

Item No. 18
12.09.2023
Court. No. 19
GB

C.O. 3943 of 2022
with
CAN 1 of 2023

Sudeb Hazra
Vs.
Ramprakash Shaw @ Ramprakash

Mr. Somnath Roy Chowdhury

... for the Petitioner.

Mr. Sanjib Seth

... for the Opposite Party.

The revisional application arises out of an order dated November 22, 2022, passed by the learned Civil Judge (Junior Division), 7th Court at Howrah in Title Suit No.593 of 2022.

By the order impugned, the learned court allowed an application under Section 5 of the Limitation Act, seeking condonation of delay in filing the application under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act'). The application for condonation was filed by the defendant/opposite party on September 15, 2022.

The learned court below was of the view that although the application under Sections 7(1) and 7(2) of the said Act was filed after one month from the receipt of summons and the specific statutory period was not complied with, the delay should be condoned as the tenant was not to be blamed. The omission of

the learned advocate to take steps within time, was a good ground to condone the delay caused in filing the applications under the said Act.

Mr. Roy Chowdhury, learned advocate appearing on behalf of the landlord/petitioner submits that the learned court did not have any jurisdiction to condone the delay of even one day. According to Mr. Roy Chowdhury, the application under Sections 7(1) and 7(2) did not have any existence in the eye of law, until the delay was condoned. Moreover, the application for condonation of delay was filed in September 15, 2022. Reference is made to the order impugned as also the statement of the defendant in order to establish such fact.

Mr. Seth, learned advocate appearing on behalf of the opposite party submits that the conduct of the tenant should be taken into consideration. He relies on a decision of a coordinate Bench of this Court passed in **C.O. 3852 of 2010**. Mr. Seth further relies on a decision of a coordinate Bench of this Court in the matter of ***Bahadur Singh Kathotia versus Smt. Purabi Basu*** passed in **C.O.2575 of 2022**.

Having considered the submissions of the learned advocates for the respective parties, this Court is of the view that the only issue to be decided in this revisional application is whether the learned court below acted illegally and with material irregularity in

allowing the application for condonation of delay in filing the application under Section 7(1) and 7(2) of the said Act.

Coming to the facts of this case, there is no dispute with regard to the admitted position that the suit was one for eviction under the provision of Section 6 of the said Act. Ground of default was one of the grounds for eviction. The summons were served on June 28, 2022. The petitioner appeared on August 3, 2022. The applications under Section 7(1) and 7(2) of the said Act was filed on the same day, without any application for condonation of delay. Thereafter, the application under Section 5 of the Limitation Act was filed on September 15, 2022.

In the application under Section 7(1) of the said Act, the petitioner stated that monthly rent was paid to the landlord upto July 2021. Suddenly the landlord refused to accept the rent from August 2021. The petitioner tried to pay the rent through money order on September 15, 2021 but the same was refused. The petitioner filed a misc. case being No.168 of 2021 on October 5, 2021 before the rent controller, Howrah in terms of Section 21 of the West Bengal Premises Tenancy Act, 1997. The application was pending, so the learned court should pass necessary orders allowing deposit of Rs.4730/- as admitted rent from the month of August 2021 and onwards, if the matter

was not heard by the rent controller. In my view, the opposite party failed to comply with the provision of Section 7(1). Not only was there delay in filing the application, but the other requirements of the provisions were also not complied with. Similar averments were made in the application under Section 7(2), without fulfilling the statutory mandate.

The law provides a complete mechanism to be availed of by a tenant in order to protect himself from eviction. Such mechanism is incorporated in Section 7 of the said Act. On institution of a suit by the landlord for eviction on any of the grounds referred to in Section 6 of the said Act, the tenant, subject to the provisions of sub-section (2) of the Section 7, was liable to 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 was made, together with interest at the rate of 10% per annum. Such payment or deposit was to be made within one month from the service of summons on the tenant or when the tenant appeared in the suit without summons being served, within one month from his appearance. Thereafter, the tenant was enjoined by law, to continue to pay to the landlord or deposit with the civil judge a sum equivalent to the rent at that rate, month by month within 15th of each succeeding month.

