

Item No. 547
07.08.2023
Court. No. 19
GB

C.O. 2252 of 2023

Madhu Devi Saraf
Vs.
Janki Devi Jain

Mr. Sibasish Ghosh,
Mr. Tirtharaj Ghoshal

...for the Petitioner.

This revisional application has been filed challenging an order dated May 10, 2023, passed by the learned Chief Judge, Presidency Small Causes Court at Calcutta in Ejectment Suit No.283 of 2022.

By the order impugned, the learned court below rejected an application under Section 151 of the Code of Civil Procedure, by which the petitioner prayed for extension of time to deposit the monthly rent from December 2022 onwards. By an order dated December 12, 2022 the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 filed by the defendant/petitioner, was disposed of by the learned trial court.

It was held that the defendant was a defaulter since April 2011. The defendant was directed to pay the arrear rent from April 2011 to August 2022. There was no dispute with regard to the arrear rent. Such payment was directed to be made with statutory interest at the rate of ten per cent per annum, within 30 days from the date of order. It was further directed that the defendant was liable to pay the current rent month by month within the 15th of each succeeding month. The petitioner did not pay the amount as directed by the

learned court below with regard to the current rent within 15th of the succeeding month from December 2022 onwards till the date of filing of the application under Section 151 of the Code of Civil Procedure. The application was filed in February 2023. The petitioner prayed for an order for acceptance of the current rent which had not been paid in terms of the order of court and in violation of Section 7(1) (c).

The learned court below found that the provisions of Section 7(1)(c) of the West Bengal Premises Tenancy Act, 1997 was violated.

The tenant was to continue to pay to the landlord or deposit with the court, current rent month by month by the 15th of each succeeding month, a sum equivalent to the rent.

Hence, the application under Section 151 of the Code was rejected on the ground that there is no satisfactory explanation as to why rent could not be deposited on and from December 2022 and moreover, delay in depositing the same could not be condoned by invoking inherent power.

This Court does not find any illegality in the order impugned. The decision of ***Ashok Kumar Bhagnani versus Mansur Ahmed*** reported in **2015 (4) CHN (CAL) 699** does not apply as the said decision was rendered when the decision of the Hon'ble Apex Court was otherwise. 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)** held that the provision of Section 7(1) of the said Act was mandatory.

Relevant paragraphs are quoted below:-

“16. While examining as to when the provision of a statute is to be treated as directory or mandatory, this Court held in Nasiruddin case that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences thereof are specified. It was held as under:

“37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression “shall or may” is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.

38. Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified. In Sutherland's Statutory Construction, 3rd Edn., Vol. 3, at p. 107 it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that

shall follow non-compliance with the provision.
xxx xxx xxx

40. Thus, on analysis of the aforesaid two decisions we find that wherever the special Act provides for extension of time or condonation of default, the court possesses the power therefor, but where the statute does not provide either for extension of time or to condone the default in depositing the rent within the stipulated period, the court does not have the power to do so.

41. In that view of the matter it must be held that in absence of such provisions in the present Act the Court did not have the power to either extend the period to deposit the rent or to condone the default in depositing the rent.”

17. Further, a three Judge Bench of this Court in a judgment reported as *Union of India and Others v. A. K. Pandey*¹⁸ held as under: “15. The principle seems to be fairly well settled that prohibitive or negative words are ordinarily indicative of mandatory nature of the provision; although not conclusive. The Court has to examine carefully the purpose of such provision and the consequences that may follow from non-observance thereof. If the context does not show nor demands otherwise, the text of a statutory provision couched in a negative form ordinarily has to be read in the form of command. When the word “shall” is followed by prohibitive or negative words, the legislative intention of making the provision absolute, peremptory and imperative becomes loud and clear and ordinarily has to be inferred as such. There being nothing in the context otherwise, in our judgment, there has to be clear ninety-six hours' interval between the accused being charged for which he is to be tried and his arraignment and interval time in Rule 34 must be read as absolute. There is a purpose behind this provision: that purpose is that before the accused is called upon for trial, he must be given adequate time to give a cool thought to the charge or charges for which he is to be tried, decide about his defence and ask the authorities, if necessary, to take reasonable steps in procuring the attendance of his witnesses. He may even decide not to defend the charge(s) but before he decides his line of action, he must be given clear ninety-six hours.”

18. The judgment in *B.P. Khemka* is in respect of a statute giving power to condone delay without any fetters. The amendments carried with retrospective effect inter alia enabled tenants who were in default to apply to the court and pay the arrears of rent in instalments and thereby avert their eviction. In pursuance of the amendments, the tenant deposited the rent. However, he subsequently committed default in paying monthly rent. 18 (2009) 10 SCC

552 Consequently, the defence was struck off on the ground that in paying the rent for the months of September 1968 and March 1969, there had been a delay of 44 days and 6 days respectively, which was in contravention of Section 17(1) of the West Bengal Act. This Court held that the proviso makes it clear that if the subsequent default is for a period of 4 months within a period of 12 months, the tenant can claim relief under the sub-section once again. Since the default was less than 40 days, this Court held that under the said proviso, the delay could be condoned. Provisions of M.P. Act and of Delhi Act are also similar.

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 learned court below has rightly held that the entire mechanism laid down by Section 7 of the West Bengal Premises Tenancy Act, 1997 was mandatory and the tenant could not take shelter of Section 151 of the Code of Civil Procedure to make delayed deposits.

Accordingly, the revisional application is disposed of.

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

(Shampa Sarkar, J.)