

June 13, 2023
Sl. No.04
Court No.19
s.biswas

CO 1665 of 2023
Seuli Saha and another
vs.
Smt. Sita Das and others

Mr. Tarak Nath Halder

... for the petitioners

Mr. Gautam Das

... for the opposite parties

This revisional application is directed against the order passed by the learned Civil Judge (Junior Division), 1st Court, Sealdah in Ejectment Suit No.105 of 2019. By the order impugned, the learned court below rejected the application under Section 5 of the Limitation Act for condonation of delay in filing the applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as 'the Act').

The learned court below held upon considering the decision of the Hon'ble Apex Court in the matter of ***Bijay Kumar Singh and others vs. Amit Kumar Chamariya and others*** reported in ***[(2019) 10 SCC 660]***, that an application under Section 5 of the Limitation Act would not be applicable for condoning the delay in presentation of a time barred petition under Section 7(1) and 7(2) of the Act.

On perusal of the ground taken in the application under Section 7(1) and 7(2) of the Act, it does not appear that the tenant had deposited the admitted rent or had made any averment with regard

to the rent payable. Rather, he stated that the rent be adjusted from the security deposit. The tenant did not deposit the admitted arrears within one month from receipt of summons and also failed to file the application for determination of the arrear rent within the prescribed time. The contention of the tenant that the security deposits should be adjusted against the monthly rent is also not a proper ground for adjudication of the arrear rent.

It is an admitted position that the application under Sections 7(1) and 7(2) was filed after 13 months from the date of receipt of summons.

In ***Bijay Kumar (Supra)*** the Hon'ble Apex Court held as follows:-

“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 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.”

Under such circumstances, this court does think it fit to interfere with the order of the learned court below. The order impugned is upheld.

The revisional application is disposed of without interference.

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

(Shampa Sarkar, J.)