

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

C.O. 1259 of 2022

**Sri Bhola Yadav
-Versus-
Sri Rajesh Kumar Agarwala & Anr.**

Mr. Arnab Mukherjee, Adv.,
Mr. Souparno Pyne, Adv.

...for the petitioner.

Mr. Ritoban Sarkar, Adv.,
Mr. Sobhan Kumar Pathak, Adv.

...for the respondents.

Affidavit of service filed on behalf of the petitioner is taken on record.

This is an application under Article 227 of the Constitution of India filed by the petitioner/defendant challenging order no. 57 dated April 7, 2022, passed by the learned Civil Judge (Junior Division), 1st Court at Alipore, 24-Parganas (South) in Ejectment Suit no. 33 of 2013, rejecting the prayer of the petitioner/defendant for recall of order dated July 5, 2016.

The brief fact of the case is that the opposite parties/plaintiff filed a suit for ejectment being Ejectment Suit no. 33 of 2013, before the learned trial Court, praying, *inter alia*, for a decree of eviction of the defendant/petitioner from the suit property. In the said

suit, the petitioner/defendant filed two applications, one under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act') and another under Section 7(2) of the said Act. By order dated July 5, 2016 the application under Section 7(2) of the said Act was disposed of and the defendant was directed to pay arrear rents pertaining to 50 months from March 2010 to April 2014 with interest amounting to Rs.58,393/- within one month. The defendant/petitioner filed several applications for modification of the order dated July 5, 2016, lastly on December 9, 2021, which was rejected by the learned trial Court by the order impugned. Hence this revision.

Mr. Arnab Mukherjee, learned Advocate for the petitioner submits that the interest calculated by the learned trial Court is erroneous to the extent that the same should have been calculated on simple interest whereas the Court proceeded to calculate on compound interest, which led to filing of the application for recall of order dated July 5, 2016, which is innocuous one and should be allowed in the interest of justice. Though, at a belated stage, but the amount as directed by the Court was deposited by the defendant/petitioner. In light of the above submissions, he prays for setting aside of impugned order.

In reply to the contentions raised on behalf of the petitioner/defendant, Mr. Ritoban Sarkar, learned

Advocate for the opposite parties, submits that the petitioner, after passing of the order on July 5, 2016, has filed applications for modification one after the other with a view to delay the proceedings. As per order dated July 5, 2016, there was direction to deposit the arrear rent within one month. However, such order was not complied and by order dated December 11, 2017, the defence of the defendant/petitioner was struck off in terms of Section 7(3) of the said Act. Such order was assailed in revision by the defendant/petitioner which was dismissed by this Court *vide* order dated February 16, 2018, passed in C.O. 435 of 2018. He also draws attention of the Court that the petitioners before the learned trial Court sought for extension of time for depositing the arrear rent as directed by order dated July 5, 2016, which goes to show that the petitioners accepted the amount of arrear calculated by the learned trial Court. He further submits that such order of the learned trial Court directing for depositing arrear rents having not been assailed before the higher Court, has reached finality and therefore, an application for recalling of such order at a belated stage of the proceedings requires to be rejected. In the aforesaid backdrop, he prays for dismissal of the revisional application.

By order no. 20, dated July 5, 2016, while disposing of the application under Section 7(2) of the

said Act, the learned trial Court directed the defendant/petitioner to pay the arrear amount with interest amounting to Rs.58,393/- within one month from the date of the order directly to the plaintiff either by cash or Bank draft in the name of either of the plaintiffs. The defendant/petitioner, on September 5, 2016, filed an application for modification of order dated July 5, 2016, and thereafter, on December 21, 2016, the defendant filed another application for modification of the order dated July 5, 2016. Upon perusal of order no. 28 dated December 11, 2017, it reveals that the defendant/petitioner on 18.04.2017 not pressed his earlier application for modification dated September 5, 2016 and moved application dated December 21, 2016, for modification which was refused by the Court with a direction to the defendant to strictly comply order dated July 5, 2016. There is no material on record that the direction passed in respect of application of the defendant/petitioner dated December 21, 2016, was assailed before the higher Court. Learned Advocate for the defendant/petitioner informs the Court that no such revisional application challenging such order has been preferred by the defendant/petitioner. Thus, it goes without saying that the order dated July 5, 2016, reached finality. Further, for such non-compliance in depositing arrear rent within the stipulated period, the defence of the

defendant/petitioner has been struck off in terms of order dated December 11, 2017. Such order was assailed in revision being C.O. 435 of 2018 and the revision was dismissed upholding the order passed by the learned trial Court.

The application of the defendant/petitioner dated December 9, 2021, for recall of the order dated July 5, 2016 at a belated stage and that too after direction was passed by the learned trial Court to strictly comply such order, appears nothing but an approach to delay the proceeding in the suit.

That being the position and in view of the above discussion, I do not find any impropriety in the order impugned passed by the learned trial Court.

In the aforesaid backdrop, the revisional application being C.O. No. 1259 of 2022, stands dismissed.

Interim order, if any, stands vacated.

All connected applications stand disposed of.

Urgent photostat certified copy of this order, if applied for, be made available to the parties, upon compliance with all requisite formalities.

(Bivas Pattanayak, J.)