

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**C.O. 3360 of 2019
Sri Om Prakash Agarwal & Anr.
Vs
Sri Bijay Singh Dugar & Ors.**

For the petitioners : Mr. Arjun Samanta

For the opposite parties : Mr. Surya Prasad Chattopadhyay
Mr. Anik Chatterjee

Heard on : 05.07.2023

Judgment on : 20.07.2023

Ajoy Kumar Mukherjee, J.

1. Order no. 47 dated August 13, 2019, passed by learned Judge, 3rd Bench, Small Causes Court, Kolkata in Ejectment Suit No. 6752 of 2014, is the subject matter under challenge in the present Application. By the impugned order learned court below was pleased to allow defendant /tenants' application under section 151 of the Code of the Civil Procedure dated March 20, 2019 seeking permission to deposit rent for the month of January 2019 to February 2019, which could not be deposited in time.

2. The petitioners case in brief is that petitioners herein filed aforesaid ejectment suit no. 6752 of 2014 *inter alia* praying for decree of ejectment and delivery of "khas" possession of the suit premises against the opposite parties herein who are tenants in respect of suit premises at a monthly rent

of Rs. 1940/-, payable according to English Calendar month. The defendant/tenants/opposite parties herein after receiving summon appeared in the said suit and filed application under section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (herein after called as Act of 1997). Plaintiff /petitioners filed written objection and learned court below had disposed of both the applications under section 7(1) and 7 (2) directing the opposite parties herein to deposit arrear rent and also to deposit current rent month by month.

3. Petitioners further case is on 14.09.2015 an application was filed on behalf of the opposite parties under section 151 of the code, wherein it was stated that the opposite parties deposited rent in terms of order passed under section 7(1) of the Act of 1997 up to the month of June 2015 and subsequent thereto the defendant no. 2 met with an accident and was bedridden and could not deposit rent for the month of July, 2015 and as such opposite party should be allowed to deposit rent from July, 2015 and thereafter month by month after condoning the delay. Said prayer was allowed by the court below.

4. Thereafter opposite parties/tenants filed another application under section 151 of the code on March, 2019 *interalia* stating that on 17.01.2019 while filing the affidavit of evidence of the defendants' witness no. 1, all documents including civil deposit challan for the month of December, 2019 was submitted before the court below by the said witness but due to non-production of civil deposit challan for the month of December, 2018 for verification, the rent for the month of January 2019 and February 2019 could not be deposited within time and again prayed before the court below

by the impugned application for passing appropriate order allowing the opposite parties to deposit the monthly rent for the month of January 2019 to February 2019 and thereafter month by month. The petitioners herein filed written objection against the said application and also prayed for dismissal of the same.

5. Petitioners contended, learned court below while disposing the aforesaid prayer made under section 151 of the code, passed the impugned order thereby allowed the said application misconstruing the objection raised by the petitioners herein. Mr. Samanta learned counsel appearing on behalf of the petitioners submits that the court below failed to appreciate the scope, meaning and purport of section 7(1) and section 7(2) of the Act of 1997. Learned court below failed to appreciate that no cogent and plausible reason was given by the opposite parties for defaulting in payment of rent for the month of January 2019 and February 2019. In fact court below committed miscarriage of justice by allowing the application under section 151 of the code. Court below failed to appreciate that there is no scope for the court below to extend time or to condone delay in making deposit under section 7 (1) of the Act. He further failed to appreciate that the benefits conferred under section 7 of the Act could be enjoyed by the tenant only on strict compliance of the statutory provisions. In fact court below exercising jurisdiction under section 7 of the Act does not have power to entertain any application of a tenant/opposite parties under section 151 of the code to condone delay in depositing rent within the statutory period prescribed under section 7(1) of the Act. Court below passed the order impugned, mechanically without applying judicial mind. Accordingly petitioners prayed

for setting aside the order impugned. In this context petitioners relied upon judgment In ***Bijoy Kr. Singh. and others Vs. Amit Kumar Chamariya*** reported in **(2019) 10 SCC 660**.

6. Learned counsel appearing on behalf of the opposite parties raised vehement objection against such prayer and contended that section 7(4) stipulates that if there is a default in payment of rent by a tenant for four months within a period of twelve months, then only defendant is not entitle to get protection under section 7(4) of the Act of 1996 but in the present case admittedly defendant had paid the entire arrear amount of rent including current rent and he has only made delayed deposit twice i.e. in the month of July 2015 and December, 2015, which was earlier condoned by the court and in the present application he has only made prayer for condonation of delayed payment for the month of January and February 2019.

