

10.10.2023
Sl. No.23(DL)
srm

C.O. No. 2855 of 2023
Sri Sambhunath Thakur & Anr.
Versus
Smt. Kabita Ghosh & Anr.

Mr. Sukanta Chakraborty,
Sk. Zubair Ahmed

...for the Petitioners.

The revisional application arises out of an order dated July 10, 2023 passed in Title Suit No.268 of 2022 by the learned Civil Judge (Junior Division), 1st Court, Hooghly at Chandernagore.

By the order impugned, the learned trial Judge rejected an application under Section 5 of the Limitation Act. The application filed by the petitioners under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act) was not taken into consideration as the same was belated and the application for condonation of the delay in filing the said application had been rejected.

In view of the decision in **Bijay Kumar Singh & Ors. vs. Amit Kumar Chamaria & Ors. reported in (2019) 10 SCC 650**, it was held that the court did not have any authority to condone the delay by applying the provisions of the Limitation

Act. The law had been well settled that provisions of Sections 7(1) and 7(2) and the time period mentioned therein, were mandatory pre-conditions. As the applications under Sections 7(1) and 7(2) of the said Act were not entertained and the petitioners were found to be in arrears, their defence was also struck off.

Mr. Chakraborty, learned Advocate appearing on behalf of the petitioners submits that the order impugned suffers from the following irregularities:-

- (a) The summons which were served on the petitioners, did not mention the date when the petitioners were required to appear before the court.
- (b) If the date was not mentioned, the petitioners could not have appeared within one month as prescribed by law and file the applications under Sections 7(1) and 7(2).
- (c) The decision of a learned co-ordinate Bench in the matter of Bahadur Singh Kathotia vs. Purabi Basu reported in (2023) 1 RCR (Rent) 342 was not considered.
- (d) The *bona fide* attempt of the tenants in appearing before the court immediately on receipt of summons, the issue of substantial justice and the prejudice that

would be caused to the tenant should have persuaded the learned court to allow the application for condonation of delay and pass necessary orders with regard to the deposit of arrear rent.

- (e) That there were certain provisions in the Code of Civil Procedure which permitted a civil court to extend the time for compliance of directions. This aspect was not decided in Amit Kumar Chamaria (supra).

Having heard the learned counsel for the petitioners, this Court agrees with the learned trial Judge to the extent that the Hon'ble Apex Court in the decision of Bijay Kumar Singh & Ors. vs. Amit Kumar Chamaria & Ors. (supra) had categorically laid down the law that the pre-condition of deposit of admitted arrears rent with 10% statutory interest under Section 7(1) of the said Act, within a month from the receipt of the summons or within a month from the date of appearance, when the defendants appear without receipt of summons, is a mandatory pre-condition.

A court does not have any power under the law to apply the provisions of Section 5 of the Limitation Act to condone the delay either in filing the application under Sections 7(1) and 7(2) or in depositing the arrear rent. Further, the application

under Section 7(1) should be accompanied with the deposit of admitted arrear rent along with 10% statutory interest, which was not done in the present case.

Mr. Chakraborty's contention that the summons which were served upon the petitioners did not mention the date on which the petitioners were required to attend the court, is of little significance. It has been specifically admitted in paragraph 2 of the application under Section 5 of the Limitation Act that the summons were received by the petitioners on November 17, 2022 and the petitioners appeared in court on November 25, 2022 by filing *vakalatnama*. This is not a case that the summons were not received and the petitioners were not aware of the proceedings. The duty was upon the petitioners to appear before the court within a month from the receipt of summons and file an application under Section 7(1) along with the admitted arrear rent with statutory interest. In the event there was any dispute with regard to the quantum of rent, the application should have contained a prayer for determination of the rent and the arrears payable.

In this case, the petitioners prayed for determination of the arrear rent by raising a dispute. The application under Section 7(2) of the said Act was accordingly filed, but without

depositing the arrear rent along with 10% statutory interest, as mandated by law.

Under such circumstances, the order impugned is justified. Not only were the applications filed beyond the period prescribed by law, but the pre-condition of depositing the admitted arrears with 10% interest along with the application under Section 7(1) was also not complied with.

In the decision of *Bijay Kumar Singh & Ors. versus Amit Kumar Chamariya & Anr.* reported in (2019) 10 SCC 660, the Hon'ble Apex Court ultimately decided the scope of Section 7 of the said Act. Paragraph 5 of the said decision is quoted below:-

"5. In this background, the argument of the learned counsel appearing for the appellant is that the High Court has not maintained judicial decorum and should have referred the matter to the larger Bench to decide the scope and ambit of Section 7(2) of the Act. We find that since a short question of law arises for consideration, therefore, without going into the question as to whether learned Single Judge should have referred the matter to the larger Bench or not, the question to be decided by this Court is to bring certainty in respect of scope of Section 7 of the Act."

While deciding *Chamariya (supra)* the Hon'ble Apex Court discussed the decision of *Nasiruddin & Ors. versus Sita Ram Agarwal* reported in (2003) 2 SCC 577, especially paragraph 47 thereof, and held that *Nasiruddin (supra)* had clearly stated that the court could condone the delay only

when the statute conferred such power on the court and not otherwise.

