

Ct. 03.8
No. 2023
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C.O. 3503 of 2019
Uttam Bera @ Uttam Kumar Bera
-Versus-
Shyamgobinda Dawn,
since deceased,
representative by legal heirs,
Smt. Hira Dawn & Ors.

Mr. Rabindranath Mahato
Mr. Aritra Shankar Roy ...For the Petitioner

Mr. Rwitendra Banerjee
Mr. Ritwik Pattanayak
Mr. A. Roy Chowdhury ...For the Opposite Parties

This is an application under Article 227 of the Constitution of India against order No. 94 dated 17th January, 2018 passed by the learned Civil Judge, (Junior Division) at Jhargram, in Other Suit No. 71 of 2013. By the impugned order the learned Court below observed in a suit for eviction that initial invalid deposit by the defendant under section 7(1) read with section 7(2) of the West Bengal premises Tenancy Act of 1997, has now become incurable for his (tenant's) own fault and therefore he must suffer it's consequence as laid down in section 7(3) of the Act of 1997.

The petitioner contended that the opposite parties, being the landlord initiated Eviction Case No. 3 of 2003 against the present petitioner. The petitioner entered appearance in the said proceeding and contested the same by filing written statement. Petitioner in the said suit filed application under Section 7(1) and 7(2) of the Act of 1997 and the opposite party herein filed written objection against the said application. After hearing learned court below rejected petition under section 7(2) and thereby strike off defendant's defence against delivery of possession of the suit premises under the provision of section 7(3) of the Act.

The plaintiff / landlord contended that the defendant is defaulter for a period of 135 months and on the contrary the defendant contended that he has defaulted in payment of rent for 127 months. There is no dispute as regards rate of rent which is Rs. 85/- per month. It is also admitted position that the defendant has deposited the arrear rent at the time of filing application under Section 7(1) and 7(2) of the Act which is an amount of Rs. 11,960/- on the basis of calculation, which is as follows :

Rs. 85/- X 127 months = 10795/-

10% interest thereon Rs. 1079/-

the rent for the month of July, 2013 Rs. 85/-.

Total Arrear Amount is 11,959

Section 7(1) (a) mandates that tenant shall pay to the landlord or deposit with court all arrears of rent together with interest at the rate of ten percent per annum. “per annum” is a latin term which means annually or each year. When it comes to payment as per dictum of statute, it refers to recurring obligation or those that occur each year. Be it mentioned that legislature has not used the term “ten percent of arrear amount” as interest and instead used the term “together with interest at the rate of ten percent per annum”

Learned Trial court while deciding the fate of defendant/tenants application under section 7(1) & 7(2) of the Act of 1997 held, plaintiff has stated that defendant is defaulter in payment of rent for 135 months while defendant’s case is he is defaulter for 127 months and defendant in support of his contention, mentioned about an oral negotiation. However court below held that evidence does not suggest such story of oral negotiation plausible and as such court below held that defendant is a defaulter

for 135 months.

Now taking “a” as monthly rent and “n” as month for which defendant has defaulted in payment of rent, court below made calculation applying mathematical formula $(a \times n) \{1+(n+1)/(10 \times 12 \times 2)\}$ and thereby considering admitted monthly rent of Rs. 85/- and arrear is for 135 months he calculated arrear rent together with 10% interest as Rs. $(85 \times 127) \{1+(127+1)/(10 \times 12 \times 2)\}$ i.e. Rs. 17,977.50/-

However since defendant has disputed “n” i.e. total number of months he has defaulted court below held that he was bound to deposit admitted arrear monthly rent together with 10% interest along with application to save himself from the rigour of section 7(3) of the Act. Accordingly taking the value of ‘n’ as 127 months he applied the same formula to find out the amount, which defendant mandatorily bound to have been deposited within one month. According to said mathematical formula. Rs. $(85 \times 127) \{1+ (127+1)/ (10 \times 12 \times 2)\}$ i.e. Rs. 16,552.34/-

However defendant deposited only Rs. 11,960/- As such court below held that such short deposit makes his deposit invalid under section 7(1) read with section 7(2) of the Act. court below further held such invalidity, the defendant could have cured taking the benefit of the proviso to the section 7(2) for that proviso gives a scope to the court to extend the time for making good such short deposit but such proviso does not give scope to the court to extend such time for an unlimited period but for two months only. Therefore Trial court concluded since the initial deposit under section 7(1) & 7(2) is invalid and since it has become incurable, section 7(3) attracts and therefore court below

strike off defendant's defence against delivery of possession of the suit premises.

Time and again it has been reiterated in different judgements that under Article 227 of the constitution of India, High Court has little scope to interfere with the orders of Trial court as a matter of routine and such power can not be taken as right of appeal to the aggrieved party. Statute mandates the tenant to deposit all admitted arrear rent together with ten percent per annum with the application within one month of the date of service of summon on the tenant or appearance as the case may be and if after making mathematical calculation, court below finds that such deposit made by defendant towards arrear rent together with ten percent interest per annum is not in accordance with section 7(1) and 7 (2) and as a consequence section 7(3) attracts, such finding cannot be said to be perverse. It is well settled that supervisory jurisdiction under Article 227 of the constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When from the order impugned there is nothing to show that the court below has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or has exercised jurisdiction vested in it in a manner not permitted by law and/or grave injustice has occasioned, the High Court should not step into exercise its supervisory jurisdiction. In other words supervisory jurisdiction can be exercised to correct errors of jurisdiction but not to upset pure findings of the fact like an appellate court. In substance if the trial court had the jurisdiction to make a calculation about arrear rent along with statutory interest and after making such calculation if he comes to a conclusion that such deposit

has not been validly made, I find no material for holding that there was any impropriety in exercising this jurisdiction. Accordingly order impugned does not call for interference on the only ground that a different view on the facts elicited was possible.

In such view of the matter, the ultimate conclusion of the Trial Court that Section 7(3) of the Act attracted in the present case because of non-compliance of the provisions of Section 7(1) and 7(2) in its proper perspective, cannot be called as perverse and as such does not call for interference seeking jurisdiction under Article 227 of the Constitution of India.

In such view of the matter, C.O. 3503 of 2019 is dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)