

October 3, 2023
Sl. No.13
Court No.19
s.biswas

CO 3211 of 2022

Smt. Shyamali Das and others
vs.
sri Sankar Karmakar @ Sankar and another

Mr. Amit Singh

... for the petitioners

This court does not find any reason to interfere with the order dated July 25, 2022 passed by the learned Civil Judge (Junior Division), 4th Court, Serampore, Hooghly, in connection with Title Suit No.09 of 2015.

By the order impugned, the application filed by the petitioners/plaintiffs under Section 7(3) of the West Bengal Premises Tenancy Act was rejected. The learned court below found that while disposing of an application under Section 227 of the Constitution of India filed by the petitioners, a Co-ordinate Bench in CO 3561 of 2019 was of the view that the deposits made in the name of the deceased/landlord could not be termed as bad deposits. Any such observation of the court with regard to validity of the deposits would amount to defence of the defendants being struck off. Rather, the learned Co-ordinate Bench allowed the petitioners as heirs of the deceased landlord to withdraw the rent deposited in the learned court below.

The learned Co-ordinate Bench further directed the suit be disposed of on merits. The petitioners moved the learned court below praying for orders to strike out the defence of the defendants on the self-same ground taken before the high court, that the rent was being deposited in the name of the deceased/landlord. The learned court found, upon perusal of the order no.101 dated August 9, 2019 that the defendants had made the deposits in the name of the legal heirs of the deceased/plaintiff and the same was accepted by the learned rent controller.

On perusal of the challans, the court found that apart from the months of Pous 1418 B.S. and Magh 1418 B.S., the defendants had regularly deposited monthly rent in the name of the legal heirs of the original plaintiff, who were admittedly substituted in the suit.

The learned court below found that although the substitution application filed before the rent controller was not available in the records, the fact that the rent had been regularly deposited in the name of the heirs was available from the challans. The heirs had already been permitted to withdraw the rent.

Under such circumstances, the court was of the view that the defence of the tenant could not be

struck off as the requirement of Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act had been satisfied.

The learned Co-ordinate Bench had put a finality to such objection of the petitioners, long before. The learned trial judge, upon perusal of the challans, came to the finding that apart from two challans which indicated that the rent had been deposited in the name of the deceased/landlord, all subsequent deposits of rent had been made in the name of the heirs of the original plaintiff before the rent controller.

The provision of Section 7(3) of the Act is quoted below:

“7(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.”

The law is well-settled that the defence of tenant can be struck off only if the rents are not deposited in terms of Sections 7(1) and 7(2) of the Act and the orders passed by the learned court below are not complied with.

In this case, no default was found. Rather, the court had found that rents were paid regularly. The

applications under Sections 7(1) and 7(2) had also been disposed of in favour of the tenant.

Scope of interference under Article 227 of the Constitution of India is limited.

In the decision of ***Sadhana Lodh v. National Insurance Co. Ltd.***, reported in **(2003) 3 SCC 524**, the Hon'ble Apex Court held as follows:-

“ 7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal had proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.”

In the decision of ***M/s. Puri Investments v. M/s. Young Friends and Co. and Others***, reported in **2022 SCC OnLine SC 283**, the Hon'ble Apex Court held as follows:-

“14.

We have considered the submissions of the respective counsel and also gone through the decisions of the fact-finding fora and also that of the High Court. At this stage, we cannot revisit the factual aspects of the dispute. Nor can we re-appreciate evidence to assess the quality thereof, which has been considered by the two fact-finding fora. The view of the forum of first instance was reversed by the Appellate Tribunal. The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the

judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are:—

- (i) Erroneous on account of non-consideration of material evidence, or
- (ii) Being conclusions which are contrary to the evidence, or
- (iii) Based on inferences that are impermissible in law.

15. We are in agreement with the High Court's enunciation of the principles of law on scope of interference by the supervisory Court on decisions of the fact-finding forum. But having gone through the decisions of the two stages of fact-finding by the statutory fora, we are of the view that there was overstepping of this boundary by the supervisory Court. In its exercise of scrutinizing the evidence to find out if any of the three aforesaid conditions were breached, there was re-appreciation of evidence itself by the supervisory Court.

16. In our opinion, the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India in the judgment under appeal had gone deep into the factual arena to disagree with the final fact-finding forum.”

Under such circumstances, this court does not find any reason to interfere with the order of the learned court below.

The suit shall proceed in accordance with law.

The revisional application is thus disposed of.

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.)