

Item No. 10
03.10.2023
Court. No. 19
GB

C.O. 1747 of 2022

Sri Methai Lall Jaiswal
Vs.
Sri Bholanath Kundu

*Mr. Sanjib K. Mukhopadhyay,
Ms. Parama Roy,
Ms. Aparupa Bhattacharya,
Ms. Nargish Parveen*

...for the Petitioner.

Mr. Abhijit Ray

...for the Opposite Party.

The revisional application arises out of an order dated May 13, 2022, passed by the learned Judge, 3rd Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No.28 of 2021.

By the order impugned, an application under Section 5 of the Limitation Act, seeking condonation of delay in filing the application under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act') was rejected. The learned court disbelieved the contention of the petitioner that due to illness of his recorded advocate, another learned advocate was entrusted to file the application under Section 7(1) and 7(2) of the said Act within time.

Although, the petitioner was informed that the colleague of the recorded learned advocate had filed the application, the application could not be traced in the court's record. There was no proof of such filing. The learned court finding no other alternative and applying the decision of ***Bijay Kumar Singh & Ors. versus Amit Kumar***

Chamariya & Anr. reported in **(2019) 10 SCC 660**, rejected the application, upon arriving at a finding that the provisions of Section 5 of the Limitation Act could not be applied in case of delayed deposit of rent under Section 7(1) and 7(2) of the said Act.

The Hon'ble Apex Court had held that the provision of deposit of the admitted arrear rent along with 10% statutory interest was a mandatory pre-condition to be fulfilled by a tenant if he claimed protection from eviction under any of the grounds mentioned in Section 6 of the said Act. The Hon'ble Apex Court further held that if there was a dispute with regard to either the arrears or the rate of rent, compliance under Section 7(1) was necessary. In addition to such compliance an application was to be filed in Court under Section 7 (2) of the said Act, calling upon the court to decide the dispute.

The law provides a complete mechanism to be availed of by a tenant in order to protect himself from eviction. Such mechanism is incorporated in Section 7 of the said Act. On institution of a suit by the landlord for eviction on any of the grounds referred to in Section 6 of the said Act, the tenant, subject to the provisions of sub-section (2) of the Section 7, was liable to pay to the landlord or deposit with the civil judge all arrears of rent calculated at the rate at which it was last paid and upto the end of the month previous to that in which the payment was made, together with interest at the rate of 10% per annum. Such payment or deposit was to be made within one month from the service of summons on the

tenant or when the tenant appeared in the suit without summons being served, within one month from his appearance. Thereafter, the tenant was enjoined by law, to continue to pay to the landlord or deposit with the civil judge a sum equivalent to the rent at that rate, month by month within 15th of each succeeding month.

In case of any dispute as to the amount of rent payable by the tenant, the tenant was liable to 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 within the time specified in the sub-section. No such deposit could be accepted unless it was accompanied by an application for determination of the rent payable. On receipt of the application, the civil judge, having regard to the rate at which the rent was last paid and the period for which default may have been made by the tenant, determine the dispute, and pass an order within a period not exceeding one year, specifying the amount, if any, due from the tenant and thereupon the tenant was liable to pay to the landlord within one month from the date of such order, the amount so specified in the order along with the monthly rent at the rate so determined.

There have been contrary views of this Court with regard to the applicability of Section 5 of the Limitation Act in respect of belated applications under Sections 7(1) and 7(2) of the said Act, in the past.

However, in the decision of ***Bijay Kumar Singh & Ors. versus Amit Kumar Chamariya & Anr.*** reported

in **(2019) 10 SCC 660**, the Hon'ble Apex Court ultimately decided the scope of Section 7 of the said Act. Paragraph 5 of the said decision is quoted below:-

“5. In this background, the argument of the learned counsel appearing for the appellant is that the High Court has not maintained judicial decorum and should have referred the matter to the larger Bench to decide the scope and ambit of Section 7(2) of the Act. We find that since a short question of law arises for consideration, therefore, without going into the question as to whether learned Single Judge should have referred the matter to the larger Bench or not, the question to be decided by this Court is to bring certainty in respect of scope of Section 7 of the Act.”

The intention of the Hon'ble Apex Court was to bring a finality or a certainty with regard to the issue and resolve the same.

While deciding **Chamariya (supra)** the Hon'ble Apex Court discussed the decision of **Nasiruddin & Ors. versus Sita Ram Agarwal** reported in **(2003) 2 SCC 577**, especially paragraph 47 thereof, and held that **Nasiruddin (supra)** had clearly stated that the court could condone the delay only when the statute conferred such power on the court and not otherwise.

