

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

CO 1724 of 2023

Aatish Das & Anr.

vs.

Mst. Fatema Begam Mollah & Ors.

For the petitioners : Mr. Jayanta Kr. Mandal,
Ms. Sayantani Rakshit

For the opposite parties : Mr. Rajdeep Bhattacharya,
Mr. A. Mannan Mollah.

Hearing concluded on: 21.06.2023

Judgment on: 01.08.2023

Shampa Sarkar, J.:-

1. The revisional application has been filed challenging an order dated February 28, 2023, passed by the Learned Civil Judge (Junior Division), 4th court at Serampore in Title Suit No.467 of 2022.

2. The opposite parties Nos. 1 to 4, instituted a suit for eviction and recovery of khas possession on the ground of reasonable requirement and default. The petitioners were the defendant Nos. 1 and 2, in the suit. The petitioners contested the suit by filing their written statement and denied the allegations made therein. The petitioners prayed for dismissal of the suit.

3. The petitioners filed an application under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the Act), contending, inter alia, that they had received the summons on September 2022 and permission be given to deposit the monthly rent of Rs. 1700 per month, from the month of September 2022.

4. The petitioners, thereafter, filed an application under Section 7(2) of the said Act. They contended that summons were served on September 9, 2022 and an application under Section 7(1) of the said Act had been filed claiming to be monthly tenants, at a monthly rental of Rs.1700/- per month, in respect of the shop room as mentioned in the schedule of the plaint. That the plaintiffs/opposite parties No.1 to 4 had not accept rent from the month of May 2021. The petitioners prayed for an order allowing delayed deposit of arrear of rents, in instalments.

5. The said application under Section 7(2) of the said Act was rejected by the learned court below. This revisional application arises out of the order of rejection. The learned court below observed that in order to attract the provisions of Section 7(2) of the said Act, three essential elements were required to be fulfilled. First, there must be a dispute with regard to the amount of rent payable by the tenant. Secondly, the admitted amount of arrear rent along with statutory interest should be deposited within the time prescribed by law and thirdly the court must be approached to determine such dispute with regard to the rate of rent.

6. The learned court held that without raising any dispute with regard to the rate of rent, without depositing the admitted arrear rent and without making any prayer for determination of the rent payable, an application

under Section 7(2) of the said Act was not maintainable. The defendants/petitioners had not raised any dispute either with regard to the rate of rent or with regard to the arrear of rent payable. They had only prayed for an order to deposit the arrear rent in instalments, i.e., rent from May 2021.

7. Learned advocate for the petitioners submitted that proviso to Section 7(2) of the said Act permitted the learned court to extend the time to deposit rent in case of default of payment, by a period of two months. The learned court below ought to have allowed the petitioner to pay the arrear rent in instalments, by invoking the proviso to Section 7(2) of the said Act.

8. According to the learned advocate for the petitioners, as the rate of rent was not in dispute in this case, the pre-conditions of depositing the admitted arrear rent with statutory rate of interest, raising a dispute with regard to arrear rent payable, and consequently calling upon the court to decide such dispute, were not required to be fulfilled. It was submitted that in this case, the learned court ought to have allowed the prayer for deposit of the arrear rent from the month of May 2021, by allowing instalments.

9. Mr. Bhattacharya, learned advocate for the opposite parties/plaintiffs denied such contentions and submitted that in the decision of **Arun Prakash Saha vs Asit Baran De and Ors.** reported in **2017(2) CHN (Cal) 123**, a Co-ordinate Bench of this court held that when the defendant did not deposit the admitted arrear rent together with the statutory rate of interest, the question of determination of arrear rent by the Court, would not arise. That the court did not have any power to extend the time for payment of arrear rent under Section 7(1) of the said Act and it was only by

virtue of the proviso to Section 7(2) of the Act, the court had the power to extend the time for payment of the amount of rent directed by the Court, that too, not beyond a period exceeding two months for the first and only default.

