil deposit challans show that the defendant petitioner has paid Rs. 11,500/- for the period from February, 2000 to December, 2010 after adjustment of advance amount. The Court below further held that from the rent receipt for the month of February, 2000, it appears that a sum of Rs. 9,000/- is still lying due to the defendant which defendant/petitioner had prayed for adjustment. Now after adjusting the said amount of Rs. 9,000/- as well the civil deposit challan showing payment of Rs. 11,500/-, the Court came to conclusion that the net arrear due is Rs. 21,229/- including statutory interest and accordingly directed to deposit the arrear rent by two instalments of Rs. 10,614/- and Rs. 10615/- within 12th July, 2013 and 12th August, 2013 respectively.

8. Instead of compliance of the said order passed under Section 7(2) of Act, the defendant/tenant/petitioner preferred present revisional application being C.O. 4347 of 2015, contending that the Court below has erred in making calculation of the arrear amount since, by the impugned order, it did not at all consider that after deduction of the aforesaid advance amount of Rs. 9,000/- as well the civil deposit of Rs. 11,500/- from the total arrear rent, a paltry amount remains due and payable towards arrear and the calculation of arrear rent as on the date of passing order made by court below is erroneous and excessive. The

defendant made his own calculation contending that he was defaulter of 130 months and the rate of rent per month is Rs. 150/- and as such the total arrear rent calculated at Rs. 19,500/-. Now if Rs. 9,000/- paid way of advance is adjusted the amount comes down to Rs. 10,500/-. With the said amount if arrear rent of another two months namely January, 2011 and April 2013 is added then it amounts to Rs. 10,800/-. If the interest at the rate of 10% is added with the said amount then the total arrear rent is Rs. 11,880/-. Now, from that amount if the admitted civil deposit amount of Rs. 11,500/- is adjusted then according to the petitioner the arrear amount stands Rs.380/- only.

9. He further contended that the Court below has not considered that aspect and erroneously observed that the total arrear amount is Rs. 21,229/-. Accordingly, the petitioner has raised two issues herein firstly interest upon arrear amount is to be calculated after adjusting Rs. 9,000/- initially from the total arrear amount and secondly interest to be imposed would be simple interest and not compound interest. In this context he relied upon judgement of a coordinate Bench of this court passed in **C.O. 1792 of 2013, (Gopinath Roy & others Vs. Satish Chandra Ghosh)**.

10. Mr. Dutta, learned Counsel appearing on behalf of the opposite parties submits that interest calculated by the court below is not compound interest but simple interest. He further contended that section 7 of the Act of 1997 speaks about interest @ 10% per annum. Since petitioner/tenant had defaulted for about eleven years, so interest will have to be calculated at the rate of ten percent upon the accumulated arrear sum year-wise. In such view of the matter, court below committed no mistake in calculating arrear rent and for non-payment of arrear rent within the period fixed by the court, provision laid down under section

7(3) of the Act attracts automatically and as such impugned three orders as above, do not call for interference.

11. Having considered the facts and circumstances of the case, it appears that the plaintiff did not file the application under Section 7(2) of the Act of 1997 within the statutory period. It is submitted that the suit was filed on 02.5.2009 and the summons returned with the endorsement 'not claimed' with presumption of good service on 28.6.2010. If the summons is to be taken as served even on 28.6.2010, the petitioner/defendant ought to have filed the application under Section 7(2) within 28.7.2010. However, he filed the said application under Section 7(2) on 11.01.2011 and accordingly, filing of the application itself was beyond the statutory period. In *Bijay Kumar Singh and others Vs. Amit Kumar Chamariya and another*, reported in (2019) 10 SCC 660 it was observed

“**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.” (*emphasis added*)

12. However the court below calculated the arrear amount of rent as above on the basis of materials available on record and directed the petitioner to deposit arrear amount within specified dated. In the present case, relationship and the rate of rent was never disputed. The only dispute is about the method of calculation of arrear amount.

13. It is no more res integra that though an appeal is considered to be continuation of the suit but an application under Article 227 of the Constitution of India cannot in any view of the matter be regarded as a continuation of the proceeding before the courts and Tribunals, nor it is the exercise of power of appeal or revision on question of facts and law. In the present case, Court below calculated the arrear rent while disposing application under section 7(2) of the Act, which were directed to be paid by two installments within 12th August, 2013. Said order attains it's finality since the legislature has not conferred a right

of appeal and made the decision of the trial court final on facts. The High Court cannot in guise of exercising jurisdiction under Article 227 convert itself into a court of appeal, nor the tenant in anticipation of his success in application filed under Article 227, can withheld payment of arrear rent by the date fixed by court. Since the order passed under Section 7(2) of the Act for deposit of arrear rent within the specified date attained it's finality on fact with the passing of order and since petitioner raised dispute before this court under Article 227 on facts, so the option left to the petitioner was to deposit the said amount within the specified period on protest without prejudice to the final outcome of this Application, filed under Article 227 or review application, if any. Since the petitioner has not complied the said order and thereby contravened section 7(2) of the Act, he will have to face the consequences under section 7(3) of the Act.

14. In my opinion even in a case where after making scrutiny about method of calculation it appears to court that a different view is also possible by calculating the same in a different mode, High court would not be justified to interfere, as this would amount to re-appreciating the evidence on finding of facts which is the role of appellate court and not the supervisory court acting under Article 227 of the Constitution of India.

15. Accordingly as I have observed that the petitioners ought to have deposited the arear rent in view of order dated, 12th June, 2013 without prejudice to his rights and contentions subject to final outcome of present application under Article 227, it cannot be said that any of the impugned orders of court below is either illegal or irrational or suffers from procedural impropriety. Apex Court in *Sarla Ahuja Vs. United India Insurance Company Ltd.* Reported in AIR 1999 SC 100 observed in para 6 as follows:-

:6. The above proviso indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passes the order. The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is “according to the law”. In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25-B. 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 Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.”

16. On the basis of above discussion, C.O. 4347 of 2015 stands dismissed. In view of the dismissal of C.O. 4347 of 2015, C.O. 383 of 2019 and C.O. 487 of 2018 are also dismissed.

17. There will be no order as to costs.

18. 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.)