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**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 3538 of 2022

**Mahadeo Business Centre Pvt. Ltd.
versus
Amiya Chorone Roquittee**

Mr. Buddhadeb Ghoshal
Mr. Anirudh Poddar
Mr. Dhiraj Kumar Gupta
Mr. Swarup Saha
... For the petitioner/defendant

Mr. Dwaipayan Basu Mallick
Mr. Meghnath Dutta
Mr. Rahul Kumar Singh
Mr. Rajesh Upadhyay
... For the opposite party

This revisional application is filed by the petitioner under Article 227 of the Constitution of India challenging order No.29 dated 15th September, 2022 passed by the learned Judge, 2nd Bench, City Civil Court at Calcutta in Ejectment Suit No.12 of 2019.

The brief fact of the case is that the opposite party/plaintiff filed a suit for eviction which is registered as Ejectment Suit No.12 of 2019. In the said suit, the petitioner filed two applications; one under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 and another under Section 7(2) of the said Act. By order No.14 dated 12th January, 2021 the application under Section 7(1) of the Act was disposed of by the trial court directing the petitioner-defendant to deposit arrears of

rent from February, 2020 to January, 2021 @Rs.2,100/- together with interest accrued thereon @10% per annum within thirty days from the date of order. The application under Section 7(2) of the Act was rejected. Hence, this revision.

Mr. Buddhadeb Ghoshal, learned Advocate for the petitioner referring to Section 7(2) of the West Bengal Premises Tenancy Act submits that on an application being made by the tenant before the Court, the Court has to specify the amount of rent defaulted by the tenant in making payment and thereby give opportunity to the tenant to deposit the same within a period not exceeding one month which can be extended for a period of another two months. However, the trial court by the impugned order failed to take recourse to the procedure laid down in Section 7(2) of the Act and rejected the application without giving opportunity to the defendant-tenant to deposit any arrears due from him. To buttress his contention, he relies on a decision of this Court passed in the case of ***M/s. Dwarkadas Raghubir Prosad Choudhury & anr.*** reported in **92 CWN 287**. In light of aforesaid submission he prays that the matter be remanded back to the trial court for passing necessary direction in terms of Section 7(2) of the Act. He files written notes of argument which is taken on record.

Mr. Dwaipayan Basu Mallick, learned Advocate for the opposite party submits that the petitioner before the trial court has contended that the rate of rent is Rs.2,100/- whereas the maintenance charges, corporation taxes and commercial surcharge amounting to Rs.976/- which is also inclusive with the rent has never been contended by the petitioner-tenant before the trial court. By the impugned order the learned trial court has noted the aforesaid fact and thereby rejected the application under Section 7(2) of the Act. In view of the above submission, he prays that the impugned order under challenge does not call for interference. He further submits for expeditious hearing of the suit.

In reply, Mr. Buddhadeb Ghoshal, learned Advocate for the petitioner submits that law enjoins that the rate of rent includes maintenance charges, corporation taxes and commercial surcharge.

Having heard the learned Advocates for the respective parties, it has fallen for consideration whether the learned Trial Court was justified in rejecting the application under Section 7(2) of the Act without giving opportunity to the defendant-tenant to make good the default, if any.

Before delving into the merit of the application it would be apposite to reproduce the relevant provisions of Section 7(2) of the West Bengal Premises Tenancy Act as under :-

“(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.”

Upon going through the impugned order under challenge, it is found that though the learned trial court held that the rate of rent should be Rs.3076/- including maintenance charges, commercial surcharge and corporation tax and has also come to this finding that the petitioner-tenant is a defaulter but has failed to specify the amount to be deposited by the defendant-tenant towards default in payment of rent in terms of Section 7(2) of the Act. The provisions under Section 7(2) of the Act clearly enshrines that 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 and such period for making payment may be extended not exceeding two months. Such being the position, the matter needs to be remanded back to the trial court for determining the amount due towards rent from the petitioner-tenant and, thereafter give opportunity to the defendant-tenant in terms of Section 7(2) of the Act for depositing such amount due from him within the stipulated period.

The referred decision in *M/s. Dwarkadas Raghubir Prosad Choudhury's case (supra)* is passed in respect of provision of Section 17(2) and Section 17(2A) of West Bengal Premises Tenancy Act, 1956 (old Act) which provision has been deleted in the new Act of 1997 and, therefore, the ratio of the cited decision is not applicable to the case at hand.

Accordingly, the impugned order under challenge is set aside.

The matter is remanded back to the learned Trial Court for determining the amount of rent due, if any, to be paid by the defendant-tenant in terms of Section 7(2)

of the West Bengal Premises Tenancy Act and also give opportunity to the defendant-tenant to deposit the said amount within the period stipulated in the said provision. Further, the trial court is directed to dispose of the application under Section 7(2) of the Act preferably within a period of one month from the date of communication of this order, after hearing both the sides, without giving unnecessary adjournment to either of the parties.

Learned Trial Judge is requested to expedite the hearing of the suit and dispose of the same as early as possible.

Petitioner is directed to communicate this order to the learned Trial Court.

With the aforesaid observation, this revisional application being **C.O. 3538 of 2022** stands disposed of.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)