

C.O. 1161 of 2023

Bluechips Trading Company (P) Ltd.
Vs.
Shree Ram Trust

Mr. Pranit Bag
Ms. Ankita Agrahari
Ms. Joyshree Ghosh
Ms. Barnali Bhowmik

.... for the petitioner.

Ms. Busra Khatun

.... for the opposite party.

This revisional application has been filed challenging the order dated November 29, 2022 passed by the learned Judge, 6th Bench, Presidency Small Causes Court, Calcutta in Ejectment Suit No. 17 of 2016.

By the order impugned, the learned Court allowed an application under Section 7(3) of West Bengal Premises Tenancy Act, 1997 (hereinafter referred to the said Act) dated July 10, 2017, filed by the landlord. The defence of the defendant/tenant, against delivery of possession, was struck off. The prayer of the plaintiff to refund the money remitted to the bank account of the plaintiff, was allowed.

Mr Bag, learned advocate appearing on behalf of the petitioner/defendant, submits that the suit was filed for eviction under section 6 of the said Act. The petitioner was asked to vacate the premises on expiry of March 31, 2015.

According to Mr. Bag, there was no default as the petitioner had issued a cheque for a sum of Rs.18,747/- dated January 25, 2016 against rentals, for the period between May 2015 and January 2016. The said cheque was drawn on the ICICI Bank, Portuguese Church Street Branch and delivered to the address of the plaintiff/landlord on February 2, 2016, by registered post. The plaintiff admitted to have received the envelope containing the cheque, through the receptionist at the office. As the rent for the afore-mentioned period had already been tendered to the landlord, there had been no default in payment of rent for the period between May 2015 and January 2016.

Mr. Bag, submits that the application under Section 7(1) of the Act was filed before the learned trial court, within a month from the receipt of summons. A prayer for an order to deposit current rent from the month of February 2016 to the tune of Rs.1166/- per month was made. The Learned Court allowed such application by order dated March 10, 2016 and directed the petitioner to deposit such arrear rent along with current rent, month by month, as per law. Thereafter, an application under Section 151 of the Code of Civil Procedure was filed for permission to pay the current rent at the rate of Rs.2091/- instead of Rs.1166/-, as there was a miscalculation in the rent payable, on account of

bona fide mistake in not including the service charges. At that juncture, the petitioner also received an intimation from the bank that the cheque which had been tendered to the landlord, had not been presented for encashment till May 12, 2016. Thus, another application under Section 151 of the code of civil procedure was filed with a prayer to allow payment of the rentals from May 2015 to January 2016.

As the petitioner was waiting for the outcome of the said applications, the rents for February 2016 to April 2017 had not been paid, month by month by the 15th of every succeeding month, in terms of Section 7(1(c) of the said Act. The application for payment for the rent at the rate of Rs.2091/- was allowed. By the order dated April 19, 2017, the application seeking permission to deposit the rent from May 2015 to January 2016 was rejected. The said order remained unchallenged. Thereafter, the petitioner issued a pay order against the rentals for the period between February 2016 and April 2017, along with 10% interest amounting to Rs.33,456/-. The pay order was accepted by the learned Advocate for the landlord without prejudice. Again, the rentals from May 2015 to January 2016 were directly sent to the bank account of the landlord. Such payment was made on May 16, 2017. The plaintiff raised an objection on May 29, 2017 with regard to the direct

transfer of the arrear rent to the bank account of the plaintiff, without the leave of the court.

On July 10, 2017 the plaintiff filed an application under section 7(3) of the Act, praying for striking out the defence.

According to Mr. Bag, the application was misconceived. Mr. Bag, submits that a cheque for the rents from May 2015 to January 2016 had been sent to landlord directly, before the suit had been instituted. Thus, at the time of the institution of the suit, there were no arrears. The question of failure to deposit the admitted arrears did not arise. Secondly, it was not for the tenant to enquire whether the landlord had encashed the amount or not. Thus, the prayer for leave to deposit the said amount which was not encashed by the landlord ought to have been allowed. The said amount should not be treated as arrear rent and the defence could not be struck off for non-payment of the said amount. Subsequently, the amount was again deposited by electronic transfer directly to the account of the landlord.

With regard to the one-time payment of the arrears from February 2016 to April 2017, it is contended by Mr. Bag that the said amount along with 10% interest was tendered by pay order. Under such circumstances, the Court could not hold that the petitioner had committed any default in payment of rent as per the provisions of Section 7(1) and 7(2)

of the said Act. The law had been complied with. The application filed under Section 7(3) of the Act, ought to have been rejected by the learned court, on the peculiar facts of this case.

