

15.12.2023
23
Ct. no. 652
sb

CO 721 of 2020

**Smt. Ruby Ghosh
Vs.
Pushpa Seal & Ors.**

Ms. Jeenia Rudra
Mr. Bhaskar Roy ...for the Petitioner

Affidavit of service filed by the petitioner is taken on record. Opposite parties are not represented.

This is an application under Article 227 of the Constitution of India which has been preferred against order no. 66 dated 10.01.2020 passed by the learned Judge, 2nd Bench, Presidency Small Causes Court, Calcutta in Ejectment Suit no. 44 of 2013. By the impugned order, learned court below has been pleased to reject the petition filed by the petitioner to allow him to deposit arrear rent in terms of order dated 10.4.2019.

The Opposite parties herein filed aforesaid Ejectment Suit on 31.01.2013 against the present petitioner. In the said suit, the defendant no. 1 appeared on 15.4.2016 by filing Vakalatnama. Thereafter on 30.10.2017, the defendant No.1 filed written statement and prayed for setting aside the order of ex parte hearing of the suit and also filed petition under section 7(1) & 7(2) of the West Bengal premises Tenancy Act. Thereafter, on 14.8.2018, the defendant no. 1 submitted before the

court that he could not file petition under Section 7(1) and (2) of the West Bengal Premises Tenancy Act in time and accordingly, he moved the said application for condonation of delay filed under Section 5 of the Limitation Act, which the court below allowed by the said order subject to payment of cost of Rs. 10,000/-. Thereafter, on 10.4.2019, the court below had taken up the defendant's application under Section 7(1) of the West Bengal Premises Tenancy Act and was pleased to permit the defendant to deposit admitted arrear rent calculated at which it was last paid and up to the end of the month previous to that in which the payment was made, together with interest @ 10% within 30 days from the date of order i.e. from 10.4.2019. Thereafter the defendant did not pay the said amount and on 10.1.2020, the defendant moved the application dated 03.12.2019 wherein he has sought for giving him permission to deposit the arrear rent which is lying outstanding since August, 2011 and learned court below by the impugned order, was pleased to reject the said prayer.

Learned counsel for the petitioner submits that the petitioner/defendant is an old aged lady, having no alternative accommodation and as such on sympathetic ground, the court below ought to have considered his application for deposit of arrear rent.

In *Bijay Kumar Singh & others Vs. Amit Kumar Chamariya & another* reported in (2019) 10 SCC 660

Apex Court while interpreting the provision when a tenant can get the benefit of protection against eviction Under section 7 of the said Act, it was observed in Para 21.

“.....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.”

A division of this court in the Calcutta Gujrati Education Society Vs. Sri Ajit Narayan Kapoor reported in 2022 (1) ICC 414 (cal) is of clear view that limitation Act, 1963 has not application in respect of an application by a tenant made under section 7 for determination of arrears of disputed rent. Co-ordinate Bench of this court endorsed the same view following Bijay Kumar Singh's Case (supra) that the provision under section 7 is mandatory and required to be followed scrupulously by tenant if tenant has to avoid eviction on account of non-payment of arrears of rent under section 6 of the Act ,(2022(1) ICC 777 (Cal)

Having considered the facts and circumstances of the case and the mandatory provision as laid down in Section 7(1) of the West Bengal Premises Tenancy Act and

in view of judicial pronouncements while interpreting section 7 of the Act of 1997, I do not find any illegality or perversity in the order impugned.

C.O. 721 of 2020 is accordingly dismissed.

Urgent Photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)