7. From the order dated 20th April 2015 passed in the aforesaid suit it appears that defendants have deposited admitted arrear rent from July 2006 to August 2014 along with interest and they have also deposited current rent month by month for the months of September, 2014 to February 2015. On scrutiny, court below made it clear that said deposits of admitted arrear rent as well as current rent month by month are valid except the deposit made for the month December, 2014 which was deposited on 16.01.2015. However, court below condoned such delay by the order dated 20 April, 2015 and directed the defendant to deposit the arrear rent for December 2014 along with interest and also directed to pay current rent month by month from March, 2015 onwards at the rate of Rs. 1049/- per

month within the time period as prescribed under section 7(1) (c) of the Act. i.e. by the 15th day of each succeeding calendar month. Accordingly opposite party/tenant contended that Section 7(3) has got no application in the present context and court below was justified in allowing his prayer for condonation of delay, which does not call for interference.

8. He further contended that the proviso attached to section 7(2) of the Act of 1997 which provides that having regard to the circumstances of the case an extension of time may be granted by civil judge only once and the period of such extension shall not exceed two months , is confined only in respect of deposit of arrear amount of rent under section 7(2) and not in connection with the payment of current rent as stipulated in section 7(1)(c) . According to Mr. Chattopadhyay, the tenant is liable to pay rent month by month within 15th day of each succeeding month, a sum equivalent to the rent as directed by the court below but his defence is liable to be struck off only when it will appear that he has made default in payment of rent for four month within a period of 12 months as envisaged in section 7(4) of the Act. In other cases where current deposit has been made at a belated stage i.e. beyond the statutory period i.e. after 15th of each succeeding month, the defence will not be struck off. Since in the present case there is no allegation of delayed deposit of payment of rent for a period of four months within a period of 12 months, so section 5 of the Limitation Act is very much applicable in the present context. Accordingly opposite parties have prayed for dismissal of present Application.

9. I have extensively heard both the parties. On perusal of the order dated 20th April, 2015 it appears that court below was pleased to direct the

defendant/tenant to deposit arrear rent and was further pleased to direct to go on depositing the current rent month by month in court from March 2015 onwards at the rate of Rs. 1940/- per month within the time period as prescribed under section 7 (1) (c) of the West Bengal Premises Tenancy Act 1997, i.e. by the 15th day of each succeeding English calendar month. The defendant/tenant is his application under section 151 of the Code of Civil Procedure dated 20.03.2019, contended that due to inadvertence and *bonafide* mistake the rent for the month of January 2019 to February 2019 could not be deposited in time and accordingly by the said application he prayed before the court below to permit him to deposit the rent for the month of January and February 2019 after condoning the delay, in making deposit of rent, in terms of the section 7(1) of the Act of 1997. The plaintiff/landlord filed objection against the said application contending that the application is misconceived and the said petition is the product of sheer negligence and latches on the part of the defendants in making deposit of monthly rent within the stipulated period.

10. Needless to say that under the provision of section 7(1) (c), a tenant is under an obligation to pay to land lord or deposit with court month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate. Accordingly under the said provision the outer limit for depositing rent month by month has been given in the said provision. Section 40 of the Act of 1997 provides that subject to the provisions of the Act of 1997 relating to limitation, the provisions of the Limitation Act, 1963 shall apply to the proceedings and appeals under the Act.

11. Before the Act of 1997, which came into effect from July 10, 2001, The West Bengal premises Tenancy Act, 1956 was applicable for deciding a suit for eviction of monthly premises tenant. Section 17 of the said Act provided for the provisions when a tenant could get the benefit of protection against eviction. From a bare reading of section 7(1) of the Act of 1997 it is clear that the provisions contained in section 7(1) are similar to those contained in section 17(1) of the Act of 1956, except section 17 (2A) and section 17 (2B) of the Act of 1956.

12. For better understanding of the issue, let me reproduce Section 17 of the Act of 1956:-

17. When a tenant can get the benefit of protection against eviction.- (1) On a suit or proceeding being instituted by the landlord on any of the grounds referred to in section 13, the tenant ¹[shall, subject to the provisions of sub-section (2), within one month] of the service of the writ of summons on him, ²[or where he appears in the suit or proceeding without the writ of summons being served on him, within one month of his appearance] ³[deposit in Court or with the Controller or pay to the landlord] an amount calculated at the rate of rent at which it was last paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made together with interest on such amount calculated at the rate of eight and one-third per cent. per annum from the date when any such amount was payable up to the date of deposit, and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate.

