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21.08.2023
Court. No. 19
S. Biswas

CO 1997 of 2023

**The Secretary, Charaktala Consumers Co-
Operative Stores Ltd.**

-Vs-

Dr. Arun Kumar Giri

Mr. S. Halder
Mr. A. Halder

... for the petitioner

This revisional application arises out of an order dated July 28, 2023 passed by the Learned Civil Judge (Junior Division), 5th Court, Alipore in Ejectment Suit No. 6248 of 2013.

By the order impugned, the learned court below rejected an application filed by the defendant/tenant under Section 151 of the Code of Civil Procedure.

By the said application, the petitioner prayed for permission from the Court to deposit the arrear rent along with 10 per cent statutory interest in terms of the order passed by the Hon'ble High Court in CO 4018 of 2016.

The Learned Court below rejected the said application on the ground that on an earlier occasion, by an order dated August 29, 2016, the Court had rejected an application under Section 5 of the Limitation Act and consequently, the belated applications filed under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter

referred to as the said Act), were also rejected. Once again, the application under Section 151 of the Code of Criminal Procedure could not be entertained by giving a further chance to the tenant to deposit arrear rent.

Being aggrieved by the rejection of the application for condonation of delay in filing the applications under Sections 7(1) and 7(2) of the said Act, the defendant filed CO 4018 of 2016, before the High Court.

The civil revision was dismissed by a Co-ordinate Bench of this Court, by an order dated February 8, 2021 with the following observations:-

“The petitioner is aggrieved by the order dated August 29, 2016 passed in the said suit whereby the learned trial Judge has dismissed an application under Section 5 of the Limitation Act, 1963 filed by the petitioner praying 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’ in short) on the ground that the explanations offered are not satisfactory.

*The Hon’ble Supreme Court in the case of **Bijay Kumar Singh & Ors. vs. Amit Kumar Chamariya & Ors.** reported in (2019) 10 Supreme Court Cases 660 has held that Section 7 of the said 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.

In view of the aforesaid proposition of law laid down by the Hon'ble Supreme Court on this issue, the order impugned does not call for any interference."

Accordingly, the learned trial judge once again rejected the application filed by the defendant.

The learned trial Court was of the opinion that the Hon'ble High Court, neither granted any liberty to the petitioner to deposit the arrear rent nor was any permission given to the petitioner to file an application with a prayer for deposit of the arrear rent. Instead, the Hon'ble High Court affirmed the order dated August 29, 2016, passed by the learned trial judge, dismissing the application for condonation of delay and acceptance of the belated applications under Section 7(1) and 7(2) of the said Act.

The ground for rejection was that as the applications under Section 7(1) and 7(2) of the Premises Tenancy Act were not entertained on the ground of delay, a further application for permission to deposit the arrears, was not maintainable as such permission would amount to allowing belated deposit of arrear rent, which was no longer permissible.

Learned Advocate for the petitioner submits that the earlier civil revisional application was rejected on the ground that the petitioner ought to have deposited the arrear rent and raised a dispute with regard to the

rate of rent. The same not having been done, the order of the learned trial judge, rejecting the application under Section 5 of the Limitation Act, 1963, was correct.

Learned Advocate for the petitioner relies upon a decision of this Court reported in (2015) 4 WBLR 348 (*M/s. Sree Krishna Welding Works –vs- Amit Kumar Chamaria & Anr.*). In the said decision, a learned Judge of this Court was of the view that Section 40 of the Premises Tenancy Act allowed condonation of delay in depositing the rent beyond the prescribed time, by exercising the inherent power under Section 151 of the Code of Civil Procedure. As non-compliance of Section 7(1), would attract serious penal consequences, the court should not adopt a pedantic approach but a pragmatic one and allow belated filing of the admitted arrears in order to render complete justice.

Further reliance has been placed on the decision of this Hon'ble Court reported in (2017) 5 WBLR 553 (*M/s. Smart Enterprises – Vs- Shree Ram, Trust*), wherein the tenant was given the opportunity to either deposit the arrear rent or wait for the final amount to be indicated by the Court below, as the application under Section 7(2) was still pending. It is urged that this court should allow the application under Section

151 of the Code of Civil Procedure, in the light of the decisions of this court.

Coming to the facts of this case, it appears that the suit for eviction and recovery of khas possession was filed against the petitioner. Around November, 2013, applications were filed before the learned court below, under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 along with an application for condonation of delay. The petitioner expressed a desire to deposit the current monthly rent and the arrears, in easy instalments. It was admitted by the tenant that there was 67 days delay in filing the applications. The delay occurred as the tenant was not properly guided by the learned advocate. The said application for condonation of delay was heard on contest and dismissed by an order dated August 29, 2016 on merits.

