June 13, 2023
Sl. No.03
Court No.19
s.biswas

CO 1140 of 2023

Mata Prasad Shaw
vs.
Smt. Sudama Debi

Mr. Abhijit Ray
Mr. Rajib Ray
... for the petitioner
Mr. Asit Kumar Bhattacharyya
Ms. Mousumi Biswas
... for the opposite party

The revisional application was to be heard today on the question of calculation of interest by the learned court below by the order dated March 16, 2023. The points raised have already been answered by the court against the petitioner.

Mr. Bhattacharya, learned advocate for the opposite party/landlord in support of the calculation submits that the method of calculation of interest was correct and the interest payable amounted to more than not only the principal amount but also more than the calculation made by the learned court below.

This calculation has been challenged by the petitioner/tenant on the ground that the interest was not only compounded but unitary method was applied by taking the total arrears rent for 19 years as the principal amount. Interest of 10% per annum was calculated on the said amount even for the first year of default. This, according to the learned advocate for the petitioner, was improper and contrary to the provision of law.

Learned advocate for the opposite party submits that the language of Section 7(1)(a) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as 'the Act') mandates that the tenant must pay to the landlord or deposit in court all arrears of rent calculated at the rate at which it was last paid and up to the end of the month previous to which the payment was made, together with interest at the rate of 10% per annum.

According to Mr. Bhattacharya, the expression 10% per annum would mean and include the arrear rent along with interest of 10% for each year as the total due (principal and interest) which would be carried forward to calculate the next year's arrear and interest.

This, in my view, is not a correct assessment or interpretation of the law. The Hon'ble Apex Court in the matter of ***State of Haryana and others vs. S. L. Arora & Company*** reported in ***AIR 2010 SC 1511,*** held that compounding of interest could not be allowed by any court of law unless the statute provided for the same.

In the matter of ***Gopinath Roy & Ors. v. Sasthi Charan Ghosh*** passed in CO 1792 of 2023, a Co-ordinate Bench of this Court held that Section

7(1) of the said Act postulates that the interest shall be calculated at the rate of simple interest and not at the rate of compound interest. The relevant portion was relied upon and His Lordship held that there was no mention in Section 7(1) of the Act that the expression 'interest' should be treated as 'compound interest'.

In this case, the learned court below calculated the interest as follows:-

"Thus, the amount of interest on Rs.7,21,765 for 232 months (November 2003 to February 2023) would be :

(10 x 232 x 721765 / (100 x 12) = Rs.13,95,412/."

The court took the total arrears of rent and calculated the interest at the flat rate of 10% thereon, per annum. The amount arrived at was multiplied by the number of months of default.

This is not, in my view, the correct calculation. It also appears that the some amount of interest had already been paid by the defendant, which is also a part of the order. Whether adjustment of the said interest was given or not is not available from the calculation impugned before the court

For clarity, the following decisions are discussed:

In the case of **Gopinath Roy & Ors. v. Sasthi Charan Ghosh** passed in CO No.1792 of 2013 a Co-ordinate Bench observed that *"On a plain reading of the Section it appears to me that it is nowhere in that Section stated that the interest shall be calculated at the rate of compund interest. The relevant portion of Section 7(1) is quoted herein once again. "Calculated at the rate at which it was last paid and up to 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." Going by the intention of the Legislature it is very difficult on the part of the court to express the intention of the Legislature meant for compound interest not for simple interest. If I interpret this Section liberally, it cannot be said that the interest is to be calculated on the basis of compound rate.*

With the aforesaid observations I find it judicious to interfere with the order impugned. The impugned order is modified touching the interest part of the same. The interest must be calculated taking the simple interest."

In the case of **Probir Kundu Chowdhury v. M/s. Traders Assembly** passed in CO No.4363 of 2015, a Co-ordinate Bench held as follows:- *"I have considered facts of the case and the provisions of the said Act. From a reading of the provisions contained in Section 7(2) of the said Act, it is clear that the* *defendant-tenant in an ejectment suit is liable to pay simple interest, on the arrear rent and there is no scope for directing the defendant-tenant to pay compound interest on the arrear rent."*

In the case of **Manoroma Dey and ors. v. Jyotsna Rani Das** (CO No.45 of 2016) one of the grievances of the petitioners who were the defendants in the eviction suit was that compound interest had been awarded under Section 7(2) of the West Bengal Premises Tenancy Act, 1997. The Co-ordinate Bench modified the impugned order and *provided simple interest on the principal amount of Rs.7960/- at 10% per annum.*

The order impugned is set aside to the extent of calculation of the interest and the arrears of rent payable by the defendant. The matter is sent back to the learned court below for recalculation of the arrears of rent, along with simple interest at 10% per annum. The learned court below shall fix the time within which the amount shall be paid, so that the tenant will be in a position to get his relief as per Section 7(4) of the said Act.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of server copy of the order.

(Shampa Sarkar, J.)