10. Having perused the records, it appears that an application under Section 7(1) of the said Act was filed by the petitioner. The petitioner had admitted to have received the summons on September 19, 2022. The petitioners contended that they were monthly tenants in respect of the shop room at a monthly rent of Rs. 1700/-, payable according to English calendar. The petitioners wanted to deposit the said rent of Rs. 1700/- per month from the month of September 2022. The said application under Section 7(1) of the said Act did not mention anything about the arrears, meaning thereby, at that stage, the defendant's case was that there were no arrears payable. Another application was filed under Section 7(2) of the said Act. The petitioner contended that the plaintiffs/opposite party Nos.1 to 4, had accepted rent up to the month of April, 2021 and from May, 2021 the rent was not accepted. The predecessor of the petitioners was the original tenant and thereafter the petitioners were running the business from the suit premises. The tenancy was inherited by the petitioners. The petitioners had requested the landlord to accept the rent and grant them rent receipt, but the same was refused. Title suit of 323 of 2022 was filed by the said petitioners, for declaration of tenancy and injunction and they had obtained an ad-interim order of injunction against the plaintiffs, which was in force.

Considering the submissions of the learned advocates for the respective parties, the court finds it necessary to discuss the relevant provisions of law:-

Section 7 of the said Act is quoted below:-

“7. When a tenant can get the benefit of protection against eviction.-

- (1)(a)** On a proceeding being instituted by the landlord for eviction on any of the grounds referred to in section 6, the tenant shall, subject to the provisions of sub-section (2) of this section, pay to the landlord or deposit with the Controller 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.
- (b)** Such payment or deposit shall be made within one month of the service of summons on the tenant or, where he appears in the proceeding without the summons being served upon him, within one month of his appearance.
- (c)** The tenant shall thereafter continue to pay to the landlord or deposit with the Controller month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.
- (2)** If in any proceeding referred to in sub-section (1), there is any dispute as to the amount of the rent payable by the tenant, the tenant shall, within the time specified in that sub-section, deposit with the Civil Judge the amount admitted by him to be due from him together with an application for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. On receipt of the application, the Civil Judge shall, having regard to the rate at which rent was last paid and the period for which default may have been made by the tenant, make, as soon as possible within a period not exceeding one year, an order specifying the amount, if any, due from the tenant and, thereupon, the tenant shall, within one month of the date of such order, pay to the landlord the amount so specified in the order:

Provided that having regard to the circumstances of the case, an extension of time may be granted by the Civil Judge only once and the period of such extension shall not exceed two months.

- (3)** If the tenant fails to deposit or pay any amount referred to in subsection (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, the Civil Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.”

11. Section 7(1)(a) of the said Act requires that on a suit being instituted by the landlord for eviction of the tenant on any of the grounds mentioned in Section 6 of the said Act, the tenant shall subject to the provisions of subsection 2, pay to the landlord or deposit with the 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 that in which the payment was made, together with interest at the rate of 10% per annum.

12. As per Section 7(1)(b) of the said Act, the admitted arrear rent must be deposited by the defendants/tenant within one month from the date of service of summons on him or where he appears in the suit without summon, such arrear rent must be paid/deposited within one month from his date of appearance.

13. As per Section 7(1)(c) of the said Act, the tenant shall continue to pay to the landlord or deposit with the court, month by month, by 15th of each succeeding month, a sum equivalent to the rent at that rate.

14. Section 7(2) of the Act provides that in case of dispute with regard to the amount of rent payable, the tenant shall within one month from receipt of summons or from appearing before the Court, deposit the admitted amount due from him as rent and file an application for determination of the rent payable and the Court shall pass an order on such application by determining the rent payable.

15. Proviso to Section 7(2) of the said Act, however empowers the court to extend the time for payment of amount directed to be so paid, only once and that too for a period not exceeding two months.

16. Section 7(3) provides that if the tenant fails to deposit the rent as specified under Section 7(1) or 7(2) of the said Act, within the time specified or within such extended time as may be granted, the court shall order the defence against delivery of possession to be struck out and shall proceed with the eviction suit.

