

18.08.2023
Sl. No.6(DL)
srm

C.O. No. 3284 of 2022
Smt. Bidisha Mullick & Ors.
Versus
Ram Prosad Mondal

Mr. Alok Chatterjee,
Mr. Muhammad Obaid

...for the Petitioners.

Mr. Soumik Ganguli,
Mr. Sanat Kumar Das,
Mr. Sujan Chatterjee

...for the Opposite Party.

This revisional application has been filed challenging orders dated January 28, 2019, February 1, 2019, February 25, 2019, March 30, 2019 and June 24, 2022, passed by the learned Civil Judge (Junior Division), 3rd Court at Burdwan, Purba Bardhaman, in Title Suit No.110 of 2018.

By the order dated January 28, 2019, the learned court below allowed the defendant's prayer for supply of copy and on that date the defendant appeared and filed *vakalatnama*. On February 1, 2019, the defendant filed an application praying for time. Such a prayer was allowed. By the order dated February 25, 2019, a separate application filed by the defendant under Section 7(1)(c) of the West Bengal Premises Tenancy Act, 1997 with a prayer to pass order permitting the

defendant to deposit the monthly rent of Rs.264.60p. month by month had been allowed with retrospective effect from January, 2019. The application for setting aside the order by which the suit was fixed for *ex parte* hearing was also allowed. By the order dated March 30, 2019, the learned court fixed a date for hearing the applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act filed by the defendant in the suit. By the order dated June 24, 2022, the prayer of the petitioners for recalling of the earlier order dated February 25, 2019 was rejected.

Mr. Chatterjee, learned Advocate appearing on behalf of the landlord submits that by order dated November 15, 2018, the learned court recorded that summons were served upon the defendant on August 29, 2018. The defendant did not appear before the court on November 15, 2018 and did not take any steps. Hence, the suit should proceed *ex parte*. The date of receipt of summons is not in doubt, that is, August 29, 2018. The defendant was wrongly permitted to appear before the court on January 28, 2019 and on February 1, 2019. The prayer for adjournment filed by the defendant was allowed, but no application under Sections 7(1) and 7(2) of the Code of Civil Procedure had been filed within the statutory time limit. Thus, the benefit available to a tenant for protection against

eviction was not availed of within the statutory limit as prescribed under Section 7.

According to the learned Advocate, by the subsequent order the court could not have accepted the two applications filed by the tenant under Sections 7(1) and 7(2), and fixed them for hearing on a subsequent date. It has been further stated that by an order dated February 25, 2019, a third application under Section 7(1)(c) of the said Act for deposit of monthly rent could not have been accepted as admittedly the third application which was filed separately from the applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act could not have been filed as per law. Such application was misconceived, belated and contrary to the provisions of law. By the order dated February 25, 2019, the learned court wrongly allowed the tenant to deposit monthly rent with retrospective effect from January, 2019.

Mr. Ganguli, learned Advocate for the tenant/opposite party submits that the learned court below had not taken a final decision on the applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act. The said applications have been fixed for hearing on October 18, 2023 and the learned court must decide the issue. The question raised by the petitioner with regard to the maintainability of the said applications and whether the applications could be

filed on February 25, 2019 although the summons were received on August 29, 2018 will be a decision on merits, upon hearing the parties on contest.

This Court is of the view that the order dated February 25, 2019 suffers from material irregularity. The law does not make any exception in filing an application under Section 7(1)(c) separately, from the applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act. Thus, the order dated February 25, 2019 is set aside to the extent of permitting the tenant to pay the monthly rent from January, 2019.

The law requires that the tenant must, within one month from the date of receipt of summons or within one month from appearance if the summons were not received, deposit admitted arrears with @ 10% statutory interest in the learned court below or pay the same to the landlord and thereafter pay the rent month by month every month, with 15th of the succeeding month.

According to the statute, Section 7(1) has the following ingredients:-

- (a) On a suit being instituted by the landlord for eviction on any of the grounds referred to in Section 6, the tenant shall subject to the provision of sub-section (2) of the said Act, pay to the landlord or deposit

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 was made with interest @ 10% per annum.

- (b) Such payment or deposit shall be made within one month of the service of summons on the tenant or where the tenant appears in the suit without summons being served, within a month from his appearance.
- (c) The tenant shall thereafter continue to pay to the landlord or deposit with the civil judge, current rent, month by month every month by the 15th of each succeeding month.

Section 7(2) has the following ingredients:

- (a) If 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 with the civil judge the admitted arrears rent with statutory interest and file an application for determination of the rent by raising the dispute.
- (b) No prayer shall be entertained unless it is accompanied by an application for determination of the rent payable by raising a dispute.

(c) On receipt of such application, the civil judge having regard to the rate at which the rent was last paid and the period of default, pass an order specifying the amount due.

(d) Lastly, the tenant shall within one month from the date of such order, pay to the landlord the amount so specified in the order under Section 7(2) of the West Bengal Premises Tenancy Act, 1997.

The proviso to Section 7(2) of the Act provides that an extension of time may be given only once, by the learned civil judge and the period of such extension shall not exceed two months.

In the case in hand, a separate application under Section 7(1)(c) of the Act could not have been filed belatedly. Upon appreciation of the above provisions of law, the order dated February 25, 2019 to the extent of allowing the application under Section 7(1)(c) is set aside. Any deposit made on the basis of the said order, shall not be treated as valid deposit.

The Hon'ble Apex Court in the matter of *Bijay Kumar Singh & Ors. vs. Amit Kumar Chamaria & Anr.* reported in *2020(1) Indian Civil Cases 664 (SC)* held that Section 7 was a complete mechanism by which the tenant could seek protection from eviction.

Relevant paragraphs 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 contention of Mr. Chatterjee with regard to the belated filing of the applications under Sections 7(1) and 7(2) of the Act and non-fulfilment of the essential ingredients of the said sections while filing the applications, shall be decided on merits as the learned court has already fixed a date for hearing of those applications.

Needless to mention, the petitioners will be given adequate opportunity to file their objection to the said applications if not already filed and thereafter the learned court below shall pass necessary orders disposing of the application under Sections 7 (1) and 7(2) of the Act on its own merits by applying the provisions of law as laid down by this Court and by the Hon'ble Apex Court in this regard.

The revisional application is disposed of, accordingly.

It is made clear that the said application should be disposed of within ten days from the next date fixed.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)