

07.12.2023
Court No. 19
Item no.07
CP

C.O. No. 1999 of 2023

Sri Indradeb Shaw @ Indra Deb Shaw
Vs.
Partha Sarathi Roy

Mr. Rahul Karmakar
Mr. Suman Majumder
Mrs. Srabani Majumder

.....for the petitioner.

Mr. Pinaki Ranjan Mitra
Ms. Gargi Acharyya

.....for the opposite party.

The petitioner alleges that the order dated April 28, 2023 passed by the learned Chief Judge, Small Causes Court at Calcutta in Ejectment Suit No. 48 of 2022 suffers from several irregularities. The irregularities are:-

- a) The learned court proceeded on the bailiff's report that the bailiff had tried to cause substituted service on March 21, 2023 by affixing the same at a conspicuous place at the premises in question, without allowing the petitioner to cross-examine the bailiff.
- b) The summons that were allegedly sought to be affixed indicated the date for appearance of the petitioner as April 28, 2023, but the learned court rejected the application which was filed on April 28, 2023 on the ground of delay.

- c) The provisions of Rule 276 of the Civil Rules and Orders were violated by the learned court below in not fixing a date within 14 days from filing of the suit which would then enable the petitioner to appear within the statutory period of limitation prescribed under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act'), and pray for necessary orders by filing the application under Section 7(2) of the said Act.
- d) The petitioner cannot be blamed for the mistake of the court in fixing a later date, which was beyond the expiry of one month, as a litigant could be misled by such dates.
- e) The petitioner was a diligent litigant as would be seen from his conduct as he appeared on the date fixed by the court and filed the applications under Section 7(1) and 7(2) of the said Act.

Mr. Mitra, learned advocate appearing on behalf of the opposite party/landlord, submits that the provisions of Section 7 of the said Act was mandatory. The time limit prescribed by the said provisions was to be followed by the tenant if the tenant wanted to seek protection from eviction in a suit filed under Section 6 of the said Act.

Even assuming that the defendant was misled by the date mentioned in the summons and appeared on the said date, the liability to deposit the admitted arrears along with statutory interest still remained and such failure would also amount to non-compliance of Section 7 of the said Act and the applications under Sections 7(1) and 7(2) were rightly rejected.

Coming to the order impugned, this court finds that the court had applied its mind to the materials on record and the bailiff's report. Upon perusing the report and the documents, the court was of the view that the summons were attempted to be served by the bailiff on March 21, 2023. However, due to the resistance offered by the petitioner's wife and son, the bailiff could not affix the summons. The court concluded that the defendant/petitioner had knowledge of the suit from March 21, 2023.

The court holds that in view of the decision of the Hon'ble Apex Court in the matter of *Bijay Kumar Singh & Ors. vs. Amit Kumar Chamaria & Anr.*, reported in 2020(1) Indian Civil Cases 664 S.C, a time barred application under Sections 7(1) and 7(2) could not be entertained by the learned court. The applications were filed on April 28, 2023.

Section 7 is a provision incorporated under the said Act which provides the tenant protection from

eviction, on any of the grounds under Section 6 of the said Act, provided the tenant complies with the following:-

- a) The tenant was 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 @ 10% p.a.
- b) Such payment or deposit is to be made within one month of the service of summons on the tenant or where he appears in the suit without summons being served upon him, within one month of his appearance.
- c) The tenant should thereafter continue to pay to the landlord or deposit with the Civil Judge month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.

Section 7(2) provides that in case of any dispute with regard to the rent payable the tenant shall within the time specified in Sub-Section (1), deposit with the Civil Judge the admitted rent and make a prayer 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.

In this case, the learned court was of the view that the petitioner was aware of the institution of the suit and the summons sought to be affixed at the premises could not be so affixed, due to severe resistance. The court recorded that the summons was considered to be served as the wife and son were put in knowledge of the same when the bailiff went to affix the same. Thus, the period of limitation would expire on April 21, 2023. The petitioner appeared on April 28, 2023 and filed the applications under Sections 7(1) and 7(2) of the said Act without depositing the admitted arrears with the statutory interest.

