

Item No. 6
28.07.2023
Court. No. 19
GB

C.O. 648 of 2023

Madan Das
Vs.
Archana Ghosh & Ors.

Mr. Debdutta Raha

...for the Petitioner.

This revisional application has been filed challenging an order dated December 16, 2022 passed by the learned Civil Judge (Junior Division), 3rd Court at Alipore in Ejectment Suit No.93 of 2016.

By the order impugned, the learned court below rejected an application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997, which was filed belatedly. The learned court found that the explanation for the delay was illness of the defendant. The court did not find any material in support of such contention.

The learned court, upon considering the challans and the deposits made by the defendant in support of his case found that all the arrears had not been deposited before the rent controller. The learned court came to a factual finding that the rent from April 2016 to January 2017 (eight months) had not been paid and there were no challans in support of payment for such rents.

The learned advocate for the petitioner submits that the challans were deposited but the learned court did not take into consideration the said challans. However, it has been admitted by the petitioner himself, that the rent for the month of May was paid belatedly and in violation of Section 7(1)(c) of the Act. Secondly, the application under Section

7(2) was filed belatedly and not within a month from receipt of summons. Summons were received on April 25, 2016. There was delay of 26 days in filing his applications under Section 7(1) and 7(2) of the Act.

The Hon'ble Apex Court in the matter of ***Bijay Kumar Singh & Ors. vs. Amit Kumar Chamaria & Anr.*** reported in ***2020(1) Indian Civil Cases 664 (SC)*** held that if a tenant fails to deposit admitted arrear rent within a month of receipt of summons or within a 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, within the stipulated period, the benefit of Section 7(2) will not be available and delay cannot be condoned.

Relevant paragraph is quoted below:-

“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.”

Accordingly, the learned court below had no other option but to reject the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 by applying the ratio of the above judgment.

In the decision of the Hon’ble Apex Court it was held that the preconditions to filing an application under Section 7(2) of the Act were mandatory and Section 5 of the

Limitation Act would not apply. The tenant would not be able to take recourse to such provision. The application for determination of the rent and the deposit of admitted arrears were all to be done simultaneously and within the time specified under Section 7(1). The judgment clearly laid down that the application under Section 7(2) has to be filed within a month from receipt of summons, i.e., the tenant has to apply within the specified time as per Sub-Section (1) of Section 7.

The revisional application is dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)