The learned court below recorded that the negligence of the learned advocate was not a ground for not filing the applications within the statutory period. The compliance of necessary formalities as required by Section 7 of the said Act, were also missing.

Such order was challenged before this Court. A Co-ordinate Bench of this Hon'ble Court, held that in view of the decision in *Bijay Kumar Singh -vs- Amit Kumar Chamaria* reported in (2019) 10 SCC 660,

deposit of admitted arrear rent with statutory interest along with an application for determination of the rate of rent, were the pre-conditions to avoid eviction on the ground of non-payment of arrears of rent. In view thereof, the tenant would not be able to take recourse to Section 5 of the Limitation Act as it was not the application alone which was required to be filed by the tenant, but the tenant was also required to deposit the admitted arrears of rent with interest, within the period prescribed by Section 7(1).

Such order of this Court was interpreted by the petitioner to mean that upon depositing the admitted arrears subsequently, the tenant would be given the protection under Section 7 of the West Bengal Premises Tenancy Act, 1997.

Thus, this revisional application has been filed assailing the order impugned on the ground that the belated deposit of the arrear rent, by invoking Section 151 of the Code of Civil Procedure was permissible and the defence/petitioner should not be struck off. In spite of rejection of the application under Section 5 of the Limitation Act in the earlier round of litigation, the arrears could be deposited by invoking the inherent power of the court.

The entire issue revolves around the interpretation of Section 7 of the said Act.

Paragraph 5 of the decision in Chamariya (supra) indicates that the Hon'ble Apex Court wanted to bring a certainty to the scope of Section 7 of the Act.

Paragraph 5 of the said judgment 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 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 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.”

The Hon’ble Apex Court held that the sub-section (1) of the Act relieved the tenant from ejectment on the ground of non-payment of arrears of rent if he paid to the landlord or deposited 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 was made together with interest at the rate of ten per cent per annum. Such payment or deposit was to be made within one month of the service of summons on the tenant or, where he appeared in the suit without the summons being served upon him, within one month of his appearance.

According to the Hon’ble Apex Court, the decisions in *B.P. Khemka Pvt. Ltd* and *Nasiruddin* were distinguishable and not applicable in a situation when benefit of protection from eviction was to be taken by a tenant being a private individual.

The Hon’ble Apex Court went on to decide the ingredients of sub-section(2) of Section 7 and held that sub-section (2) of the Act would come into play if there was a dispute as to the amount of rent including the period of arrears payable by the tenant. In such a situation, the tenant was obliged, within the time as specified in sub-section (1), that is, within one month

of the receipt of the 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 was further required to file an application for determination of the rent payable. Such deposit could not be accepted, unless it was accompanied by an application for determination of rent payable. Therefore, if the above pre-conditions were not satisfied, the tenant could not take recourse to Section 5 of the Limitation Act. Sub-section (3) of Section 7 provided for consequences of non-payment of rent.

The tenant was bound to take steps as contemplated under Section 7(1) and 7(2) of the Act. The deposit of rent along with an application for determination of dispute within the statutory time limit was a pre-condition to avoid eviction on the ground of non-payment of arrears of rent. The petitioner did not approach the court by filing the applications under Sections 7(1) and 7(2) of the said Act within one month from service of summons. Also, the admitted arrears with interest was not deposited. Instead, belated applications were filed seeking permission to deposit the arrears in instalments.

In view thereof, the tenant could not take recourse to Section 5 of the Limitation Act as it was not the application alone, which was required to be filed, but the amount was also to be deposited within the statutory

period. Thus, the time within which the said steps were to be taken by the tenant have been stipulated in Section 7(1) of the Act, was mandatory. Such time frame was not adhered to at the first instance. The Hon'ble Apex Court has finally decided the issue. Belated applications under Sections 7(1) and 7(2) of the said Act, could not be accepted.

The decisions cited by the petitioner in Smart Enterprise (supra) and Welding Works (supra) were rendered before the decision of the Hon'ble Apex Court in Bijay Kumar Singh –Vs- Amit Kumar Chamariya.

Moreover, the Division Bench in the matter of Calcutta Gujarati Education Society vs. Ajit Narayan Kapoor has categorically answered the following reference:-

“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 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 spirit of the order of the High Court in CO 4018 of 2016 was not that in case the arrears were deposited, the applications under Section 7(1) and 7(2) of the Act could be entertained upon condonation of delay. Instead, the learned coordinate bench referred to the decision in **Chamariya (supra)** which was an authority on the scope of Section 7 of the said Act.

Under such circumstances, this court is of the view that the application filed by the petitioner under Section 151 of the Code, was not maintainable. By such application, the petitioner tried to circumvent the order of rejection of the application for condonation of delay on account of belated filing of the applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act. The application was misconceived. The learned court below rightly rejected the same.

The revisional application is thus dismissed.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)