17. In the matter of ***Gunwantrai T. Kamdar v. Satyanarayan Jhunjhunwalla***, reported in **1975 CWN 372**, the Hon'ble Division Bench of this high court discussed the ingredients of Section 17(2) of West Bengal Premises Tenancy Act, 1997 as follows:-

- (a) that there must be a dispute raised as to the amount of rent payable;
- (b) that the tenant must, for the purposes of this section, make deposit of all the admitted arrears within the statutory period;
- (c) that the said deposits, if any, must be made along with an application praying for determination of the amount of rent payable.

18. In the decision of ***Hindusthan Industrial Co. v. Chandi Prosad More***, reported in **(1979) CWN 1017**, the Division Bench of this High Court held as follows:-

“8. This Court in the case of *Gurwantrai v. Satyanarayan Jhunjhunwala*, 75 C.W.N. 372 had considered the true elements which go to make an application under section 17(2) of the Act. It was laid down that such an application must have three elements, namely:--

- (a) that there must be a dispute raised as to the amount of rent payable;
- (b) that the tenant must, for the purposes of this section, make deposit of all the admitted arrears within the statutory period;
- (c) that the said deposits, if any, must be made along with an application praying for determination of the amount of rent payable.

The third element above referred to was considered to be an integral and essential part of the section and it was held that unless the said element is present the application cannot be considered to be an application under section 17(2). That was the decision which

again was based on two earlier unreported decisions of this court referred to and relied on therein. This decision again and the principles laid down therein have been approved and followed by two subsequent decisions of this court in the case of Saroj Kumar Kundu v. Leena Saha, I.L.R. (1972) 2 Cal 118 and Jitendra Chandra Dey v. Tarak Nath Mallick, MANU/WB/0413/1974: 79 C.W.N. 112. The principles so laid down and approved by so many Bench decisions of this court clearly appears to us to lay down the correct principles of law on the provisions of section 17 and on the terms of section 17(2) we are in respectful agreement with the principles so laid down. Tested on the principles as aforesaid, the application dated March 12, 1965, relied by Mr. Dutt can hardly be considered to be an application under section 17(2). Even if we agree and accept Mr. Dutt's suggestion that in this application the appellant raised a dispute as to the amount of rent payable but there is nothing in this application which can establish any invitation to the court to adjudicate on the dispute and determine the amount payable by the appellant. In clear terms it was an application for permission to deposit the rent for the month of March, 1965, though an assertion was made therein that he is not in default in payment of rent and the allegation of default is untrue. It was an application more or less of the same nature as was the application under consideration in MANU/WB/0373/1970: 75 C.W.N. 372 and in any event the third element laid down by this court in the said decision being conspicuously absent this application could neither have been considered nor treated as an application under section 17(2). Therefore, we are clearly of the view that the learned single judge was right in his conclusion that this application could not have been considered as an application under section 17(2). The first point raised by Mr. Dutt, therefore, fails and is overruled."

19. Section 17(2) of the West Bengal Premises Tenancy Act, 1956 is hereby quoted below:-

"17. When a tenant can get the benefit of protection against eviction. –

(2) If in any suit or proceeding referred to in sub-section (1) there is any dispute as to the amount of rent payable by the tenant, the tenant shall, within the time specified in sub-section (1), deposit in court the amount admitted by him to be due from him together with an application to the court for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. On receipt of such application, the court shall –

(a) having regard to the rate at which rent was last paid, and the period for which default may have been made, by the tenant, make, as soon as possible within a period not exceeding one year, a

preliminary order, pending final decision of the dispute, specifying the amount, if any, due from the tenant and thereupon the tenant shall, within one month of the date of such preliminary order, deposit in court or pay to the landlord the amount so specified in the preliminary order; and

(b) having regard to the provisions of this Act, make, as soon after the preliminary order as possible, a final order determining the rate of rent and the amount to be deposited in court or paid to the landlord and either fixing the time within which the amount shall be deposited or paid or, as the case may be, directing that the amount already deposited or paid be adjusted in such manner and within such time as may be specified in the order.”

