

October 9, 2023
Sl. No.8
Court No.19
s.biswas

CO 2517 of 2023

Sri Durga Das Chatterjee
vs.
M/s Kunjilal Hariram represented by
Sri Ravi Agarwal and another

Mr. Tanmoy Mukherjee
Ms. Tithi Mazumder
Mr. Souvik Das
Mr. K. Raihan Ahmed
Mr. Rudranil Das
Mr. Soumava Santra

... for the petitioner

Mr. Souradipta Banerjee
Ms. Fatima Hassan

... for the opposite party no.1

The revisional application arises out of orders dated May 8, 2023 and June 16, 2023 passed by the learned Judge, 3rd Bench, Presidency Small Causes Court, Calcutta in Ejectment Suit No.369 of 2018.

By the order dated May 8, 2023, the learned court accepted the written statement filed by the defendant no.1, and removed the suit from its ex parte board. The learned court further fixed a date for hearing of the application filed by the tenant/defendant no.1 under Section 7(2) of the West Bengal Premises Tenancy Act (hereinafter the said Act). By order dated June 16, 2023, the learned court again fixed the application under Section 7(2) of the said Act for hearing.

Mr. Mukherjee, learned advocate for the petitioner, submits that summons were served on June 29, 2019. The defendant no.1 entered appearance in the suit on February 7, 2020 and the

application under Section 7(2) of the said Act was filed on March 20, 2021. That no application under Section 7(1) of the said Act had been filed, which was sine qua non to filing the application under Section 7(2) of the said Act. Moreover, a tenant could only seek protection, if the provision of Section 7(1) of the said Act was complied with. Thus, the learned court below without deciding the fate of the application under Section 7(2) of the said Act, which according to Mr. Mukherjee, was belated, could not have accepted the written statement.

Mr. Banerjee, learned advocate for the opposite party no.1/tenant, submits that the learned court has only fixed the application under Section 7(2) of the said Act for hearing. No adverse order had been passed. Thus, the contention of Mr. Mukherjee that the written statement could not have been accepted is incorrect. The learned court had applied its discretion and accepted the written statement, with reasons.

In reply, Mr. Mukherjee submits that when an application under Section 7(2) of the said Act is not maintainable before the learned court, acceptance of the written statement was irregular. The tenant cannot have a defence in such a situation.

Having heard the learned advocates for the respective parties, this court is of the view that mere

acceptance of the written statement by the court does not amount to a decision that even if the provision of Section 7(1) and 7(2) of the said Act were not complied with by the tenant in its letter and spirit and on the basis of the settled principles of law, the learned court would be bound to allow the tenant to place his defence and contest the suit on the basis of the written statement which was on record.

The acceptance of the written statement will definitely be subject to the final decision of the learned court below with regard to the compliance of Section 7 of the said Act by the tenant.

Under such circumstances, the order impugned does not call for any interference. The learned court below shall proceed with the hearing of the application of under Section 7(2) of the said Act in accordance with law.

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.)