

17.10.2023
Sl. No.4(DL)
srm

C.O. No. 491 of 2022

Smt. Bharati Dutta

Versus

Sri Nanda Kishore Sharma & Anr.

Mr. P.C. Paul Choudhury

...for the Petitioner.

Mr. Abhijit Roy,
Mr. Sirshendu Bikash Pal

...for the Opposite Parties.

This revisional application has been filed challenging an order dated December 20, 2021 passed by the learned Chief Judge, Small Causes Court at Calcutta in Ejectment Suit No.138 of 2017.

The learned court below allowed an application under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act) upon condoning the delay in filing the same. According to the learned court, the application under Section 7(1) of the said Act should be allowed as the same appeared to be within time. The learned court found that the cease work of the local bar was from April 20, 2017 to June 3, 2017 and the application was filed on June 5, 2017. The learned court permitted the defendants/opposite

parties to pay the admitted arrears of rent calculated at the rate at which it was last paid up to the end of the month previous to that in which the payment was made together with interest @ 10% per annum within one month from the date of the order. The defendants were further granted liberty to deposit the current rent month by month by 15th of each succeeding month at his own risk without prejudice to the right and contention of the parties.

The petitioner/landlord has challenged the order on the following grounds:

- (a) On the ratio of the decision in *Bijay Kumar Singh and Ors versus Amit Kumar Chamariya and Another*, reported in (2019) 10 SCC 660, the court did not have any jurisdiction to condone the delay in filing the application under Section 7(1) of the said Act.
- (b) The cease work observed by the learned Advocates not to appear before the court, would not prevent the defendants from filing the application in the department.
- (c) The provisions of Section 7(1) of the said Act with regard to the deposit of admitted arrears along with statutory interest had not been complied with, but a

simple application was filed. The application for condonation of delay was filed much after the said application had been filed.

Mr. Roy, learned Advocate appearing on behalf of the tenants/defendants submits that under very exceptional circumstances, the delay can be condoned. The learned Advocates were observing cease work and they were not available to take steps in the matter. The litigant cannot be deprived of his protection under Section 7(1) of the said Act on account of non-availability of the learned Advocates.

Considered the submissions of the respective parties.

It appears from the order impugned, that the defendants received the summons on April 17, 2017. The defendants were required to file the applications under Sections 7(1) and 7(2) of the said Act on or before May 16, 2017. The applications were filed on June 5, 2017. The application under Section 5 of the Limitation Act was neither verified nor supported by any affidavits. It also appears that during the pendency of the earlier application under Section 5, another application under Section 5 of the Limitation Act for condonation of the delay was filed by the defendants. Such application was filed after 155 days from filing of the application under Section 7 (1). The learned court took note of the cease work observed by the Bar

Association, the factum of death of the defendants' mother and condoned the delay.

The issue is whether the learned trial court could have passed the order condoning the delay in filing the application under Section 7(1) of the said Act and in allowing the petitioner to deposit the admitted arrears with 10% statutory interest. Section 7 of the said Act provides a complete mechanism for protection of the tenant from eviction on any of the grounds under Section 6 of the said Act. Section 7(1) of the said Act mandates that the admitted arrears of rent along with 10% statutory interest should be deposited within a month from the receipt of summons and when the defendant appears without summons within a month from appearance.

It is an admitted position in this case that the application under Section 7(1) of the said Act was not filed within a month from the receipt of summons. It is also an admitted position that the admitted arrears along with 10% statutory interest was not deposited along with application under Section 7(1) of the said Act which is the mandate of law. Even assuming that the tenants were prevented by sufficient cause from filing the applications within time, the fact remains that the very mandate of law, i.e. the pre-condition of depositing the admitted arrears along with 10% statutory interest at the time

of filing the application under Section 7(1) of the said Act was not complied with. The law requires compliance of such statutory pre-condition, mandatorily.

The law is well-settled that without compliance of Section 7(1), Section 7(2) would not come into operation. The tenant was required to deposit the admitted arrear rent within a month from receipt of summons calculated at the rate at which it was last paid and upto the end of the month previous to that in which the payment was made, together with the interest at the rate of 10% per annum. Thereafter, the tenant was required to continue to pay to the landlord or deposit with the civil judge month by month within 15th of every succeeding month, a sum equivalent to the rent at that rate.

In case of any dispute, the tenant was required to deposit the amount as per sub-section (1) within the statutory period of one month and file an application asking the court to determine the dispute with regard to the rate of rent and arrears payable.

In this case, not only the applications under Section 7(1) and 7(2) were delayed, but also misconceived.

Such is the law and the ratio laid down by the Hon'ble Apex Court.