Section 7 was interpreted in **Chamariya (supra)** and the entire mechanism by which a tenant could seek benefit from eviction on the ground of default, was considered to be mandatory and inter-related. The provisions of the said section were discussed in detail in the following paragraphs of the said judgment:-

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 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 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 (2A) and (2B) which was being examined by this Court in B.P. Khemka. Sub sections (2A) and (2B) of Section 17 of 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso of sub sections (2) and (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 pre-condition 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.”

A Division Bench in the **Calcutta Gujarati Education Society vs Sri Ajit Narayan Kapoor** decided in **C.O. 175 of 2017**, answered a reference in view of the conflicting decisions. The question formulated by the then Acting Chief Justice is quoted below:-

“Does the view of the Division Bench of this court that section 5 of the Limitation Act can be applied to condone delay in making applications under sub-sections (1) and (2) of section 7 of the West Bengal Premises Tenancy Act, 1997, as held in the Subrata Mukherjee case (supra), survive in view of the decisions of the Hon’ble Supreme Court in the Nasiruddin case (supra), the Ashoke Kumar Mishra case (supra), Manjushree Chakraborty case (supra).”

The reference was specific as to whether Section 5 of the Limitation Act could be applied to condone a delay in making application under Section 7(1) and 7(2) of the said Act. The Hon’ble Division Bench held that the Limitation Act, 1963 had no manner of application in respect of an application by a tenant under Section 7. Paragraphs 46 and

47 of **Nasiruddin (supra)**, were considered by the Hon'ble Division Bench. In **Nasiruddin (supra)**, it was held that the court could condone delay only when the statute conferred such a power on the court and not otherwise. The Hon'ble Division Bench held as follows:-

“West Bengal Premises Tenancy Act, 1997 is an Act of the State legislature providing for period of limitation in respect of deposit and determination of rent. Section 6 in the Act has the non-obstante clause on application of other laws, regarding eviction. Section 40 makes applicable Limitation Act, 1963 subject to provisions in the Act relating to limitation.

The application for determination of rent not having prescribed period of limitation anywhere else in the third division, article 137, if applied, will provide for it to be made within three years from when the right to apply accrues. In case of such an application it is not the right of the tenant that would accrue, to make such an application. The Act of 1997 mandates that deposit of rent or where there is dispute regarding quantum of rent, deposit of admitted rent alongwith application for determination of rent, must be made by the tenant within time specified and as extendable under said Act. This is in relation to the suit filed for eviction, where compliance with the deposit mandate will enable the tenant to seek the protection provided. This enabling provision cannot be seen as an assertive right of a tenant, to be enforced. Here, provision in article 137 cannot be made applicable. Furthermore, where it is a requirement of compliance by the tenant to seek protection, mandated by the statute as competently legislated by the State legislature and specifically limiting application of the 1963 Act, there cannot be occasion for application of the period of three years, overriding the period and extension specified by the local law and thereafter condonation of delay as under section 5.

We answer the question referred to say that Limitation Act, 1963 has no application in respect of an application by a tenant, made under section 7 for determination of arrears of disputed rent. We are aware our answer to the question referred gives rise to conflicting views of two Division Benches of this Court. However, we have answered the question pursuant to direction made in said administrative order.

The files be sent back on the reference answered and disposed of.”

The decision of a coordinate Bench in **Papiya Sengupta and ors. vs. Suvasis Ghosh** reported in **(2020) 1 ICC 980**, is quoted below:-

“**12.** The Division Bench of this Court in the case of Subrata Mukherjee v. Bisakha Das (supra) while dealing with the said issue at paragraph 32 has held as under:—

‘Accordingly, for this reason, we hold that Section 5 of the Limitation Act will be applicable for the purpose of making deposit of admitted amount of arrears of rent, as mentioned in sub-sections (1) and (2) of Section 7 of the 1997 Act.’

13. The Hon'ble Supreme Court since in the case of Bijay Kumar Singh and Ors. (supra) has held that the deposit of rent along with an application for determination of dispute is a pre-condition to avoid eviction on the ground of non-payment of arrears of rent and in view thereof, tenant will not be able to take recourse to section 5 of the Limitation Act, 1963 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 view of the said decision of the Hon'ble Supreme Court, the decision of Subrata Mukherjee v. Bisakha Das (supra) is of no assistance to the petitioners.”

In **Chamariya (supra)** the Hon'ble Apex Court finally interpreted **Nasiruddin (supra)**, in paragraph 16 thereof. **B.P. Khemka (supra)** was also considered and the Hon'ble Apex Court arrived at the conclusion that Section 5 of the Limitation Act would not apply in case the benefit of protection from eviction was sought by the tenant under Section 7 of the said Act. A conjoint reading of the paragraphs 19, 20 and 21 of **Chamariya (supra)** would categorically reflect such finding.

Similar view was taken by this court in the decision of **Kishan Lal Bihani Vs. Shiv Shakti Real Estate Private Limited** decided in **C.O. 1385 of 2023**.

Under such circumstances, the revisional application is dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)