

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**C.O. 1674 of 2016
Monoranjan Saha
Vs.
Rubi Santra**

For the petitioners : Mr. Satyendra Agarwal
Mr. Animesh Paul

For the opposite party : Mr. Debasish Sur

Heard on : 07.08.2023

Judgment on : 17.08.2023

Ajoy Kumar Mukherjee, J.

1. Order dated 20.02.2016 passed by the learned Civil Judge (Junior Division) 2nd Court, Chandannagore, has been assailed herein by filing application under Article 227 of the Constitution of India. By the order impugned learned court below has rejected defendant's application under section 7 (1) & (2) of the West Bengal premises Tenancy Act, 1997.

2. Petitioners case is that he is the defendant/tenant and the opposite party herein is the plaintiff/landlady, who filed aforesaid suit *inter alia* for eviction, mense profit against petitioner herein. The petitioner submits that after receiving summon, he appeared before the court below and filed the application under section 7(1) of the Act of 1997 permitting *inter alia* for depositing current monthly rent and also filed another application under

section 7(2) of the Act of 1997, within statutory period, stating that the petitioner/defendant had paid rent for the month of April 2014 without the grant of rent receipt from the plaintiff/opposite party and thereafter he had sent rent for the month of May 2014 for the tenanted premises, through money order which was refused by the plaintiff/opposite party on 13.06.2014 and there is *bonafide* dispute regarding arrears of rent and for which petitioner referred the matter before the court below for determining of actual arrear rent payable by the defendant/tenant to the plaintiff/landlady. Defendant also filed written statement in the said suit, wherein he has made same submission regarding payment of arrear rent. He further contended that plaintiff/landlady used to issue rent receipt once in a year i.e. in the month of March, every year for renewal of the licence of his business. The plaintiff/landlady had lastly handed over rent receipt dated 20.03.2014 to the defendant after the payment of monthly rent.

3. Petitioner further submits that the opposite party had filed written objection against the petitioner's said applications under section 7(1) and 7(2) of the Act of 1997 and both the parties adduced evidence in connection with said two applications. In the cross examination, the plaintiff/opposite party admitted that rent receipt book is lying with her and she further admitted that she refused to accept rent sent through money order, for the month of May 2014. After hearing both the parties learned court below rejected the defendant's aforesaid applications observing that the provisions of section 7(1) (b) of the Act of 1997 is inflexible and unexpandable and as such he has no other option but to reject the said applications.

4. Mr. Agarwal learned counsel appearing on behalf of the petitioner submits that the petitioner /defendant was wrongly advised by the lawyer at the court below and had wrongly and inadvertently challenged the order no. 38 dated 20.02.2016 under section 115 A of the Code of Civil Procedure before the Additional District Judge, Chandannagore, which was rejected on the ground that revision under section 115 A does not lie against said order, which is interlocutory in nature and said revisional application was withdrawn by the petitioner.

5. Mr. Agarwal further contended that learned court below had acted illegally and arbitrarily and with material irregularity in rejecting the petition under section 7(2) of the Act of 1997 without determining the *bonafide* dispute raised by the defendant/tenant, regarding arrears of rent that he had paid till May, 2014 through money order which was refused to accept by the landlady. The petitioner is not a defaulter and has been depositing the current rent regularly. The court below erred in law and fact in passing the impugned order by not taking into consideration that the Act of 1997 is social legislation for the benefit of the tenant. Accordingly he has prayed for setting aside the order impugned.

6. Mr. Sur learned Counsel appearing on behalf of the opposite party/landlady vehemently opposed the prayer made by the petitioner contending that the petitioner herein has made contradictory statements regarding payment of rent. At one place he has stated that he used to pay rent monthly and in the same breath he has stated in another place that he had to pay rent on daily basis. However, he could not show any document that he has paid rent for the months from April 2014 to July, 2014 and as

such it was mandatory on his part to deposit the arrear rent for aforesaid four months along with application under section 7(2), of the Act of 1997. Since the defendant has not complied the statutory mandate which he had to follow scrupulously in order to get protection against eviction, the court below was justified in rejecting his application under section 7(2), which application in fact is not maintainable in the eye of law. In such view of the mater, the order impugned does not call for any interference.