Section 7 was interpreted in **Chamariya (supra)** and the entire mechanism by which a tenant could seek benefit from eviction was considered to be mandatory and inter-related. The provisions of the said section were discussed in detail in the following paragraphs of the said judgment:-

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."

A Division Bench in the **Calcutta Gujarati Education Society vs Sri Ajit Narayan Kapoor** decided in *C.O. 175 of 2017*, answered a reference in view of earlier conflicting decisions.

Moreover, the decision in *Bahadur Singh Kathotia (supra)* would not come to the aid of the petitioner as the said judgment was rendered without considering the decision of the Division Bench in the *Calcutta Gujarati Education Society (supra)*.

The question formulated by the then Acting Chief Justice is quoted below:-

"Does the view of the Division Bench of this court that section 5 of the Limitation Act can be applied to condone delay in making applications under sub-sections (1) and (2) of section 7 of the West Bengal Premises Tenancy Act, 1997, as held in the Subrata Mukherjee case (supra), survive in view of the decisions of the Hon'ble Supreme Court in the Nasiruddin case (supra), the Ashoke Kumar Mishra case (supra), Manjushree Chakraborty case (supra)."

The reference was specific as to whether Section 5 of the Limitation Act could be applied to condone a delay in filing application under Section 7(1) and 7(2) of the said Act. The Hon'ble Division Bench held that the Limitation Act, 1963 had no manner of application in respect of an application by a

tenant under Section 7. Paragraphs 46 and 47 of **Nasiruddin (supra)**, were considered by the Hon'ble Division Bench.

The Hon'ble Division Bench held as follows:-

"West Bengal Premises Tenancy Act, 1997 is an Act of the State legislature providing for period of limitation in respect of deposit and determination of rent. Section 6 in the Act has the non-obstante clause on application of other laws, regarding eviction. Section 40 makes applicable Limitation Act, 1963 subject to provisions in the Act relating to limitation.

The application for determination of rent not having prescribed period of limitation anywhere else in the third division, article 137, if applied, will provide for it to be made within three years from when the right to apply accrues. In case of such an application it is not the right of the tenant that would accrue, to make such an application. The Act of 1997 mandates that deposit of rent or where there is dispute regarding quantum of rent, deposit of admitted rent alongwith application for determination of rent, must be made by the tenant within time specified and as extendable under said Act. This is in relation to the suit filed for eviction, where compliance with the deposit mandate will enable the tenant to seek the protection provided. This enabling provision cannot be seen as an assertive right of a tenant, to be enforced. Here, provision in article 137 cannot be made applicable. Furthermore, where it is a requirement of compliance by the tenant to seek protection, mandated by the statute as competently legislated by the State legislature and specifically limiting application of the 1963 Act, there cannot be occasion for application of the period of three years, overriding the period and extension specified by the local law and thereafter condonation of delay as under section 5.

We answer the question referred to say that Limitation Act, 1963 has no application in respect of an application by a tenant, made under section 7 for determination of arrears of disputed rent. We are aware our answer to the question referred gives rise to conflicting views of two Division Benches of this Court. However, we have answered the question pursuant to direction made in said administrative order.

The files be sent back on the reference answered and disposed of.”

The decision of a coordinate Bench in **Papiya Sengupta and ors. vs. Suvasis Ghosh** reported in (2020) 1 ICC 980, is also referred. The relevant paragraphs are quoted below:-

“12. The Division Bench of this Court in the case of Subrata Mukherjee v. Bisakha Das (supra) while dealing with the said issue at paragraph 32 has held as under:—

‘Accordingly, for this reason, we hold that Section 5 of the Limitation Act will be applicable for the purpose of making deposit of admitted amount of arrears of rent, as mentioned in sub-sections (1) and (2) of Section 7 of the 1997 Act.’

13. The Hon'ble Supreme Court since in the case of Bijay Kumar Singh and Ors. (supra) has held that 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 and in view thereof, tenant will not be able to take recourse to section 5 of the Limitation Act, 1963 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. In view of the said decision of the Hon'ble Supreme Court, the decision of Subrata Mukherjee v. Bisakha Das (supra) is of no assistance to the petitioners.”

In **Chamariya (supra)** the Hon'ble Apex Court finally interpreted **Nasiruddin (supra)**, in paragraph 16 thereof. B.P. **Khemka (supra)** was also considered and the Hon'ble Apex Court arrived at the conclusion that Section 5 of the Limitation Act would not apply in case the benefit of protection from

eviction was sought by the tenant under Section 7 of the said Act. A conjoint reading of the paragraphs 19, 20 and 21 of **Chamariya (supra)** would categorically reflect such finding.

Similar view was taken by this court in the decision of *Kishan Lal Bihani Vs. Shiv Shakti Real Estate Private Limited* decided in *C.O. 1385 of 2023*.

The revisional application is accordingly dismissed.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)