20. The pre conditions for filing an application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 are *pari materia* with Section 17(2) West Bengal Premises Tenancy Act, 1956. Hence, the three essential requirements for maintainability of an application under Section 7(2) of the said Act, have to be satisfied, as decided in ***Gunwantrai (Supra)*** and ***Chandi Prasad (Supra)***. The said decisions are squarely applicable.

21. In the decision of ***Anwar Hussain v. Raja Mohammed Amin, and ors.*** reported in ***2017 SCC OnLine Cal 15683***, a Co-ordinate Bench of this Court held as follows:-

18. In view of the settled principle of interpretation of statute, as discussed above when the word “shall” appearing in the second part of sub-section (2) of Section 7 of the Act of 1997 is imperative, the same word appearing in the first part of the said sub-section must also be given an imperative meaning.

19. Further, as argued by the plaintiffs opposite parties even it be accepted for the sake of argument clause (a) of sub-section (2A) of Section 17 of the Act of 1956 conferred the power on the Court to extend the time for deposit of rent under sub-sections (1) and (2) of Section 17, but while enacting the Act of 1997 the legislature has consciously omitted to incorporate any provision in Section 7 of the Act similar to sub-section (2A) or (2B) of the Act of 1956.

20. When the requirement of deposit of the admitted arrear rent, along with an application under Section 7(2) of the Act of 1997 is mandatory, the application filed by the petitioner and the

defendant no. 4, the only contesting defendants without deposit of the admitted arrear rent was not maintainable.

22. From a conjoint reading of Sections 7(1) and 7(2) of the said Act, and on the ratios of the judgments discussed earlier, it is clear that the court has no power to extend the time for payment of admitted arrear rent in instalments. The provisions of payment by instalments were consciously omitted in the 1997 Act. Moreover, unless the arrears admitted by the tenant was deposited within one month from receipt of summons or within one month from appearance, along with an application for determination of the arrear rent, Section 7(2) could not be pressed into action. A simpliciter application by the tenant for payment of arrear rent in instalments on the ground that the rent could not be paid as the business did not do well during the covid period, would not be maintainable under Section 7(2) of the Act. The Act of 1997 does not provide for instalments. The petitioners were aware of the arrears, from May, 2021. They filed an application under Section 7(1) of the said Act. The petitioners did not mention anything about the arrears, but filed the application only for permission to deposit the monthly rent from September, 2022 at the rate of Rs. 1700/-. Prior to this, a suit was already filed for declaration of tenancy and injunction and as such, the factum of non acceptance of rent from May, 2021 was well within knowledge. Such fact was not mentioned in the application under Section 7(1). The admitted arrears of rent were not deposited within the statutory period. No dispute was raised for determination of the rent. Such failure could not be overcome by seeking payment of admitted arrears in instalments, by filing an application under Section 7(2) of the said Act.

23. In the matter 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 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."

24. Thus this revisional application fails. The learned court below correctly held that without payment of admitted arrear rent within the time prescribed by law and without filing an application calling upon the court to determine the dispute with regard to the rate of rent, the application under Section 7(2) of the said Act could not be entertained. Moreover, the law does not make any provision for payment in instalments. The proviso to Section 7(2) of the Act is not applicable in this case as the law empowers the court to extend the time period for payment of the amount directed, only once and that too not beyond a period of two months. In this case, no such direction was ever issued. The Court neither has the power to extend the time to deposit arrear rent nor the power to allow delayed deposit of admitted arrears by way of instalments in exercise of power under Section 7(2) of the Act. The deposit of admitted arrears as per Section 7(1) within the statutory period, along with an application for determination of the dispute with

regard to the rate of rent were mandatory pre-conditions, required to be fulfilled by the petitioners. Admittedly, in this case, there was also no dispute with regard to the rate of rent of Rs.1700/- per month. Hence, applicability of Section 7(2) of the Act is answered in the negative.

25. Under such circumstances, the revisional application is dismissed.

26. The application under Section 7(2) of the Act was rightly rejected.

27. There will be no order as to costs.

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

(Shampa Sarkar, J.)