

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**C.O. 2498 of 2018
Prabir Roy Chowdhury
Vs
Smt. Reena Majumder & Ors.**

For the petitioner : Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal
Ms. Poulami Chakraborty

For the opposite parties : Mr. Malay Dhar
Mr. Anupam Som
Mr. Amit Bikram Mahata

Heard on : 11.08.2023

Judgment on : 23.08.2023

Ajoy Kumar Mukherjee, J.

1. Order being dated 05.06.2018 passed by the learned Civil judge(Junior Division) 2nd Court at Alipore, in Ejectment Suit No.55 of 2013, has been assailed in the present application. This application has a checkered history. The opposite party herein/plaintiff filed aforesaid ejectment suit against the petitioner herein/ defendant/tenant on 11.04.2007. After receiving summon the tenant/defendant appeared in the said suit on 31.05.2007, but defendant/petitioner did not file any application under section 7(1) or 7(2) of the Act within statutory period and after long lapse of time on 22.07.2008, he filed applications under section

7(1) and 7(2) of the Act of 1997 along with application under section 5 of the Limitation Act. Learned Court below by an order dated 19.03.2009 allowed the defendant/petitioner's application under section 5 of the Limitation Act in filing the application under section 7(1) and 7(2) with cost of Rs. 5,00/-. Subsequently after long interval, the court below had ultimately taken up defendant's application under section 7(2) of the Act of 1997 on 05.08.2016 and while disposing the said application, was pleased to held that total arrear amount is Rs. 2,29,311.22/-

2. Subsequently by an application the petitioner herein prayed for recalculation of the arrear amount of rent contending that he has already deposited rent which includes rent of the months of February, 2015 to April 2015 and accordingly after recalculation the court below came to a finding by the said order dated 06.09.2016 that the defendant is a defaulter in payment of rent for 56 months and arrear amount is Rs. 2,14,746.85/- and defendant was directed to pay the said arrear amount within a period of one month from date i.e. within 06.10.2016. Subsequently defendant prayed for payment of the said amount by easy instalments but learned court below by an order dated 19.12.2016 was pleased to reject the said prayer made by the defendant. On 21.04.2017 the plaintiff filed an application under section 7(3) of the West Bengal Premises Tenancy Act for striking out the defence. Prior to that being aggrieved by the order dated 19.12.2016 the petitioner herein preferred civil revision application before this court being **C.O. 1347 of 2017** and while disposing the said application this court was pleased to observe by an order dated 24.04.2017, as follow:-

“Since the petitioner had due opportunity at the relevant time to rely on necessary documents but failed to do so, the matter could not be reopened at the mere demand of the petitioner. The admitted position is that the petitioner could not deposit the relevant receipts at the appropriate time. The petitioner has to suffer the consequences thereof.

Accordingly, the order impugned dated December 19, 2016 is not interfered with and the petitioner is left free to comply with the directions contained in such order.”

3. Accordingly the petitioner applied for certified copy of the order dated 24.04.2017 and got the same on 14.06.2017 and the petitioner deposited arrear amount of default to the bank account of the plaintiff and filed an application on 24.07.2017 for recording the deposited amount through demand drafts. On the other hand plaintiff's aforesaid application under section 7(3) of the Act of 1997 for striking out the defence of the petitioner, was duly contested, but learned court below by the impugned order dated 05.06.2018 was pleased to allow the application filed by the opposite party herein under section 7(3) of the Act of 1997.

4. Mr. Partha Pratim Roy learned counsel appearing on behalf of the petitioner submits that learned court below acted illegally in allowing plaintiffs prayer for striking out defence without considering the order passed by this High Court on 24.04.2017. In fact the court below failed to consider the spirit of the said order and acted illegally by allowing the application under section 7(3) of the Act, without considering that the petitioner had deposited the amount as per the direction of the learned court below and pursuant to the direction made by the High Court in C.O. No. 1347 of 2017, and as such learned court below ought to have rejected the application under section 7(3) of the Act.

5. Mr. M. Dhar learned counsel appearing on behalf of the opposite parties vehemently opposed the prayer and contended that the tenant/defendant has not complied the direction of the court below in connection with application under section 7(2) of the Act. He further contended that the petitioner has heavily relied upon the judgment of this High court passed in C.O. No. 1347 of 2017. In the said order this court has clearly observed that since petitioner had due opportunity at the relevant time to rely on necessary documents but failed to do so, the matter could not be re-opened at the mere demand of the petitioner and admitted position is that the petitioner could not deposit the relevant receipts at the appropriate time and as such petitioner has to suffer the consequence thereof. Accordingly this High Court did not interfere with the impugned order dated 19th December, 2016, but only concluded by saying that the petitioner would be left free to comply with the directions contained in such order. Since the order impugned is not in contradiction to the order dated 24.04.2017, it is justified and sustainable in the eye of law and does not call for interference.

