

12.07.2023
sayandeep
Sl. No. 78
Ct. No.652

CO 4024 of 2018

Sri Subrata Sen
Vs.
Smt. Shelly Jaiswal & Anr.

Mr. Rwitendra Banerjee
Mr. Prasenjit Debnath
.....for the petitioner

Opposite parties are not represented.

This is an application under Article 227 of the Constitution of India against order No. 50 dated July 31, 2018 passed by learned Civil Judge (Junior Division), 1st Court, Chandannagore, Hooghly in title suit No. 370 of 2015. Petitioner contended that the husband of plaintiff/opposite party no. 1, since deceased, instituted suit *inter alia* praying for eviction, khas possession against the defendant in respect of the suit property and the defendant/petitioner herein entered appearance in the said suit on January 2, 2016 and contesting the same.

On January 2, 2016, the defendant/petitioner filed two applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1977 (hereinafter referred to as the Act of 1977). The plaintiff/opposite parties filed their written objection against the said application under Section 7(2). By the impugned order, learned Court below has been pleased to reject defendant-tenant's application under Section 7(2) and

the defence has been struck off under Section 7(3) of the Act of 1997.

The petitioner submits that in his application under Section 7(2), he has taken specific plea that due to good relationship and faith upon landlord/plaintiff, the defendant repaired the tenanted rooms as per instruction and permission of the plaintiff and for which defendant spent a sum of Rs. 2 lakhs for the repair work. After completion of the said repair work, the plaintiff assured that the amount incurred for the said repair would be adjusted with the rent. On several occasions, the defendants requested for issuance of rent receipts after adjustment of the cost involved in the repair work, but the plaintiff did not issue the rent receipt in favour of the defendant on the plea that they have no blank rent receipt and it would not be a crucial issue for him.

The plaintiff landlord who is opposite party herein in his written objection denied that due to any good relation, the defendant repaired the tenanted rooms after taking permission from the plaintiff/landlord or he had incurred a sum of Rs. 2 laks for the alleged repair work or that plaintiff assured him that the said amount would be adjusted with the monthly rent.

Learned Court below while disposing the said application came to a finding that the defendant/tenant stopped paying the rent for the suit premises to the original plaintiff since 26.07.2015 and the suit was

filed by the plaintiff on 5.10.2015. The defendant appeared and filed his application under Section 7(1) and 7(2) of the Act of 1997 on 2.01.2016. Accordingly the Court below observed that though defendant has carried out their obligation under Section 7(1)(C) but they have failed to comply Section 7(2) of the Act of 1997 for not depositing the admitted arrear amount of rent from 26.07.2015 till the date of their filing applications.

Mr. Rwitendra Banerjee, learned counsel appearing on behalf of the petitioner submits that the copy of the order sheet shows that on 10.05.2018, the defendant filed written affidavit-in-chief and learned Court below on the very next date without examining the defendants' witness and plaintiff's witness (if any), straightway came to the conclusion that the defendant is a defaulter in payment of arrear rent and has not compiled Section 7(2) of the Act of 1997. Mr. Banerjee, further submits, when the defendant tenant has raised a dispute that he has paid Rs. 2 laks towards repairing cost and it was agreed that the said amount would be adjusted with the monthly rent and to that extent when he had filed an affidavit-in-chief, for examination of witness, learned Court below ought to have given a scope to tender the evidence on that issue and then come to a conclusion about the veracity of such contention made by the defendant/tenant.

Having considered the facts and circumstances of the case, I find substance in the aforesaid contention made by Mr. Banerjee. The order impugned dated 31st July, 2018 is hereby set aside, so far as the observation made in connection with defendant/petitioner's application under Section 7(2) is concerned.

The Court below is directed to permit the petitioner/tenant to tender his evidence and the scope to cross-examination by plaintiff/landlord and also to give similar opportunity to plaintiff/landlord and after taking such evidence, will pass a fresh order in respect of aforesaid application under Section 7(2) of the Act of 1997 within a period of 12 weeks from the date of communication of this order, uninfluenced by observation made herein.

CO 4024 of 2018 is accordingly disposed of.

However, there shall be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Ajoy Kumar Mukherjee, J.)