Ms. Khatun, learned Advocate appearing on behalf of the plaintiff/opposite party submits that the petitioner had defaulted in payment of rent from May 2015. Even if the said arrears rent from May 2015 to January 2016 was sent by cheque, the same had not been encashed. The proper procedure for the petitioner would have been to deposit the said amount as admitted arrear rent, along with the statutory interest within the prescribed time limit and then file an application for determination of the arrears under Section 7(2) of the said Act.

Moreover, an earlier application filed by the petitioner under Section 151 of the Code of Civil Procedure praying for permission to deposit the self-same amount, had been rejected. The order remained unchallenged. The subsequent electronic transfer was invalid as no leave of the court had been obtained. The learned Court had rightly allowed the application under Section 7(3) of the said Act.

Having heard learned counsel for the respective parties, this court finds that the application under Section 7(1) of the said Act, was filed around February 25, 2016. An order was passed, allowing the petitioner to deposit the current

rent from the month of February 01, 2016 to the tune of Rs.1166/- and the petitioner had been directed to deposit the arrear rent along with the current rent.

In the application filed under Section 7(1) of the Act, it was the specific case of the petitioner that summons were received on February 16, 2016 and a prayer was made that the petitioner be allowed to deposit the monthly rent to the tune of Rs.1166/- for the month of February 2016 and the months thereafter. From the tenor of the application, there does not appear to be any averment as to whether there were arrears of rent or not. Subsequently, the amount of Rs.1166/- was sought to be corrected by incorporation of the service charges totalling to Rs. 2091/- on and from February 2016. By an application under Section 151 of the Code of Civil Procedure, filed sometimes in June 2016, the petitioner prayed for leave to deposit the rent from May 2015 to January 2016 on the ground that the rentals for these months were tendered to the landlord by an account payee cheque, which had not been encashed. The petitioner contended that the amount of Rs.18,747/- could not be treated as arrears as it had already been tendered prior to institution of the suit. Nonpayment of the said amount would not be violation of the provision of Section 7(1) of the Act. By order dated April 19, 2017,

the learned Court held that the said application under Section 151 of the Code of Civil Procedure was not maintainable as the law provided for a specific mechanism by which the said rent should be deposited. The learned Court held that there was no provision for condonation of delay in depositing the afore-mentioned arrear rent. The plaintiff filed an application under Section 7 (3) of the said Act. The learned court considered the application under Section 7(3) of the said Act, and held that the petitioner had deposited the arrear rent in the bank account of the plaintiff only to cover up the failure to comply with the provisions of Section 7 of the said Act. The petitioner had failed to comply with the provisions of Sections 7(1) and 7(2) of the said Act and the defence was struck off.

Belated tender of arrear rent for the months from May 2015 to January 2016 directly to the bank account of the plaintiff were invalid deposits.

This Court finds that non-compliance of Sections 7(1) and 7(2) of the Act is reflected from the facts and records. In order to cover up such default, the petitioner transferred the rents to the bank account of the landlord, without any order from court. Thus, the tenant having failed to comply with the provisions of law, were rightly found to be in default and the defence was rightly struck off.

This Court is of the view that the learned trial court has not committed any illegality in passing the order impugned. The application under Section 7(1) was filed by the petitioner indicating that the petitioner be allowed to deposit current rent from February 2016. At the relevant point of time, the stand was that there were no arrears due. Subsequently, the petitioner discovered that he was in default as the cheque for the amount of the total rent payable from May 2015 to January 2016 had not been encashed by the landlord.

The petitioner applied before the learned court under Section 151 of Code of Civil Procedure for permission to deposit the said arrear rent. The application was rejected on the ground that the law provided a specific mechanism for deposit of rent, but the same was not availed of by the petitioner. The order remained unchallenged.

Even assuming that the petitioner came to know later that the cheque had not been encashed, this court also finds further default. It is an admitted position that the rent from February 2016 to April 2017 had not been deposited, despite an order of the court upon the petitioner to pay the current rent month by month in terms of Section 7(1) of the Act.

Instead of approaching the court under section 7(2) of the West Bengal Premises Tenancy Act within the time limit prescribed by raising a dispute with

regard to the rent from May 2015 to January 2016 and further, instead of praying for extension within the time limit as per the proviso to Section 7(2), when the first default for non-payment of current rent had been committed, the petitioner tendered the entire amount of rent for more than one year from February 2016 to April 2017, on April 20, 2017, by issuing a pay order.

Although, there is no elaborate discussion on this issue, the fact remains that the petitioner did not approach the Court as per law. The pay order was handed over to the learned Advocate of the plaintiff, who received the same without prejudice and thereafter the plaintiff filed an application for striking out the defence. Thus, this Court finds that the petitioner was in arrears also for the months February 2016 to April 2017. The pay order was issued sometime in April 20, 2017.

