

14.08.2023
Court No. 19
Item 124 (ML)
CP

C.O. 3732 of 2022

Dasgupta & Co. & anr.
Vs.
Sri Suresh Kumar Jaiswal & ors.

Mr. Soham Dutta

... for the petitioners.

Mr. Sayantan Bose
Ms. Ankita Choudhury

.....for the opposite parties.

The revisional application has been filed challenging an order dated May 5, 2022, passed in Ejectment Suit No. 225 of 2017 by the learned Judge, 6th Bench, Presidency Small Causes Court at Calcutta. By the order impugned, the learned court rejected an application filed by the defendants/tenants with a prayer to allow deposit of rent from September 2021 to May 2022.

It is urged by the defendants that the rent could not be paid due to the lock down and also due to illness. The suit is one for eviction of tenant and recovery of khas possession, on the ground of default and reasonable requirement. The defendants were the monthly tenants under the plaintiffs at a monthly rental of Rs.350/-

The defendants entered appearance in the suit on July 3, 2017 and filed applications under Sections

7(1) and 7(2) of the West Bengal Premises Tenancy Act (hereinafter referred to as 'the said Act').

Upon hearing the application under Section 7(1) of the Act, by an order dated July 13, 2017, the defendants were directed to deposit admitted arrears of rent along with current rent month by month. The application under Section 7(2) of the said Act was disposed of holding that there were no arrears to be paid. A default was committed from September 2021 to May 2022.

It is admitted by the petitioners that during the Covid period also the rents were paid regularly and only from September 2021 to May 2022, the payment was not made for reasons beyond control. The learned court below rejected the said application on the ground that the default could not be condoned as the defendants had failed to comply with Section 7(1)(c) of the Act. The proviso to Section 7(2) of the Act would not come into play in this case.

Moreover, an application under Section 151 of the Code of Civil Procedure to modify an earlier order would not be maintainable.

According to the learned court, the expression 'shall' in Section 7 would be treated to be mandatory. Reliance was also placed on various decisions of this court. Relevant paragraphs of the decision in *Abhishek Singh vs. Bholanath Kundu*, reported in

2022 (1) Indian Civil Cases 777 (Cal.) was considered while deciding whether the learned court could invoke the inherent power under Section 151 of the Code of Civil Procedure and condone the delay in depositing the rent from September 2021 to May 2022.

It has been rightly recorded by the learned court that the provisions of Section 7 was mandatory and should be scrupulously followed in order to avoid an eviction on account of non-payment of rent.

The learned court observed that the Hon'ble Apex Court and also the Full Bench of this court had extended the period upto February 28, 2022, but not thereafter. Had the petitioners come within one month from such extension, even then, the matter could have been given some thought. But, the petitioners approached the court in May 2022.

Moreover, it was a continuous default since September 2021 upto May 2022. Thus, there was no ground for the court to invoke the inherent power. Such action on the part of the court would go against the principles laid down by the 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)***. 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.

The revisional application is accordingly disposed of without any interference.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)