7. I have gone through the order impugned wherefrom it appears that court below has made specific observation that though plaintiff has claimed that the defendant/petitioner herein is defaulter in payment of rent in respect of suit premises since January, 2014 but exhibit 2 which is rent receipt for the month of March 2014 shows that last payment of rent in respect of suit premises was made for the month of March 2014. Court below further held that the plaintiff/landlord has withdrawn to file the rent receipt book which is in the custody of the plaintiff and for withdrawing the best evidence by the plaintiff, the court below did not accept plaintiffs contention that the defendant is defaulter in payment of rent from January, 2014. However, it is not in dispute in the present case that after institution of the suit and after appearance by the defendant the defendant is paying rent by way of challan before the court below from the month of August 2013 onwards Accordingly court below came to a conclusion that from the facts and circumstances of the case, it is palpably clear that the defendant is admittedly the defendant has not made payment of rent for four months that is for April 2014 to July 2014 at the rate of Rs. 3,000/- per month. So the court below held that in compliance with mandatory provisions as laid

down in section 7(1) and 7(2) of the Act the defendant ought to have made the said application along with admitted arrear rent and since the defendant/tenant/petitioner herein has not complied the said mandatory provision of law, the court below rejected the defendant's application under section 7(1) and 7(2) of the Act of 1997.

8. On perusal of the application filed by the defendant/petitioner herein under section 7(2) of the Act of 1997, it appears that the defendant has contended that he paid rent to the plaintiff for the month of April 2014, without granting rent receipt and for the month of May 2014 he had sent it by money order but plaintiff refused to accept the money order on 13.06.2014. He further contended that in the absence of rent receipt for April, 2014, it was not possible for him to deposit rent before the House rent controller at Chandannagore. The defendant/tenant/petitioner nowhere stated that he had paid rent to the plaintiff /opposite party herein for the month of May 2014 to July 2014 and he has only disputed payment of rent for the month of April 2014 for which rent receipt has not been allegedly granted by plaintiff. In the affidavit-in-chief he had also made the same contention. Though in evidence the defendant/tenant tried to make out a new case that his landlady used to collect rent on daily basis, but he has not even stated that for those three months he had even paid rent on daily basis. He further stated in his evidence that her landlady used to grant rent receipt for the entire year in the month of March and such rent receipt was granted to him on 20.03.2014 but nonetheless in his evidence also he nowhere stated that he has paid rent either to the rent controller or to the landlord for the months of May, June, and July, 2014.

9. In view of such matter, the observation of the Trial court that “admittedly” the defendant is defaulter in payment rent for the said months and that he must have deposited admitted arrear rent for the said months along with application under section 7(2), cannot be said to be perverse. The observation of the Trial Court that the word “shall” used in section 7 makes it imperative conclusive and mandatory, cannot be said to be an arbitrary or illegal observation nor such observation is beyond his jurisdiction.

10. In ***Bijay Kumar Singh and others Vs. Amit Kumar Chamariya and another*** reported in **(2019) 10 SCC 660** the Apex Court was pleased to observe in the paragraph 21 as follows:-

“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 sub-section (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.”

11. Since the aforesaid observation of the court below that the defendant has failed and neglected to deposit before the court below the admitted arrear rent within one month from the date of his appearance or receipt of service of summons and thereby contravened the mandatory provisions of section 7 (1) & 7 (2) of the Act of 1997, such observation can hardly be interfered while invoking jurisdiction under Article 227 of the Constitution of India. Statute mandates the tenants to deposit of admitted arrear rent together with 10% per annum with the application within one month of the date of service of summons on the tenant or appearance as the case may be and if from the facts and circumstances, it has become admitted that the defendant has not deposited rent at least for the months of May 2014 to July, 2014, such finding cannot be said to be irrational or suffering from procedural impropriety. In substance if the trial court had jurisdiction to scrutinize the default period and after scrutinization if he finds that the tenant/defendant has failed and neglected to pay rent for the months in respect of which admittedly he has not paid rent and for non-payment of arrear rent along with statutory interest, if court below comes to a conclusion that section 7(2) of the Act of 1997 has not been complied and for which the said application is liable to be rejected, I find no materials for holding that there was any impropriety in exercising the jurisdiction.

12. The power under Article 227 of the constitution of India being supervisory in nature cannot be equated with the powers of appellate court and the jurisdiction under Article 227 cannot be exercised as a cloak of an appeal in disguise. Since the order impugned does not disclose that court below ignored any material piece of evidence in support of deposit of rent for

the aforesaid months, resulting into injustice, this court would not be justified to interfere with such order, merely because different view is possible from the facts and circumstances of the case, if High Court interprets the issue leniently. As the court below appeared to have committed no mistake in appreciation of evidence, nor the conclusion of trial Court reflects any perversity or overstepping of jurisdiction, the present application lacks merit and is liable to be dismissed.

13. C.O. 1674 of 2016 is accordingly dismissed. Connected application accordingly disposed of.

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.

(AJAY KUMAR MUKHERJEE, J.)