6. Mr. Roy on behalf of petitioner in reply strenuously argued that with the passing of the order by this High Court in C.O 1347 of 2017 on 24.04.2017, wherein High court has left the petitioner free to comply with the directions contained in such order, it merged with the Trial Court's order dated 06.09.2016, wherein court below directed defendant/tenant to deposit arrear rent of Rs. 2,14,796.85/- within a period of one month which means with the merger of High court's order petitioner was required to pay said

amount by 24.05.2017. However as per proviso to section 7 (2) petitioner is entitled to get two months extended time for such deposit and accordingly petitioner was bound to pay said amount by 24.07.2017. Record shows that petitioner duly complied said order by making deposit on 24.07.2017. Accordingly the question of striking out defence against delivery of possession in respect of suit premises does not arise and petitioner is entitled to get protection against eviction.

7. This High court while disposing C.O 1347 of 2017 had specifically observed that the matter cannot be reopened at the mere demand of the petitioner, when admitted position is that the petitioner could not deposit relevant receipts at the appropriate time and as such the petitioner has to suffer the consequences thereof and the order impugned dated December 19, 2016 is not interfered with.

8. Now by the order dated December 19, 2016, the court below rejected petitioner's two prayers one for recalculation and another for granting easy instalments for payment of arrear rent. Court below, while rejecting said prayers observed as follows:-

"Heard and considered the submission advanced by the Ld. Advocate of both sides I also perused the relevant provision i.e. section 7 of the W.B.P.T. Act as well as perused the order dated 06.09.2016. It is found that in the said order i.e. dated. 06.09.2016 where the defendant was directed to pay arrear rent of Rs. 2,14,747/- within a month. According to the provision as referred above, this Ld. Court may extend for a period of two months at best for payment of arrear rent in mathematical calculation, it is clear that the said two months already expired. I do not find any merit of the present application."

9. If the said observation of court below remain uninterfered by this High court while disposing C.O 1347 of 2017 with further observation that the

petitioner has to suffer the consequences thereof, it is very difficult to digest that the order dated 06.09.2016 got merged with High Court's order dated 24.04.2017, or that High Court has legalised arrear deposit, which is otherwise not lawful.

10. In the impugned order while allowing plaintiffs application under section 7(3) of the Act, court below make specific observation, which is as follows :-

“ Perused the case record and on perusal it appears that on 19.12.2016 this court rejected the petition of the defendant observing that there was no scope for reconsideration of the order dated 05.08.2016 as the amount of arrear of rent as decided on 05.08.2016 was reconsidered and recalculated vide order dated 06.09.2016. On perusal of the said order dated 06.09.2016 it appears that the defendant was directed to pay arrear rent of Rs. 2,14,746.85/- within one month from the date of order by making draft payable at Kolkata in the name of the plaintiff No.1. Again on perusal of the order dated 19.12.2016 it appears that it was observed by this court on the said order dated 19.12.2016 that extension period of two months for payment of arrear rent was expired and on that ground the court on 19.12.2016 rejected the petition of the defendant for allowing the defendant for easy instalments regarding payment of arrear rent as decided by order dated 06.09.2016 and the suit was fixed for framing of issues vide order dated 19.12.2016.

Therefore, on the above observation, it is evident that the defendant did not comply the order dated 06.09.2016 regarding payment of arrear rent within the period as directed by this court as per order dated 06.09.2016.

11. It is well settled that supervisory jurisdiction under Article 227 of the Constitution of India is exercised for keeping the courts below within the bounds of their jurisdiction. It cannot be exercised to upset pure findings of the fact like an appellate court. The petitioner has admittedly not deposited the calculated arrear amount within one month from the order dated 06.09.2016. Accordingly court below by the impugned order refused to extend the period for deposit beyond two months in terms of proviso to section 7(2) of the Act, which observation attained its finality due to non-interference by this High court in terms of order passed in C.O 1347 of

2017. Even if from the facts and circumstances of the case, it appears that two views are possible and when it further appears that the view adopted by Trial court is reasonable and plausible one, the High court would be unjustified to interfere in such case, merely to arrive at a different view in the matter as this would be re appreciating the documents and evidence on finding of facts which is the role of the appellate court and not the supervisory court acting under Article 227 of the constitution of India. Different finding could be arrived at if it is shown that the finding of court below is so unreasonable that no court should have reached such finding on the basis of available materials or the order was not in accordance with law. Thus I find no material for holding that there is any impropriety in exercising Jurisdiction of this Court.

12. In such view of the matter the ultimate finding of the trial court in the order impugned allowing prayer under section 7(3) of the Act for non-compliance of the order dated 06.09.2016, cannot be called as perverse and as such does not call for interference seeking jurisdiction under Article 227 of the Constitution of India.

13. C.O. 2498 of 2018 is thus dismissed.

There will be no order as to 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.)