

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:-

The Hon'ble Justice Biswaroop Chowdhury

C.O. 3380 of 2022

Smt. Laxmi Modak & Lakshmi Rani Modak

Vs.

Sri Bisweswar Dey

For the petitioner : Mr. Rwitendra Banerjee
Mr. Prasenjit Debnath

For the opposite party : Ms. Malyasree Maity

Last Heard on : 06.10.2023

Delivered on : 13.10.2023

Biswaroop Chowdhury, J:

1. The petitioner before this Court is the tenant in a suit for eviction filed by the opposite party and is aggrieved by the order No. 50 dated February 24, 2022, and order No. 57 dated June 27, 2022 passed by Learned Civil Judge (Junior Division) Nabadwip, Nadia in R. C. Case No. 01/2019.

2. The case of the petitioner may be summed up thus:

- 1) The plaintiff/opposite party filed a suit for eviction before the Learned Civil Judge (Junior Division) Nabadwip, Nadia being R. C. Case No. 01/2019 which is pending.
- 2) The petitioner/defendant entered into appearance and contested the suit by filing written statement.
- 3) On 20.07.2019, the petitioner filed an application under Section 7(1) of the West Bengal Premises Tenancy Act 1997 and with a prayer for depositing the rent and also filed an application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 for determination of rent payable.
- 4) The opposite party/ plaintiff pursuant to the filing of application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 by the petitioner filed his objection to the said petition.
- 5) By Order No. 50 dated 24.02.2022 the Learned Civil Judge (Junior Division) Nabadwip, Nadia was pleased to reject the application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 filed by the petitioner/ defendant, without determining the rent payable.

- 6) The petitioner thereafter moved another application under Section 151 of the Code of Civil Procedure 1908 for recalling the Order No. 50 dated 24.02.2022, to which the plaintiff filed objection.
- 7) By order dated 27.06.2022 Learned Civil Judge (Junior Division) Nabadwip, Nadia was pleased to reject the application made by the petitioner under Section 151 of the Code of Civil Procedure 1908 for recalling the Order No. 50 dated 24.02.2022.
- 3.** The petitioner being aggrieved by the order dated 24.02.2022 passed by the Learned Trial Judge has come up with the instant application.
- 4.** It is the contention of the petitioner that the Learned Trial Court acted illegally and with material irregularities in exercise of the jurisdiction vested in it while rejecting the application under Section 7(2) of the West Bengal Premises Tenancy Act 1997. It is further contended that the Learned Trial Court acted illegally and misconstrued the provision of 7(2) of the West Bengal Premises Tenancy Act 1997. It is also contended that the Learned Trial Court acted illegally in not considering the application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 on merits.
- 5.** Heard Learned Advocate for the petitioner and Learned Advocate for the opposite party, perused the petition filed and materials on record.

- 6.** Learned Advocate for the petitioner submits that the Learned Trial Court erred in dismissing the application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 without determining the amount of rent to be paid by the defendant/ tenant. Learned Advocate further submits that the Learned Trial Court also erred in not allowing the application for recalling of the order dated February 24, 2022. Learned Advocate also submits that sufficient ground was furnished for not being present on the date fixed which was not considered by the Learned Trial Court. Learned Advocate for the opposite party submits that the petitioner/ defendant was absent on several occasions and the Learned Trial Court was pleased to dismiss the application on February 24, 2022 when the application was fixed for hearing as a last chance.
- 7.** Now, in order to decide the validity of the orders dated February 24, 2022, and order dated June 27, 2022 passed by Learned Trial Court, at the very outset it is necessary to consider the relevant provisions contained in Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997.
- 8.** Sub-Section 1 of Section 7 of the West Bengal Premises Tenancy Act 1997 provides as follows:

 - 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 provisions of sub-Section (2) of this Section,

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 upto 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 [suit] 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 Civil Judge] month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.
- 2) If in any [suit] referred to in sub-Section (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.”

9. Thus, upon perusing the provisions contained in sub-Section 1 and sub-Section 2 of Section 7 of the West Bengal Premises Tenancy Act 1997 it will appear that application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 is not an application made by any party to the suit for any interim relief but an application for determination of rent payable by defendant/ tenant. In other words the defendant/tenant makes application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 not for adjudicating any of his right but determination of his liability to discharge regarding payment of rent to landlord or deposit in Court. Thus, the tenant/defendant is not seeking any direction from Court upon opposite party but upon himself on determining the obligation regarding rent for discharging the same. The distinction between

other interlocutory applications and application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 is that in other interlocutory applications the Court has discretion either to grant or to refuse the relief prayed for but in application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 it is incumbent upon the Court to determine the rent payable by the defendant/ tenant in a suit under Section 6 of the West Bengal Premises Tenancy Act 1997. Hence, the approach taken and procedure followed in determining other interlocutory applications may not be followed in deciding application for determining rent under Section 7(2) of the West Bengal Premises Tenancy Act 1997. In deciding an application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 the Court if it is of the view that several adjournments are already granted may refuse to grant adjournment and determine the rent payable on the basis of application and materials before it. Even in the absence of learned Advocates for the parties the Court is empowered to determine the rent payable by the tenant as per Section 7(2) of the West Bengal Premises Tenancy Act 1997. However, in the event of dismissing an application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 due to non-appearance of Advocate for the defendant/tenant such application should be restored and order of dismissal should be recalled on the application being filed by the defendant/tenant for restoration/recalling. Upon recalling the order of dismissal rent

should be determined in accordance with the provisions contained in sub-Section 2 of Section 7 of the West Bengal Premises Tenancy Act 1997.

10. Upon perusing the order dated February 24, 2022 passed by Learned Trial Court it will appear that the order did not specify the reasons for dismissal. Moreover, the order of dismissal was passed during COVID period. It further appears from the order dated 27.06.2022 that the Learned Trial Judge did not consider the grounds for absence of the defendant/petitioner on 24.02.2022 for which adjournment was sought as stated in the petition under Section 151 of the Code of Civil Procedure, and passed the order of rejection of the petition under Section 151 C.P.C. Moreover, Learned Trial Judge also failed to consider that 24.02.2022 which was fixed as a last chance for the defendant/ petitioner to appear was during the COVID period. In the facts and circumstances Order No. 57 dated June 27, 2022 and Order No. 50 dated February 24, 2022 passed by Learned Civil Judge (Junior Division) Nabadwip, Nadia in R.C. Case No. 01/2019 cannot be sustained and should be set aside.

11. Thus, this Revisional Application stands allowed. Order No. 57 dated June 27, 2022 and Order No. 50 dated February 24, 2022 passed by Learned Civil Judge (Junior Division) Nabadwip, Nadia in R.C. Case No. 01/2019 are set aside. The matter is remitted back to the Learned Trial Court to decide the application under Section 7(2) of

the West Bengal Premises Tenancy Act, 1997 filed by the petitioner/
defendant and determine the rent to be payable by the petitioner.

12. This application stands disposed.

[Biswaroop Chowdhury, J]