

S/L 14
28.04.2023
Court. No. 12
Sourav

CO 2957 of 2011

**Uttam Kayal
Vs.
Sunil Pal**

*Mr. Sourav Sen
Mr. Adrisnata Chakraborty*

...for the petitioner.

Mr. Gautam Lahiri

...for the Opposite Party Nos. 1(b), 1(c).

1. Both the petitioner and the opposite parties are represented by their learned advocates.
2. In this revisional application as filed under Article 227 of the Constitution of India, the Order No. 77 dated 12.07.2011 as passed in Title Suit No. 222 of 2005 by the learned Civil Judge (Junior Division), First Court, Serampore, Hooghly has been assailed.
3. By the impugned order, learned Trial Court allowed the defendant's application for modification of the Order No. 70 dated 11.03.2011 in part and at the same time held that since the defendant of the said suit failed to make deposit as directed vide Order No. 70 dated 11.03.2011, the deposit so made by the defendant is invalid deposit holding further that the defendant is still held to be a defaulter.
4. For effective disposal of the instant revisional application, the facts giving rise to the instant revisional application is required to be dealt with in a nutshell.

5. Originally, the Title Suit No. 222 of 2005 was filed by the plaintiff before the learned Trial Court for eviction of the defendant under the provisions of Transfer of Property Act. Subsequently, for some reasons or other, it has been directed by the learned Trial Court that the said Title Suit No. 222 of 2005 would be proceeded under the provisions of West Bengal Premises Tenancy Act, 1997 and accordingly, the defendant who is the petitioner before this Court filed the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 which was disposed of by the learned Trial Court vide Order No. 70 dated 11.03.2011 holding that the present defendant/petitioner is defaulter in payment of rent for the month of September 2008, November 2008 and December 2008. Vide order No. 70 dated 11.03.2011, learned Trial Court further directed the defendant to deposit the said arrears of rent totaling Rs. 1,050/- together with 10 per cent interest of the said amount i.e., in total Rs. 1,155/- within one month from the date of passing of the said order i.e., on 11.03.2011.
6. Immediately, thereafter, the defendant/revisionist filed an application before the learned Trial Court under Section 152 read with Section 151 of the Code of Civil Procedure praying for modification of the Order No. 70 dated 11.03.2011 on the ground that for the month of September 2008, the defendant/revisionist has already paid the said rent

on 15.09.2008 in hand and for the month of November 2008 and December 2008, the rent has been deposited in Court in the said suit on April 4, 2009 under cover of a challan in view of the earlier order as passed by the learned Trial Court.

7. Mr. Sen, learned advocate for the defendant/revisionist submits before this Court that while passing the impugned order, learned Trial Court has failed to visualize that for the alleged default period i.e., September 2008, November 2008 and December 2008, the defendant/petitioner had paid rent for the month of September 2008 in hand to the plaintiff and the same was duly received by the learned advocate for the plaintiff by issuing a money receipt and further much prior to passing of the Order No. 70 dated 11.03.2011, the defendant on April 4, 2009 has already deposited the rent of November 2008 and December 2008 along with other months by way of challan in the Trial Court. It is thus submitted that learned Trial Court committed serious error of law by not allowing the defendant's application for modification.
8. Learned advocate for the plaintiff/opposite party, however, opposes such prayer. It is contended by him that nothing has been produced before this Court to substantiate that the order as passed by the learned Trial Court is incorrect.
9. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for

both sides, it reveals that at the time of disposal of the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997, the learned Trial Court vide its Order No. 70 dated 11.03.2011 found that the defendant/revisionist was defaulter in payment of rent for the month of September 2008, November 2008 and December 2008 and thus, by the self-same order, directed the defendant/revisionist herein to pay the arrears of three months rent together with 10 per cent interest totaling Rs. 1,155/- within one month from the date of passing of Order No. 70 dated 11.03.2011.

10. Sufficient materials have been placed before this Court that for the aforesaid three months, the defendant/revisionist has paid rent either within time or before time.
11. In view of such, this Court considers that there is sufficient ground for interference with the impugned order in exercise of this Court's plenary power under Article 227 of the Constitution of India.
12. In view of the discussion made hereinabove and in view of the fact that the defendant/revisionist has already paid and/or deposited rent for the month of September, November and December 2008 at the rate of Rs. 350/- there cannot be any justification to hold that the defendant is defaulter in paying rent for the aforesaid three months.
13. In view of such, both the impugned Order No. 77 dated 12.07.2011 and the impugned Order No. 70

dated 11.03.2011 as passed by the learned Trial Court in Title Suit No. 222 of 2005 are hereby modified holding that the present defendant/revisionist is not defaulter for the month of September, November and December 2008 at the rate of Rs. 350/-.

14. With the aforementioned observation, the instant revisional application being **CO 2957 of 2011** is hereby allowed on contest.
15. Considering the fact that the suit is of the year of 2005 and it is stated to have been reached at the preemptory stage, the learned Trial Court is hereby directed to dispose of Title Suit No. 222 of 2005 within a period of three months from the date of communication of this order without granting unnecessary adjournment to either of the parties. It is further directed that learned Trial Court shall proceed with the Title Suit No. 222 of 2005 in *de-die-in-diem* manner.
16. It is, however, made clear that the observation as made hereinabove is purely limited for the disposal of the instant revisional application and same will have no bearing in the decision of the learned Trial Court when learned Trial Court will pass his judgment in Title Suit No. 222 of 2005.
17. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)