

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**C.O. 957 of 2018
Pradip Kumar Bhutoria
Vs.
Joydeb Mukherjee and another**

For the petitioners : Mr. Tamoghna Saha
Mr. Jai Kr. Surana

For the opposite parties : Mr. Rajdeep Bhattacharya

Heard on : 02.08.2023

Judgment on : 17.08.2023

Ajoy Kumar Mukherjee, J.

1. This application under Article 227 of the Constitution of India has been assailed against the order dated 10.02.2016 and 20.06.2017 passed by learned Civil Judge, (Junior Division), Alipore in Ejectment Suit No. 168 of 2007. By the impugned order dated 10.02.2016 the court below directed the defendant /tenant to pay Rs. 35,157.54/- within one month from the date of the order while disposing application under section 7(2) of the West Bengal Premises Tenancy Act, 1997. By the subsequent impugned order dated 20.06.2017 the court below rejected with cost, the defendant's application under section 151 of the Code of Civil Procedure in which defendant had sought for reconsideration of the aforesaid order dated 10.02.2016.

2. The case of the petitioner is that plaintiff/opposite party herein filed aforesaid suit for Ejectment against the defendant/petitioner . The petitioner submits that he entered appearance in the said suit and filed written statement and subsequently he also filed application under section 7(1) and 7(2) of the Act of 1997. However, learned court below decreed the suit exparte on 31st January, 2013. Challenging the said exparte decree the petitioner preferred an appeal before the District Judge Alipore, wherein the said appeal was allowed directing the defendant to contest the suit subject to payment of cost of Rs.5,000/-

3. Thereafter the defendants application under section 7(2) came up for hearing before the court below and learned court below after hearing the parties was pleased to direct for payment of Rs. 35,157.54/- towards arrear rent and interest within one month from the date of order. Petitioner subsequently filed an application under section 151 of the Code of Civil Procedure for recalling and quashing the order dated 10th February, 2016, contending that the same has been passed without considering the deposits already made by the petitioner herein. Learned court below pleased to reject the said application under section 151 of the Code of Civil Procedure.

4. Mr. Saha learned Counsel appearing on behalf of the petitioner submits that the court below has erred in law in not considering that all rent challans have been deposited before the learned court for consideration but overlooking the rent challans and treating them as occupational charges, the learned court below passed the impugned order erroneously by which he has asked the defendant /tenant to deposit the aforesaid amount. Infact learned court below has further erred in declaring the rent challans as

invalid from the period of October, 2007 to September, 2008 without assigning any reason whatsoever. Petitioner/defendant is not a defaulter in payment of rent and the order directing the defendant to pay Rs.35,157.54/- is perverse as the same is contrary to the materials on record.

5. He further contended that the learned court below did not consider civil deposits for the month of January, 2015 to December, 2015 and deposit of rent before the Rent Controller from October, 2007 to September, 2008 and also civil deposits challan from July, 2013 to December, 2013 which are lying with the case record. Petitioner further contended that the opposite party/plaintiff has not during the entire proceeding challenged and/or prayed for setting aside all the earlier orders but during ongoing arguments, the opposite parties after 15 years came up with a point about the applicability of law of limitation under section 5 of the Limitation Act in respect of petitions filed under section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 which is not maintainable in the eye of law. Accordingly the petitioner/defendant has prayed for setting aside both the orders impugned.

6. Petitioner in this context relied upon the judgment of

(i) 1974 SCC Online Bom 14 (Shankar Rao Ramchandra Rao Phate and another Vs. Chatrapal Anandrao Kedar and others).

(ii) (2019) 10 SCC 660 (Bijay Kumar Sing & Others Vs. Amit Kumar Chamariya and another).

(iii) 2011 SCC Online Cal 5003 (Subrata Mukherjee Vs. Bishakha Das).

(iv) 2012 SCC Online Cal 6964 (*Madhabi Mukherjee Vs. Dipali Mitra*).

7. Mr. Rajdeep Bhattahcharya learned counsel appearing on behalf of the opposite party raised vehement objection and contended that the defendant admittedly received summon of this suit and entered appearance on 14.11.2007 but he filed the application under section 7(1) and 7(2) of the Act of 1997 long after his appearance. Accordingly the defendant's application under section 7(1) and 7(2) of the Act of 1996 is illegal and such delay in filing the application cannot be condoned under section 5 of the Limitation Act. However, at the time of disposal of the application under section 7(2) of West Bengal Premises Tenancy Act 1997, the court below has made specific direction upon the defendant for making arrear payment of rent amounting of Rs. 35,157.54/- within one month from the date of the order but the defendant has not complied the same and instead he had taken the plea that he has already paid the amount and accordingly prayed for recalling the said order dated 16.02.2016 by filing of the application under section 151 of the Code of Civil Procedure, which has been rightly rejected by the court below by the other impugned order dated 20.06.2017. Accordingly the orders impugned are justified and do not call for interference by this court.

