

October 3, 2023
Sl. No.42
Court No.19
s.biswas

CO 2226 of 2023

Shashi Kant Soni and another
vs.
Calcutta Pinjrapole Society

Mr. Tanmoy Mukherjee
Mr. Iresh Paul

... for the petitioners

Mr. Kushal Chatterjee
Mr. Oyshik Chatterjee
Mr. Sunil Kumar Singhania
Ms. Kalpana Singhania

... for the opposite party

The revisional application has been filed challenging an order dated March 27, 2023 passed by the learned Judge, 12th Bench, City Civil Court at Calcutta in Title Suit No.375 of 2018.

By the order impugned, the learned court below allowed the application filed by the tenant under Section 7(1) of the West Bengal Premises Tenancy Act. The tenant was permitted to deposit the arrears along with the current rent.

Mr. Mukherjee, learned advocate appearing on behalf of the landlord/petitioner challenges the order on the following grounds:

- a) The suit was for eviction of a trespasser upon expiry of the lease.
- b) Section 7 of the West Bengal Premises Tenancy Act, 1997 would only come into play when a suit for eviction on any of the grounds in Section 6 of the Act had been filed.

- c) The application under Section 7(1) of the Act was wrongly filed in the facts of the present case. If the plaintiff failed to prove his case of eviction against the defendant, the suit would fail. In the alternative, if the defendant was successful in proving that he was a premises tenant, the suit would also fail.
- d) That the induction of the tenant by a registered lease deed amounted to ouster of the West Bengal Premises Tenancy Act, 1997.
- e) The order impugned indirectly amounts to conversion of the suit to one for ejectment under the West Bengal Premises Tenancy Act. If the said claim is proved, the suit will fail.

Having perused the plaint and the law, this court is of the view that the order impugned suffers from material irregularity. The same is set aside. If it is the defence of the defendant is that he is a premises tenant and the tenancy was governed by the West Bengal Premises Tenancy Act, 1997, the same shall be adjudicated in the suit. Section 7 of the 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 subsection (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.”

The positive case of the plaintiff is that the suit had been filed under the Transfer of Property Act.

The issue of deposit and non-deposit of rent shall not affect the merits of the defense case.

The court also finds that in view of the provision of law, the application under Section 7(2) of the Act need not be heard and the same is disposed of by this court. The rights and liabilities of the parties and their defence will be adjudicated in the suit. The tenant is at liberty to withdraw the amount, if any, deposited pursuant to the order impugned.

The revisional application is thus disposed of.

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

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.)