In case of any dispute as to the amount of rent payable by the tenant, the tenant was liable to 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 within the time specified in the sub-section. No such deposit could be accepted unless it was accompanied by an application for determination of the rent payable. On receipt of the application, the civil judge, having regard to the rate at which the rent was last paid and the period for which default may have been made by the tenant, determine the dispute, and pass an order within a period not exceeding one year, specifying the amount, if any, due from the tenant and thereupon the tenant was liable to pay to the landlord within one month from the date of such order, the amount so specified in the order along with the monthly rent at the rate so determined.

Instead of depositing the admitted arrear rent within the statutory period accompanied by an application for adjudication of the relationship of landlord and tenant as also the rent payable, two belated applications were filed along with an application for condonation delay.

There have been contrary views of this Court with regard to the applicability of Section 5 of the Limitation Act in respect of belated applications under Sections 7(1) and 7(2) of the said Act, in the past.

However, in the decision of ***Bijay Kumar Singh & Ors. versus Amit Kumar Chamariya & Anr.*** reported in ***(2019) 10 SCC 660***, the Hon'ble Apex Court ultimately decided the scope of Section 7 of the said Act. Paragraph 5 of the said decision is quoted below:-

“5. In this background, the argument of the learned counsel appearing for the appellant is that the High Court has not maintained judicial decorum and should have referred the matter to the larger Bench to decide the scope and ambit of Section 7(2) of the Act. We find that since a short question of law arises for consideration, therefore, without going into the question as to whether learned Single Judge should have referred the matter to the larger Bench or not, the question to be decided by this Court is to bring certainty in respect of scope of Section 7 of the Act.”

The intention of the Hon'ble Apex Court was to bring a finality or a certainty with regard to the issue and resolve the same.

While deciding ***Chamariya (supra)*** the Hon'ble Apex Court discussed the decision of ***Nasiruddin & Ors. versus Sita Ram Agarwal*** reported in ***(2003) 2 SCC 577***, especially paragraph 47 thereof, and held that ***Nasiruddin (supra)*** had clearly stated that the court could condone the delay only when the statute conferred such power on the court and not otherwise.

The decision in C.O.3852 of 2010 was delivered at a time when the law had not been settled by the Hon'ble Apex Court. ***Chamariya (supra)*** was a later decision.

Section 7 was interpreted in **Chamariya (supra)** and the entire mechanism by which a tenant could seek benefit from eviction on the ground of default, was considered to be mandatory and inter-related. The provisions of the said section were discussed in detail in the following paragraphs of the said judgment:-

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."

Moreover, the decision in **Bahadur Singh Kathotia (supra)** would not come to the aid of the petitioner as the said judgment was rendered without considering the decision of the Division Bench in the **Calcutta Gujarati Education Society vs Sri Ajit Narayan Kapoor** decided in **C.O. 175 of 2017**. The Division Bench answered the reference in view of the conflicting decisions. The question formulated by the then Acting Chief Justice is quoted below:-

“Does the view of the Division Bench of this court that section 5 of the Limitation Act can be applied to condone delay in making applications under sub-sections (1) and (2) of section 7 of the West Bengal Premises Tenancy Act, 1997, as held in the Subrata Mukherjee case (supra), survive in view of the decisions of the Hon’ble Supreme Court in the Nasiruddin case (supra), the Ashoke Kumar Mishra case (supra), Manjushree Chakraborty case (supra).”