It appears from the averments in paragraph 4 of the plaint, that the tenant was termed as a defaulter since July 2011. Whereas, in the application filed under Section 7(1) the petitioner only sought permission to deposit current rent for the month of April, 2023. In the application under Section 7(2) in paragraphs 5 and 6, the petitioner has averred that there was a dispute between the co-owners and Smt. Arpana Paul stopped accepting rent, despite requests from the petitioner on and from April 2011. The petitioner being an illiterate person was ignorant of the law and did not tender the rent through money orders, on the hope that once again the landlord would accept the rent. Such

was the reason why the petitioner became a defaulter from April, 2011 onwards, till March, 2022.

Thus, the requirement of depositing the admitted arrears and filing the application under Section 7(2) of the said Act, by raising a dispute with regard to the rate of rent was a mandatory requirement to be complied with by the tenant in case the tenant sought protection from eviction.

In paragraph 11 of the said application, the petitioner has stated that since he came to know that a suit had been filed against him, he rushed to the advocate, caused an e-court searching and on the advice of the advocate, filed the applications. In that paragraph, the tenant admits knowledge of the suit but does not disclose any date.

Thus, the contention of Mr. Karmakar, learned advocate for the petitioner, that one month should be reckoned from the date when he was asked to appear by the court is not accepted. The tenant was aware of the suit. However, even assuming that the bailiff's contention may not be sacrosanct, as alleged by Mr. Karmakar, yet the liability of the tenant to deposit the admitted arrears along with statutory interest, within one month from knowledge is mandatory and, in this case, no such deposit was made.

Secondly, irrespective of the date on which the learned court directed the defendant to appear in the suit, the obligation was on the part of the tenant to comply with Section 7 within the time frame prescribed by law, if the tenant wished to avail of the protection from eviction.

The Hon'ble Apex Court in the matter of ***Bijay Kumar Singh & Ors. vs. Amit Kumar Chamaria & Anr.*** reported in ***2020(1) Indian Civil Cases 664 (SC)***. Paragraphs 18 to 21 being relevant are quoted below:

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.”

In the matter of ***Debasish Paul & Anr vs Amal Boral*** reported in **2023 INSC 925 (Civil Appeal No.- 6565 of 2023)**.

“**16.** We have no doubt over the proposition that though generally the Limitation Act is applicable to the provisions of the said Act in view of Section 40 of the said Act, if there is a lesser time period specified as limitation in the said Act, then the provisions of the Limitation Act cannot be used to expand the same. It is in this context that in Nasiruddin⁶ case, it has been mentioned that the real intention of the legislation must be gathered from the language used. Thus, the reasoning in Bijay Kumar Singh⁷ case cannot be doubted more so as the requirement is for a tenant to file an application, but he has to deposit the admitted arrears of rent as well, which has certainly not been done.

17. We are of the view that a combined reading of the two statutes would suggest that while the Limitation Act may be generally applicable to the proceedings under the Tenancy Act, the restricted proviso under Section 7 of the said Act, providing a time period beyond which no extension can be granted, has to be applicable. The proviso is after Sub-Section (2) of Section 7 but Sub-Section (2) of Section 7 in turn refers to Sub-Section (1) implying the application of the proviso to Sub-Section (1) too.

18. There is also a larger context in this behalf as the Tenancy Acts provide for certain protections to the tenants beyond the contractual rights. Thus, the provisions must be strictly adhered to. The proceedings initiated on account of non-payment of rent have to be dealt with in that manner as a tenant cannot occupy the premises and then

not pay for it. This is so even if there is a dispute about the rent. The tenant is, thus, required to deposit all arrears of rent where there is no dispute on the admitted amount of rent and even in case of a dispute. The needful has to be done within the time stipulated and actually should accompany the application filed under Sub-Sections (1) & (2) of Section 7 of the said Act. The proviso only gives liberty to extend the time once by period not exceeding two months.”

The Hon’ble Supreme Court held that deposit of admitted amount with statutory interest within one month as prescribed by Section 7 of the said Act was mandatory and the provisions of the Limitation Act cannot be applied for condonation of delay in depositing the rent or in approaching the court for necessary orders under Sections 7(1) and 7(2) of the said Act.

The trial court held that in view of the limitation period prescribed in Section 7 of the said Act, a time barred application under Section 7(1) and 7(2) of the said Act cannot be accepted by the court. The learned trial court has not acted either illegally or with material irregularity in rejecting the said applications.

Accordingly, the revisional application is dismissed.

However, there shall be no order as to costs.

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

(Shampa Sarkar, J.)