

Ct.
No.
652

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akb

C.O. 3509 of 2018
Anachor Tracon Pvt. Ltd.
-Versus-
Dinobandhu Chowdhury & A

Mr. Rachit Lakhmani
Mr. D. Halder **...For the Petitioner**

Ms. Juin Dutta Chakraborty
Mr. Bidan Modak **...For the Opposite Parties**

The petitioner herein assailed order no. 80 (second part) dated 23rd July, 2018 passed by the learned Civil Judge (Junior Division), 2nd Court, Alipore arising out of an application for direction upon the defendant to produce civil deposit challans in connection with Ejectment Suit No. 509 of 2008.

The petitioner contended that the petitioner as plaintiff filed aforesaid suit being Title Suit no. 509 of 2008 against the defendant/tenant/opposite party no. 1 for a decree of recovery of khas possession in respect of the suit premises. The defendant no. 1 appeared in the said suit and filed written statement. The defendant also filed an application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 along with an application under Section 5 of the Limitation Act. Learned court below while disposed of the said application, was pleased to give a direction vide order no. 53 dated 29.9.2012 to pay a sum of Rs. 83,525/- as arrears of rent including statutory interest by two equal instalments and also directed to deposit current rent by 15th of each succeeding month.

The petitioner further contended that at the time of passing the said order no. 53 dated 29.9.2012, the court below did not make any direction in respect of payment of rent from the month of September, 2008 to September 2012

i.e. the period during which the application under Section 7(2) of the Act of 1997 was pending before the court. The defendant/tenant after the disposal of section 7(2) application started depositing rent from the month of October, 2012 but he never produced any challan in support of payment of rent from the month September, 2008 to September, 2012.

In the above backdrop, the petitioner prayed for direction upon the defendant/tenant to produce civil deposit challan in respect of the payment of rent from September, 2008 to September, 2012 by filing the said application under Section 151 of the Code of Civil Procedure. By the impugned order, learned court below rejected the plaintiff's aforesaid application, though defendant/opposite party did not file any written objection against the plaintiff's aforesaid application, only on the ground that the order dated 29.9.2012 was passed on merit and therefore Court below did not find any reason to interfere with the said order dated 29.9.2012.

Learned counsel appearing on behalf of the petitioner submits that the order impugned is arbitrary and has been passed without applying his judicial mind. The order impugned is also not supported by any reason and accordingly, he has prayed for interference invoking the power of this court under Article 227 of the Constitution of India.

I have considered the submissions made by the petitioner from which it appears that by the order no. 53 dated 29.9.2012, the court below while disposing the application under Section 7(2) of the Act of 1997, was pleased to hold that the defendant is a defaulter in payment of rent from May, 2006 to August, 2008, except November,

2006 and February, 2007 and for which the court below directed the defendant to deposit a sum of Rs. 83,525/- as arrears of rent including statutory interest by two equal instalments and was further directed to deposit current rent by 15th of each succeeding month.

In the said application under Section 151 dated 22.3.2018 it has been alleged by the plaintiff/petitioner that the defendant in compliance with the said order depositing the current rent from October, 2012 but it is alleged that the defendant/tenant taking advantage of the situation did not make any payment from September, 2008 to September, 2012. The opposite party has not filed any document to show that he has deposited rent from September, 2008 to September, 2012. The order impugned does not speak anything about the plaintiff's allegation for non-payment of rent from the month of September, 2008 to September, 2012.

In such view of the matter, I find that the second part of the impugned order being no. 80 dated 23rd July, 2018 is perverse having not supported by reason and is liable to be set aside.

In view of the above, C.O. 3509 of 2018 is hereby disposed of with a direction upon the court below, without prejudice to the rights and contentions of the parties, to dispose of the plaintiff's aforesaid application dated 22.3.2018 afresh in accordance with law within a period of four weeks from the date of reopening of the court after puja vacation, giving opportunity to both the parties to contest.

Second part of the impugned order dated 23th July, 2018 is hereby set aside.

Urgent photostat certified copy of this order, if

applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)