8. I have considered submissions made by both the parties. On perusal of the order impugned, it appears that court below has made specific observation that the defendant admittedly paid rent till June 2006. The defendant by filing an application under section 7(2) has contended that he

started depositing rent in the office of the Rent Controller since June 2007. Accordingly court below on perusal of materials on record found that the defendant filed rent control challan for the month of June 2007 to September 2008 and civil deposit challans for the months from October 2008 to May 2013 and challan for depositing occupational charges during the period of appeal for the month of June 2013 to November, 2013 and also civil dispute challans for the month from December, 2013 to December, 2014. By filing application under section 7(2) of the Act of 1997, defendant stated that the defendant appeared in the instant suit on 14.11.2007. So court below held that the Rent Control challans for the month of October 2007 to September 2008 are invalid in terms of section 7(1) and 7(2) of the Act.. However, the learned court below considered occupational charges paid by the defendant for the period from June 2013 to November 2013. Accordingly court below came to a conclusion that the defendant is defaulter in payment of rent at the rate of 540/- per month for the months from July 2006 to May 2007 and from the month of October 2007 to September 2008 and for the month from January 2015 to December, 2015 and by making mathematical calculation the court below opined that the total arrear amount of rent along with interest is Rs. 35,157.54/- which he directed to deposit within one month from the date of order.

9. While disposing the defendants application under section 151 of the code for recalling the aforesaid order of deposits, the court below held that on scrutiny he did not find any challan for payment of arrear of rent of Rs. 35,157.54/- as was decided by the court while disposing application under section 7(2) of the Act and since there is no scope to reopen the matter, so

the court below rejected the said application under section 151 of the code with a cost of Rs. 1,000/-.

10. In the present context, the court below has specifically observed after considering all materials including the challans, civil deposits and occupational charges paid by petitioner/defendant that the rent control challan for the month of October, 2007 to September, 2008 are invalid, since defendant himself admitted that he appeared in the suit on 14.11.2007 and after considering other aspects he came to a finding that the defendant is defaulter in payment of rent at the rate of Rs. 540/- per month for the period from July, 2006 to May 2007 and for the month from October 2007 to September 2008 and from January 2015 to December 2015, on the basis of materials placed before him. The jurisdiction is exclusively vested upon the court below for adjudication of the arrear amount of rent, on the basis of materials placed before him, as the defendant/petitioner has disputed the arrear amount and as such the court below has not acted anything exceeding his jurisdiction.

11. Order impugned reflects that court below while passing the order dated 10.02.2016 duly scrutinized the material's placed before it. The clarification given by the court below in calculating default period cannot be said to be arbitrary, or perverse or in excess of jurisdiction. In my view where orders have been passed on consideration of the materials placed before the court below, the High Court is generally not called upon under Article 227, to reappraise evidence or correct every error of law or fact. The order impugned dated 10.02.2016 does not show that court below ignored any vital document or evidence nor it is apparent that it has made any

irrelevant consideration to come to a conclusion about the arrear amount of rent or in respect of calculation of interest, so that it can be said that the orders impugned are perverse or that court below has overstepped its jurisdiction. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal and made the decision of the court below final on facts.

12. Since there is no perversity in the orders of court below, High Court cannot test the legality of the order impugned through the lens of an appellate authority while exercising supervisory jurisdiction under Article 227 of the constitution of India, which is impermissible. In the present case, High Court not being an Appellate Court, is precluded from reassessing or reevaluating the evidence , that has been brought on record by the parties. By exercising power under Article 227 of the Constitution of India, the order impugned could have been set aside if any illegality, irrationality or procedural impropriety is found in the order.

13. In such view of the matter the ultimate finding of the court below by which he has calculated the arrear amount of rent and for non-payment of arrear rent within stipulated period he has rejected the prayer for recalling , do not call for any interference invoking jurisdiction under Article 227 of the constitution of India.

14. C.O. 957 of 2018 is accordingly dismissed.

There will be no order as to the costs.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJOY KUMAR MUKHERJEE, J.)