

September 29, 2023
Sl. No.3
Court No.19
s.biswas

CO 3203 of 2022

Gopal Chandra Roy
vs.
Shib Sankar Dhar

Mr. Soumo Chaudhury
Mr. A. Roychowdhury

... for the petitioner

Mr. Abhijit Ray
Ms. Supriya Dubey Chakraborty

... for the opposite party

This revisional application arises out of an order dated June 24, 2022, by which the learned Judge, Presidency Small Causes Court, Calcutta, rejected an application under Section 151 of the Code of Civil Procedure on the ground that a belated application allowing payment of admitted arrear rent at the rate of Rs.500/- per month along with interest at the rate of 10% could not be allowed.

By the said application, the petitioner/tenant prayed for an order allowing the petitioner/defendant/tenant to deposit arrear rent from February, 2019 to June, 2020 at the rate of Rs.500/- per annum together with interest at the rate of 10%, arrear rent from the month of February, 2021 to August, 2021 and the arrear rent from September, 2021 to March, 2022 along with 10% interest.

By the order dated January 21, 2021, an application under Section 7(1) of the West Bengal Premises Tenancy Act (hereinafter referred to the

said Act) was disposed of allowing the petitioner to deposit the current rent from the month of February, 2021. The petitioner defaulted.

From the order impugned, it appears that the application under Section 7(1) of the said Act was disposed of by allowing the petitioner to deposit the current rent February, 2021. The prayer in the application under Section 7(1) of the said Act is quoted below:

“Under the above facts and circumstances your petitioner most humbly prays that Your Honour may graciously be pleased to allow your petitioner to deposit the current monthly rent in respect of the tenancy premises on and from the month of February, 2021 @ Rs.500/- (Rs. Five hundred) only per month and thereafter month by month and every month before this Learned Court in the instant suit to the credit of the plaintiff and to pass such further order and/or orders as Your Honour may deem fit and proper.”

From the said application, it is evident that the tenant wanted to deposit current rent from February 2021 and there were no admitted arrears. An application under Section 7 (2) of the said Act was filed by the tenant without any deposit of admitted arrears. From the application under Section 151 of the Code of Civil Procedure, it appears that the tenant defaulted in payment of the rent from

February, 2019. Payment of rent month by month within 15 of the succeeding month had not been made.

The court, by an order dated August 25, 2021 allowed an extension in terms of the proviso of Section 7(2) of the said Act and allowed the tenant to deposit rent from February, 2021 to August, 2021. Such order was not complied with. Thereafter, an application was filed under Section 151 of the Code of Civil Procedure.

The learned advocate for the petitioner submits that the entire proceedings took place during the pandemic. The order dated August 25, 2021 was not known to the parties. Thus, the arrears from February, 2021 to August, 2021 could not be paid and the benefit of the order of the Hon'ble Apex Court in the matter of **Cognizance for Extension of Limitation**, reported in **(2022) 3 SCC 117**, should be given to the petitioner. As the Hon'ble Apex Court had already extended the period of limitation in respect of suits, proceedings as also conditional orders up to February 28, 2022, the benefit of said decision should be given to the petitioner and the delay in depositing the rent should be condoned.

It further appears that an application under Section 7(2) of the said Act has also been filed, which is yet to be disposed of. In paragraph 3 of the said

application, the petitioner averred that the landlord had refused to accept rent from February, 2019, onwards. It was further averred that the rents from February, 2019 up to June, 2020 were due, on account of such non-acceptance by the landlord and subsequent refusal of the money orders. At the stage of filing the application under Section 7 (2) also, the admitted arrears were not deposited. No dispute either with regard to the rate of rent or the relationship between the landlord and the tenant had been raised.

Moreover, the application under Section 151 of the Code of Civil Procedure was filed on April 7, 2022 that is, beyond the time extended by the Hon'ble Apex Court.

Under such circumstances, this court does not find any illegality in the order impugned. The arrears of rent from February, 2019 to June, 2020 ought to have been deposited, when the application under Section 7(1) of the said Act was filed.

Section 7 of the said Act is quoted below :-

“7. When a tenant can get the benefit of protection against eviction.-

(1)(a) On a proceeding being instituted by the landlord for eviction on any of the grounds referred to in section 6, the tenant shall, subject to the provisions of sub-section (2) of this section, pay to the landlord or deposit with the Controller 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.

(b) Such payment or deposit shall be made within one month of the service of summons on the tenant or, where he appears in the proceeding without the summons being served upon him, within one month of his appearance.

(c) The tenant shall thereafter continue to pay to the landlord or deposit with the Controller month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.

(2) If in any proceeding referred to in subsection (1), there is any dispute as to the amount of the rent payable by the tenant, the tenant shall, within the time specified in that sub-section, deposit with the Civil Judge the amount admitted by him to be due from him together with an application for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. On receipt of the application, the Civil Judge shall, 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, an order specifying the amount, if any, due from the tenant and, thereupon, the tenant shall, within one month of the date of such order, pay to the landlord the amount so specified in the order:

Provided that having regard to the circumstances of the case, an extension of time may be granted by the Civil Judge only once and the period of such extension shall not exceed two months.

(3) If the tenant fails to deposit or pay any amount referred to in subsection (1) or subsection (2) within the time specified therein or within such extended time as may be granted, the Civil Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.”

Section 7(1)(a) of the said Act requires that on a suit being instituted by the landlord for eviction of the tenant on any of the grounds mentioned in

Section 6 of the said Act, the tenant shall subject to the provisions of sub-section 2, pay to the landlord or deposit with the court, 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 was made, together with interest at the rate of 10% per annum.

As per Section 7(1)(b) of the said Act, the admitted arrear rent must be deposited by the defendants/tenant within one month from the date of service of summons on him or where he appears in the suit without summon, such arrear rent must be paid/deposited within one month from his date of appearance.

As per Section 7(1)(c) of the said Act, the tenant shall continue to pay to the landlord or deposit with the court, month by month, by 15th of each succeeding month, a sum equivalent to the rent at that rate.

Section 7(2) of the Act provides that in case of dispute with regard to the amount of rent payable, the tenant shall within one month from receipt of summons or from appearing before the Court, deposit the admitted amount due from him as rent and file an application for determination of the rent payable and the Court shall pass an order on such application by determining the rent payable.

Proviso to Section 7(2) of the said Act, however empowers the court to extend the time for payment of amount directed to be so paid, only once and that too for a period not exceeding two months.

Section 7(3) provides that if the tenant fails to deposit the rent as specified under Section 7(1) or 7(2) of the said Act, within the time specified or within such extended time as may be granted, the court shall order the defence against delivery of possession to be struck out and shall proceed with the eviction suit.

Without compliance of such provision, the court rightly refused to entertain the application filed by the petitioner. Moreover, in the decision of ***Bijay Kumar Singh & Ors. versus Amit Kumar Chamariya & Anr.*** reported in ***(2019) 10 SCC 660***, it has been clearly held that there was no scope for acceptance of belated arrear rent. It has been further held that compliance under Section 7 (1) was a mandatory pre-condition to filing an application under Section 7 (2) of the said Act. Moreover, when a complete mechanism had been provided in the said Act, resort to Section 151 of the Code of Civil procedure could not be taken. The relevant portions of the said decision are quoted below:

“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."

The revisional application is thus, dismissed.

This court has not gone into the merits of the applications, which are pending. The learned court shall decide those applications in accordance with law.

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

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)