The reference was specific as to whether Section 5 of the Limitation Act could be applied to condone a delay in making application under Section 7(1) and 7(2) of the said Act. The Hon’ble Division Bench held that the Limitation Act, 1963 had no manner of application in respect of an application by a tenant under Section 7. Paragraphs 46 and 47 of **Nasiruddin (supra)**, were considered by the Hon’ble Division Bench and it was held that in **Nasiruddin (supra)** the court could condone default only when the statute conferred such a power on the court or not otherwise. The Hon’ble Division Bench held as follows:-

“West Bengal Premises Tenancy Act, 1997 is an Act of the State legislature providing for period of limitation in respect of deposit and determination of rent. Section 6 in the Act has the non-obstante clause on application of other laws, regarding eviction. Section 40 makes applicable Limitation Act, 1963 subject to provisions in the Act relating to limitation.

The application for determination of rent not having prescribed period of limitation anywhere else in the third division, article 137, if applied, will provide for it to be made within three years from when the right to apply accrues. In case of such an application it is not the right of the tenant that would accrue, to make such an application. The Act of 1997 mandates that deposit of rent or where there is dispute regarding quantum of rent, deposit of admitted rent alongwith application for determination of rent, must be made by the tenant within time specified and as extendable under said Act. This is in relation to the suit filed for eviction, where compliance with the deposit mandate will enable the tenant to seek the protection provided. This enabling provision cannot be seen as an assertive right of a tenant, to be enforced. Here, provision in article 137 cannot be made applicable. Furthermore, where it is a requirement of compliance by the tenant to seek protection, mandated by the statute as competently legislated by the State legislature and specifically limiting application of the 1963 Act, there cannot be occasion for application of the period of three years, overriding the period and extension specified by the local law and thereafter condonation of delay as under section 5.

We answer the question referred to say that Limitation Act, 1963 has no application in respect of an application by a tenant, made under section 7 for determination of arrears of disputed rent. We are aware our answer to the question referred gives rise to conflicting views of two Division Benches of this Court. However, we have answered the question pursuant to direction made in said administrative order.

The files be sent back on the reference answered and disposed of.”

The decision of a coordinate Bench in **Papiya Sengupta and ors. vs. Suvasis Ghosh** reported in

(2020) 1 ICC 980, was also relied upon by Mr. Roy Chowdhury. The relevant paragraphs are quoted below:-

“**12.** The Division Bench of this Court in the case of Subrata Mukherjee v. Bisakha Das (supra) while dealing with the said issue at paragraph 32 has held as under:—

‘Accordingly, for this reason, we hold that Section 5 of the Limitation Act will be applicable for the purpose of making deposit of admitted amount of arrears of rent, as mentioned in sub-sections (1) and (2) of Section 7 of the 1997 Act.’

13. The Hon'ble Supreme Court since in the case of Bijay Kumar Singh and Ors. (supra) has held that 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 and in view thereof, tenant will not be able to take recourse to section 5 of the Limitation Act, 1963 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. In view of the said decision of the Hon'ble Supreme Court, the decision of Subrata Mukherjee v. Bisakha Das (supra) is of no assistance to the petitioners.”

In **Chamariya (supra)** the Hon'ble Apex Court finally interpreted **Nasiruddin (supra)**, in paragraph 16 thereof. B.P. **Khemka (supra)** was also considered and the Hon'ble Apex Court arrived at the conclusion that Section 5 of the Limitation Act would not apply in case the benefit of protection from eviction was sought by the tenant under Section 7 of the said Act. A conjoint reading of the paragraphs 19, 20 and 21 of **Chamariya (supra)** would categorically reflect such finding.

Similar view was taken by this court in the decision of ***Kishan Lal Bihani Vs. Shiv Shakti Real Estate Private Limited*** decided in **C.O. 1385 of 2023**.

Thus, Mr. Seth's submission that the decision in **Chamariya (supra)** was restricted to Section 7(2) and not Section 7(1), and belated deposit of rent, but did not decide the applicability of Section 5 of the Limitation Act for condonation of delay, is not accepted. The ratio of Chamariya (supra) applies to the entire provision of Section 7 of the said Act and the concluding part of paragraph 21 has put a finality to the issue.

Under such circumstances, the revisional application is allowed. The order impugned is set aside. The learned court below shall proceed with the suit in accordance with law.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)