

12.10.2023
Court No. 19
Item No. 13
CP

C.O. 3653 of 2022

Sri Tarani Alias Tarani Mohan Das
Vs.
Tapan Kumar Dey & anr.

Mr. Subhas Chandra Atha
... for the petitioner.

The petitioner is the tenant in respect of a property situated at Holding No. 209 under Bankura Municipality, P.S. – Bankura. A suit for ejectment under the West Bengal Premises Tenancy Act (hereinafter referred to as ‘the said Act’), was instituted by the opposite parties. The petitioner filed an application under Section 7(2) of the said Act. The learned court passed an order on September 1, 2008 disposing of the application, directing the petitioner to pay the rent month by month every month within 15th of the succeeding month, in accordance with the provisions of the said Act. The petitioner admittedly did not pay the amount and defaulted for over a year.

Thereafter, the plaintiffs filed an application to strike off the defence of the petitioner. The learned court by the order impugned, allowed the application and struck off the defence of the petitioner. The learned court came to the following findings:-

- a) The fact that the defendant could not make the payment as the landlord was not available, was never brought to the notice of the court.
- b) Refusal to accept the rent by the landlord, was not intimated to the court supported by affidavits.
- c) There had been continuous default in payment of the rent despite order of the court. The default continued even after the covid period and beyond February 28, 2022.

Thus, the advantage of the time span during which the Hon'ble Apex Court had extended the period of limitation for filing suits, appeals, proceedings and also for compliance of conditional orders, would not be available to the petitioner. The petitioner defaulted even after March 1, 2022 as per the finding of the learned court.

On the verbal submissions of the petitioner and without any document showing refusal by the landlord to accept rent, the petitioners contentions were not accepted.

This court does not find any reason to interfere with the order impugned. The order impugned is well reasoned.

Section 7 of the said Act provides a mechanism by which a tenant can claim protection from eviction on any of the grounds stated in Section 6 of the said Act. The provisions of Section 7 have been held to be mandatory. Reference is made to the decision in the matter of ***Bijay Kumar Singh & Ors. vs. Amit Kumar Chamaria & Anr.*** reported in ***2020(1) Indian Civil Cases 664 (SC)***. Paragraphs 18 to 21 being relevant are quoted below:

18. The judgment in B.P. Khemka is in respect of a statute giving power to condone delay without any fetters. The amendments carried with retrospective effect inter alia enabled tenants who were in default to apply to the court and pay the arrears of rent in instalments and thereby avert their eviction. In pursuance of the amendments, the tenant deposited the rent. However, he subsequently committed default in paying monthly rent. 18 (2009) 10 SCC 552 Consequently, the defence was struck off on the ground that in paying the rent for the months of September 1968 and March 1969, there had been a delay of 44 days and 6 days respectively, which was in contravention of Section 17(1) of the West Bengal Act. This Court held that the proviso makes it clear that if the subsequent default is for a period of 4 months within a period of 12 months, the tenant can claim relief under the sub-section once again. Since the default was less than 40 days, this Court held that under the said proviso, the delay could be condoned. Provisions of M.P. Act and of Delhi Act are also similar.

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.”

Under such circumstances, the court did not have any option or jurisdiction to condone the default which continued for a long time and accept deposit of belated rent. This was not a case of first default, but continuous default for more than a year. Unless, the tenant deposits the rent as directed by the learned court, the defence would be struck off. Section 7(3) of the said Act is quoted below:-

“7. When a tenant can get the benefit of protection against eviction.-

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- (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 revisional application is accordingly dismissed, without any interference with the order impugned.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)