(2) If in any suit or proceeding referred to in sub-section (1) there is any dispute as to the amount of rent payable by the tenant, the tenant shall, within the time specified in sub-section (1), deposit in court the amount admitted by him to be due from him together with an application to the court for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination or the rent payable. On receipt of such application, the court shall-

(a) having regard to the rate at which rent was last paid, and the period for which default may have been made, by the tenant, make, as soon as possible within a period not exceeding one year, a preliminary order, pending final decision of the dispute, specifying the amount, if any, due from the tenant and thereupon the tenant shall, within one month of the date of such preliminary order, deposit in court or pay to the landlord the amount so specified in the preliminary order; and

(b) having regard to the provisions of this Act, make, as soon after the preliminary order as possible, a final order determining the rate of rent

and the amount to be deposited in court or paid to the landlord and either fixing the time within which the amount shall be deposited or paid or, as the case may be, directing that the amount already deposited or paid be adjusted in such manner and within such time as may be specified in the order.

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), on the application of the tenant, the Court may, by order,-

(a) extend the time specified in sub-section (1) or sub-section (2) for the deposit or payment of any amount referred to therein;

(b) having regard to the circumstances of the tenant as also of the landlord and the total sum inclusive of interest required to be deposited or paid under sub-section (1) on account of default in the payment of rent,

permit the tenant to deposit or pay such sum in such instalments and by such dates as the Court may fix:

Provided that where payment is permitted by instalments such sum shall include all amounts calculated at the rate of rent for the period or default including the period subsequent thereto up to the end of the month previous to that in which the order under this sub-section is to be made with interest on any such amount calculated at the rate specified in sub-section (1) from the date when such amount was payable up to the date of such order.

(2B) No application for extension of time for the deposit or payment of any amount under clause (a) of sub-section (2A) shall be entertained unless it is made before the expiry of the time specified therefor in sub-section (1) or sub-section (2), and no application for permission to pay in instalment under clause (b) of sub-section (2A) shall be entertained unless it is made before the expiry of the time specified in sub-section (1) for the deposit or payment of the amount due on account of default in the payment of rent.

(3) If a tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be allowed under clause (a) of sub-section (2A), or fails to deposit or pay any instalment permitted under clause (b) of sub-section (2A) within the time fixed therefor, the Court shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.

(4) If a tenant makes deposit or payment as required by sub-section (1) [sub-section (2) or sub-section (2A)], no decree or order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant shall be made by the Court but the Court may allow such costs as it may deem fit to the landlord:

Provided that a tenant shall not be entitled to any relief under this sub-section if, having obtained such relief once in respect of the premises, he has again made default in the payment of rent for four months within a period of twelve months.

13. Accordingly it is explicit that clause (a) of subsection (2A) of section 17 of the Act of 1956 conferred the power on the court to extend the time for deposit of rent under subsection (1) and (2) of section 17, but while enacting

the Act of 1997, the legislature has consciously omitted to incorporate any provision in section 7 of the Act similar to sub-section (2A) or (2B) of section 17 of the Act of 1956.

14. In *Nasiruddin and other Vs. Sita Ram Agarwal* reported in (2003) 2 SCC 577 it was observed by Supreme Court:-

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.

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.

15. Since section 7 of the Act provides for a complete mechanism for avoiding the eviction on the ground of arrear of rent and also deposit of current rent and legislature had not given any relaxation for extension of period prescribed under section 7 (1), section 5 of the limitation has got no application for making a prayer for condonation of delay. Now the question raised by the tenant/defendant that the said application has not been made under section 5 of the Limitation Act nor under section 40 of the Act of 1997 but he has made the said application under section 151 of the code of Civil Procedure. In this context law is specific which says, the inherent power of a court will not be exercised if it's exercise is inconsistent with or comes into conflict with any of the powers expressly or by necessary implication conferred by the other provisions of law. When, there are express provisions covering aforesaid particular topic, that give rise to a necessary implication that no power shall be exercised under section 151 of the code in respect of the said topic, otherwise than in the manner prescribed by the said provision. In view of above since section 5 has got no application in the present context for condonation of delay, section 151 of the code cannot come to it's rescue, in order to extend the outer time limit for deposit of rent before the court under section 7(1)(c) of the Act of 1997.

16. In view of above application filed under section 151 of the code of Civil Procedure by the tenant/defendant seeking condonation of delay in making deposit of the monthly rent before the court below is misconceived. Accordingly the order impugned i.e. order no. 47 dated 13th August 2019 passed by learned 3rd Bench Small Causes Court Calcutta in Ejectment Suit No. 6752 of 2014 is hereby set aside.

17. C.O. 3360 of 2019 is accordingly allowed.

There will be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)