

S/L 4-5
10.4.2023
Court No.652
SD

CO 754 of 2020
With
CO 2348 of 2022

Sri Sanjib Saha Chowdhury
Vs.
Smt. Jayanti Dutta

Mr. Debjit Mukherjee
Mr. Palash Mukherjee

...for the Petitioner.

Mr. Uddipan Banerjee
Mr. Avhisekh Chatterjee

...for the Opposite Party.

Being aggrieved and dissatisfied with the order dated 06.12.2019 passed by the learned 5th Civil Judge (Junior Division), Howrah in Title Suit No.16578 of 2014, Application being CO 754 of 2020 has been preferred and being aggrieved by another order dated 16.6.2022 passed in the same suit, Application being CO 2348 of 2022 has been preferred.

By the impugned order dated 06.12.2019, the court below was pleased to reject the defendant-tenant's application dated 12.6.2018 under section 151 of the Code of Civil Procedure in which the defendant has prayed for permission to deposit the rent for the month of March 2017 to April 2018. However, he observed that the deposit of rent for the month of May 2018 alone is only valid deposit and has given liberty to deposit the current rent in pursuance of his earlier order dated 08.01.2015 at his own risk.

Subsequently, the plaintiff-landlord filed an application under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 (in short Act of 1997) for striking out defence for not depositing the rent and the court below by the impugned order dated 16.6.2022 was pleased to allow the plaintiff's application under Section 7(3) of the Act of 1997 against which the revisional application being CO 2348 of 2022 has been preferred.

The petitioner's contention is that the original defendant-landlord never made any default in payment of rent but unfortunately, during pendency of the suit, said original defendant died. The plaintiff made application for substitution and said prayer for substitution was allowed by the court on November 1, 2017 and the legal heir of original defendant as substituted defendants appeared in the suit on 15.02.2018 and filed monthly challans for payment of current rent from March 2017 to May 2018, which became due for the untimely death of original tenant and petitioner's advocate produced those challans before learned court below but petitioner's advocate was informed that presiding officer was on leave and without order from court, no challan could be passed.

It has been further contended on behalf of the petitioner that the substituted defendant in the said suit handed over rent for the month of June 2018 to his advocate concerned but he could not get the challan passed by the court for the month of June 2018 as he was in the opinion

that unless the deposit of rent for the month of March 2017 to May 2018 be passed, the rent for the month of June 2018 cannot be deposited nor the challan can be passed. He further contended unless the challans passed by court, defendant cannot deposit the rent in court and as such, defendant has no laches on negligence in depositing rent.

Learned advocate appearing on behalf of the opposite party raised strong objection contending that tenant/defendant in his application dated 12.6.2018 clearly admitted in paragraph 5 that as he was busy with his business affairs on and from March 1, 2017 to May 10, 2018, and as such, he could not deposit monthly rent from March 2017 to May 2018 and substituted defendant only on 11.5.2018 came to his lawyer who advised him to deposit the current rent from March 2017 to May 2018. Accordingly, plaintiff/opposite party herein contended that the delay is intentional and condonation is barred under Section 7(1) and (2) of the Act of 1997.

Learned court below after hearing both side observed that original defendant expired on 21.3.2017 and substituted defendant made appearance on 15.02.2018 but petition for condonation of delay filed after four months of appearance without any sufficient cause. He further observed original defendant when appeared filed application under Section 7(1), which was allowed on 18.01.2015 directing defendant to deposit rent month by month but substituted defendant wanted to deposit rent from March 2017 to May 2018 on

12.6.2019, which is beyond the statutory provision and as such, he held that deposit for the month of May 2018 alone is valid.

In view of the above, it is quite clear that the observation made by the court below that the defendant has not complied statutory provisions laid down in Section 7 of the Act in depositing rent from March 2017 to April 2018 and June 2018 does not call for any interference.

In view of the above, CO 754 of 2020 is dismissed and in view of dismissal of aforesaid revisional application, the other revisional application being CO 2348 of 2022 which has arisen challenging the order passed by the court below in connection with an application under Section 7(3) of the Act of 1997 also stands dismissed. The impugned orders dated 06.12.2019 and 16.6.2022 are affirmed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)