

24.02.2023

C.O. 487 of 2021

Smt. Rita Agarwal

-versus

Nirmal Kumar Maheshwari @ Behari & anr.

Mr. Pradeep Kumar.

...For the Petitioner.

The record is taken up for Orders.

The petitioner before this Court is the Land Lord/Plaintiff in a suit for eviction, and is aggrieved by the Order dated 13/03/2020 passed by Learned

Additional Civil Judge (Junior Division) at Sealdah in Ej-120/2014 in rejecting the petition dated 05-12-2019 filed by the petitioner under Section 151 and 152 of the Code of Civil Procedure.

The case of the petitioner may be summed up thus:

1. The petitioner filed Suit for Ejectment in the year 2005 being Ejectment Suit No-74 of 2005. The said suit was subsequently re-numbered as 120 of 2014 and the said Suit instituted against the opposite parties/defendants is now pending before the Learned Civil Judge

(Junior Division) Additional Court
Sealdah South 24 Parganas.

2. Pursuant to the filing of the suit summon was served upon the opposite parties. Opposite party no-2 entered appearance and filed written statement. Apart from filing written statement the opposite party no-2 also filed application under Section 7(2) of the West Bengal Premises Tenancy Act 1997.
3. By Order dated 31-08-2019 Learned Trial Judge disposed the application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 by holding that there are relationship of Land Lord and tenant between the parties and the defendants/opposite parties are defaulter

in payment of rent since September 2, 1977 to August 2019, at the rate of Rs.350/- per month for a period of 504 months. Learned Judge was pleased to direct payment of total rent due of Rs. 1, 76,400/- along with interest on the said amount being Rs. 17,640/- the total amount for payment coming to Rs. 1,94,040/-. Such direction was issued upon the opposite party no-2.

4. The petitioner being aggrieved with the Order of Learned Trial Judge regarding calculation of interest on the total amount of rent due made an application under Section 151 and 152 of the Code of Civil Procedure, for rectification/correction. It was the

contention of the petitioner before the Learned Trial Court that interest on the total rent due comes to Rs. 3,79,260 instead of Rs. 17,640/-

5. By Order dated 13-03-2020 Learned Trial Court rejected the petition dated 5-12-2019 filed by the plaintiff/petitioner.

The petitioner being aggrieved by the Order dated-13-3-2020 passed by Civil Judge (Junior Division) Additional Court Sealdah South 24 Parganas in Ej. Suit 120/2014, has come up with the present application.

It is the contention of the petitioner that the Learned Trial Court ought have

allowed the said application filed on behalf of the petitioner and the amount of interest should have been corrected as prayed for in the interest of justice. It is further contended that the impugned Order is liable to be set aside, as the statutory provisions relating to the calculation of interest has not been followed.

None appeared for the opposite parties in spite of service of notice thus the case was taken up for hearing in the absence of opposite parties. Heard Learned Advocate for the petitioner, perused the petition filed and materials on record. Learned Advocate for the

petitioner submits that the Learned Trial Judge erred in Law in applying the principle of 10 per cent interest simply on the total arrear rent instead of calculating interest on every monthly rent due by applying principle of 10 per cent per annum.

Now in Order to decide as to whether the Learned Trial Judge erred in computing the interest on total arrear rent it is necessary to consider the provisions contained in Section 7(1) of the West Bengal Premises Tenancy Act 1997 and the Order passed by Learned Trial Judge with regard to computation of interest on the arrear rent.

Section 7(1)(a) of the West Bengal Premises Tenancy Act 1997 provides as follows:

‘on a [Suit] being instituted by the Land Lord for eviction on any of the grounds referred to in Section 6, the tenant shall subject to the provisions of sub-Section (2) of this section pay to the Land Lord or deposit with [the Civil Judge] all arrears of rent, calculated at the rate at which it was last paid and upto 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.’

Now upon perusing the Order dated 31-08-2019 passed by the Learned Trial Court in application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 it appears that the Learned Trial Court was pleased to determine the arrear rent as Rs. 1, 76,400/- and determined interest on the total due as Rs. 1, 7640/- by applying the principle of 10 per cent interest on the total rent due.

On the application of the petitioner under Section 151 and 152 of the Code of Civil Procedure the Learned Trial Court by Order dated 13/03/2020 was pleased to observe as follows:

‘Learned Advocate for the plaintiffs submits that while disposing of the

petition U/S. 7(2) of WBPT Act, 1997, this Court held that the amount of arrear rent due from the defendants was Rs. 1, 76,400/- and interest was calculated at Rs. 17,640/-.The plaintiffs have submitted that the total amount of interest would be Rs. 3, 79,260/- and have prayed for correction of the mathematical error.

Heard considered.

On perusal, it is seen that the petition U/S. 7(2) of WBPT Act 1997 was disposed of by this Court vide Order dated 31-08-2019 and the amount of arrear rent due from the defendants was found to Rs. 1,76,400/- and interest was calculated as Rs. 17,640/- as per

statutory provisions. The statute does not stipulate that the interest to be calculated shall be compounded annually. As such

there does not appear to be any error in calculation of statutory interest @ 10 per cent p.a and as such the prayer of the plaintiffs is not fit to be allowed.

Hence, petition dated 5.12,2019 is rejected ex-parte without costs.'

Upon considering the provision of Section 7(1) (a) of the West Bengal Premises Tenancy Act 1997 it will appear that the statutory requirement for the tenant is to deposit all arrears together with interest at the rate of ten per-cent per annum and not ten per-cent of the

total arrears. Whatever might be the real intention of the Legislators the plain meaning of the statute has to be given effect to. Although the calculation

becomes complicated but as it is the requirement of statute it is to be complied. The expression 'per annum' means by the year annually yearly. The rent when becomes payable is purely a matter of contract between the parties. Unless there is any contract the rent for any particular month becomes payable by the 15th of the following month. If tenant does not pay the rent of a particular month within the agreed period or when there is no such contract

by the 15th of the following month the rent for that month becomes arrear.

Thus interest is to be calculated on every months rent taking into account the period when it was actually deposited

or paid. The matter may be clarified by an illustration. Suppose a tenant has defaulted in payment of rent from January 1975 till February 1978 at the rate of Rs. 1,000/- per month, and is required to pay rent for the period of three years along with interest at the rate of 10 per cent per annum the interest on rent due for the month of February 1975 and paid on February 1978 will not be same for rent due on February 1977 and paid on February 1978 even if the

rate of 10 per cent per annum is applied for both the dues. As the rent due in the month of February 1975 is paid in February 1978 the interest calculated at 10 per cent per annum will definitely be

more than with regard to the rent which became due in the month of February 1977 and paid in the month of February 1978. Thus the interest is to be calculated on the monthly rent due by applying the principle of 10 per cent per annum as provided under Section 7(1) of the West Bengal Premises Tenancy Act 1977.

In the facts and circumstances mentioned above this Revisional Application stands allowed. Order dated

13/03/2020 passed by Learned Civil Judge (Junior Division) Additional Court Sealdah South 24 Parganas in Ej. Suit – 120/2014 is set aside. The matter is remitted back to the Learned Trial Court

to consider and dispose the application made by the petitioner/plaintiff on 5/12/2019 under Section 151 and 152 of the Code of Civil Procedure. Learned Trial Judge shall reconsider the said application and determine the interest due on arrear rent of the opposite parties by applying the procedure as provided under Section 7(1) of the West Bengal

Premises Tenancy Act 1997. As the matter involves calculation Learned Advocates for the parties are requested to extend their co-operation to the Learned Court.

This Revisional Application stands disposed.

Blswaroop Chowdhury,J