Section 7(2) cannot be read in isolation from Section 7(1). The Section 7 was interpreted in *Chamariya (supra)* and the

entire mechanism, by which a tenant could seek benefit from eviction on the ground of default, was considered to be mandatory and inter-related. The provisions of the said section were discussed in detail in the following paragraphs of the said judgment:-

“19. Sub section (1) of Section 7 of the Act relieves the tenant from the ejectment on the ground of non-payment of arrears of rent if he pays to the landlord or deposits it with the Civil Judge 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. 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. 20. Therefore, sub section (1) deals with the payment of arrears of rent when there is no dispute about the rate of rent or the period of arrears of rent. Sub section (2) of the Act comes into play if there is dispute as to the amount of rent including the period of arrears payable by the tenant. In that situation, the tenant is obliged to apply within time as specified in sub section (1) that is within one month of the receipt of summons or within one month of appearance before the court to deposit with the Civil Judge the amount admitted by him to be due. The tenant is also required to file an application for determination of the rent payable. Such deposit is not to be accepted, unless it is accompanied by an application for determination of rent payable. Therefore, sub section (2) of the Act requires two things, deposit of arrears of rent at the rate admitted to be due by the tenant along with an application for determination of the rent payable. If the two conditions are satisfied then only the Court having regard to the rate at which rent was last paid and for which tenant is in default, may make an order specifying the amount due. After such a determination the tenant is granted one month's time to pay to the landlord the amount which was specified. The proviso of the Act,

limits the discretion of the court to extend the time for deposit of arrears of rent. The extension can be provided once and not exceeding two months. 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 (2A) and (2B) which was being examined by this Court in B.P. Khemka. Sub sections (2A) and (2B) of Section 17 of 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso of sub sections (2) and (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 pre-condition 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.”

The Division Bench in the ***Calcutta Gujarati Education Society vs. Sri Ajit Naraya Kapoor***

decided in C.O 175 of 2017, answered the reference in view of conflicting the decisions. The question formulated by the then Acting Chief Justice is quoted below:-

“Does the view of the Division Bench of this court that section 5 of the Limitation Act can be applied to condone delay in making applications under sub-sections (1) and (2) of section 7 of the West Bengal Premises Tenancy Act, 1997, as held in the Subrata Mukherjee’s case (supra), survive in view of the decisions of the Hon’ble Supreme Court in the Nasiruddin case (supra), the Ashoke Kumar Mishra case (supra), Manjushree Chakraborty case (supra).”

The reference was specific as to whether Section 5 of the Limitation Act could be applied to condone delay in filing applications under Section 7(1) and 7(2) of the said Act. The Hon’ble Division Bench held that the Limitation Act, 1963 had no manner of application in respect of an application by a tenant under Section 7 for determination of arrear rents and disputed rents.

The Hon’ble Division Bench held as follows:-

“West Bengal Premises Tenancy Act, 1997 is an Act of the State legislature providing for period of limitation in respect of deposit and determination of rent. Section 6 in the Act has the non-obstante clause on application of other laws, regarding eviction. Section 40 makes applicable Limitation Act, 1963 subject to provisions in the Act relating to limitation. The application for determination of rent not having prescribed period of limitation anywhere else in the third division, article 137, if applied, will provide for it to be made within three years from when the right to apply accrues. In case of such an application it is not the right of the tenant that would accrue, to make such an application. The Act of 1997 mandates that deposit of rent or where

there is dispute regarding quantum of rent, deposit of admitted rent alongwith application for determination of rent, must be made by the tenant within time specified and as extendable under said Act. This is in relation to the suit filed for eviction, where compliance with the deposit mandate will enable the tenant to seek the protection provided. This enabling provision cannot be seen as an assertive right of a tenant, to be enforced. Here, provision in article 137 19 cannot be made applicable. Furthermore, where it is a requirement of compliance by the tenant to seek protection, mandated by the statute as competently legislated by the State legislature and specifically limiting application of the 1963 Act, there cannot be occasion for application of the period of three years, overriding the period and extension specified by the local law and thereafter condonation of delay as under section 5. We answer the question referred to say that Limitation Act, 1963 has no application in respect of an application by a tenant, made under section 7 for determination of arrears of disputed rent. We are aware our answer to the question referred gives rise to conflicting views of two Division Benches of this Court. However, we have answered the question pursuant to direction made in said administrative order. The files be sent back on the reference answered and disposed of.”

The ratio of the Hon’ble Apex Court has finally put an end to the confusion with regard to applicability of Section 5 of the Limitation Act to Section 7 of the said Act.

Paragraphs 19, 20 and 21 of the said judgment, if harmoniously construed, would lead to the conclusion that the court did not have any power to condone the delay in filing of the application under Section 7(1) of the said Act. Moreover, the requirement of law to deposit the admitted arrears along

with 10% statutory interest with the application under Section 7(1) was also not complied with. There are two non-compliances which were mandatorily required to be fulfilled by the tenants:

(a) That the mandate of the statute of depositing the admitted arrears along with 10% statutory interest was not followed.

(b) The applications under Section 7(1) and 7(2) of the said Act were belated and the court did not have any power to condone such delay.

Under such circumstances, the revisional application is allowed. The order impugned is set aside.

The fact that the money was deposited as per the direction of the court does not have any effect on the correctness of the order which is challenged before this Court.

The pending application will be decided according to law, by applying the cardinal principles already settled by different judicial decisions. The parties are at liberty to act and proceed according to law.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)