There has been default in the payment of rent, in violation of the order dated March 10, 2016 by which the application under Section 7(1) was allowed and the petitioner was directed to pay all arrear rent along with current rent. The petitioner failed to pay monthly rent on and from February 2016 to April 2017, in spite of the order of the Court. The proviso to Section 7 (2) of the said Act, is also not attracted, as the first default was committed in the month of February, 2016.

In the decision of ***Bijay Kumar Singh & Ors. vs. Amit Kumar Chamaria & Anr.*** reported in ***2020(1) Indian Civil Cases 664 (SC)***, the Hon'ble Apex Court held that, Section 7 provides a mechanism for protection from eviction. The provisions of Section 7(1) and 7(2) as also the statutory time limit prescribed therein are mandatory. The Hon'ble Apex Court held that the delay in depositing could not be condoned. Thus, the issuance of pay order in the absence of any direction from the Court and electronic transfer of the arrears, in contravention to the provisions of Section 7(1) of the Act, were invalid deposits. The defense was rightly struck off. The relevant portion of the said judgment is quoted bellows:-

“19. Sub-section (1) of Section 7 of the Act relieves the tenant from the ejectment on the ground of non-payment of arrears of rent if he pays to the landlord or deposits it with the Civil Judge all arrears of rent, 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. Such payment or deposit shall be made within one month of the service of summons on the tenant or, where he appears in the suit without the summons being served upon him, within one month of his appearance.

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 Section 7 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 Section 7 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 (2-A) and (2-B) which was being examined by this Court in *B.P. Khemka [B.P. Khemka (P) Ltd. v. Birendra Kumar Bhowmick, (1987) 2 SCC 407]*. Sub-sections (2-A) and (2-B) of Section 17 of the 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso to Section 7(2) and sub section (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 subsection (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 precondition 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.”

In the matter of ***Debasish Paul & Anr vs Amal Boral*** reported in **2023 INSC 925 (Civil Appeal No.- 6565 of 2023)**, the Hon’ble Court held as follows:-

“**16.** We have no doubt over the proposition that though generally the Limitation Act is applicable to the provisions of the said Act in view of Section 40 of the said Act, if there is a lesser time period specified as limitation in the said Act, then the provisions of the Limitation Act cannot be used to expand the same. It is in this context that in Nasiruddin⁶ case, it has been mentioned that the real intention of the legislation must be gathered from the language used. Thus, the reasoning in Bijay Kumar Singh⁷ case cannot be doubted more so as the requirement is for a tenant to file an application, but he has to deposit the admitted arrears of rent as well, which has certainly not been done.

18. There is also a larger context in this behalf as the Tenancy Acts provide for certain protections to the tenants beyond the contractual rights. Thus, the provisions must be strictly adhered to. The proceedings initiated on account of non-payment of rent have to be dealt with in that manner as a tenant cannot occupy the premises and then not pay for it. This is so even if there is a dispute about the rent. The tenant is, thus, required to deposit all arrears of rent where

there is no dispute on the admitted amount of rent and even in case of a dispute. The needful has to be done within the time stipulated and actually should accompany the application filed under Sub-Sections (1) & (2) of Section 7 of the said Act. The proviso only gives liberty to extend the time once by period not exceeding two months.”

In the decision of the ***Modula India vs. Kamakshya Singh Deo*** reported in **(1988) 4 SCC 619**, the Hon’ble Apex Court held as follows:-

“**24.** For the above reasons, we agree with the view of Ramendra Mohan Dutta, ACJ that, even in a case where the defence against delivery of possession of a tenant is struck off under section 17(4) of the Act, the defendant, subject to the exercise of an appropriate discretion by the court on the facts of a particular case, would generally be entitled:

(a) to cross-examine the plaintiff's witnesses; and

(b) to address argument on the basis of the plaintiff's case.

We would like to make it clear that the defendant would not be entitled to lead any evidence of his own nor can his cross-examination be permitted to travel beyond the very limited objective of pointing out the falsity or weaknesses of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses.”

The Hon’ble Supreme Court held that deposit of admitted amount with statutory interest within one month as prescribed by Section 7 of the said Act was mandatory and the provisions of the Limitation Act cannot be applied for condonation of delay in depositing the rent or in approaching the court for

necessary orders under Sections 7(1) and 7(2) of the said Act.

Under such circumstances, the revisional application is dismissed. However, in terms of ***Modual India (supra)***, the petitioner will be entitled to cross-examine the plaintiff and its witnesses and advance arguments to demolish the plaint case, but cannot set up his own defence.

There will be no order as to costs.

Parties are directed to act on the server copy of this judgment.

(Shampa Sarkar, J.)