

Item No. 11
10.10.2023
Court. No. 19
GB

C.O. 2777 of 2023

Smt. Shyam Devi Jaiswara
Vs.
Smt. Rani Jatan Jaiswara @ Lakshmi Devi Jaiswara

Mr. Shiva Prasa Ghose

...for the Petitioner.

This Court does not find any reason to interfere with the order dated February 6, 2023, passed by the learned Civil Judge (Junior Division), 2nd Court at Sealdah in Ejectment Suit No.24 of 2016.

By the said order, the learned court below refused to remove the suit from the ex parte board. It appears that the suit is for eviction of a tenant under the West Bengal Premises Tenancy Act, 1997. The petitioner entered appearance in the suit on July 2, 2018. On August 9, 2018 the petitioner filed an application under Section 7(2) of the West Bengal Premises Tenancy Act along with an application under Section 5 of the Limitation Act. The petitioner filed another application under Order 7 Rule 10 read with Order 7 Rule 10A for return of the plaint.

The petitioner took various adjournments, but did not file the written statement. Subsequently, the petitioner sought to file the written statement and prayed for acceptance of the delayed written statement. A prayer for removal of the suit from the ex parte board was also made. The learned court below rejected the said application for removal of the suit from the ex parte board. The written

statement has also not been accepted. Under such circumstances, this revisional application has been file.

It is an admitted position that an application under Section 7(2) of the West Bengal Premises Tenancy Act along with an application for condonation of delay is pending. The law is well-settled that unless the provisions of Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act are complied with in terms of the settled position of law and various judicial decisions, the defence of the tenant will be stuck off. Thus, unless the said application is disposed of, the question of acceptance of the written statement would not arise.

The application under Section 7(2) of the West Bengal Premises Tenancy Act along with the application for condonation of delay should be disposed of on the settled principles of law and only if the application under Section 7(2) is in favour of the petitioner, can the petitioner pray for opportunity to contest the suit and renew his prayer for acceptance of the written statement. As of now, the petitioner does not have any right to contest the suit. Thus, even if the written statement is on record, the same cannot accepted unless the issue of default and the compliance of Section 7 of the West Bengal Premises Tenancy Act are decided first. If it is found that the petitioner is not entitled to any relief in view of the belated application, the question of defence would not arise at all.

Accordingly, the revisional application is disposed of.

The application for condonation of delay along with the application under Section 7(2) of the West Bengal Premises Tenancy Act shall be disposed of in accordance with law within a period of one month from the next date fixed upon allowing the plaintiff to contest the same.

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

(Shampa Sarkar, J.)