

C. O. 1264 of 2020

**Ludhiana Calcutta Road Ways
Vs
Sri Bimal Kumar Bazaz**

**Mr. Probal Kumar Mukherjee, Sr. Advocae
Mr. Gupta Nath Prasad
.....For the Petitioner
Mr. Rupak Ghosh
Mr. Pradip Kr. Sarawagi
.....For the Opposite Party**

Being aggrieved by and dissatisfied with the impugned order dated 18.01.2020 passed by the learned Civil Judge (Senior Division), Sealdah in Ejectment Suit No. 3 of 2019, the present application under Article 227 of the Constitution of India has been preferred.

The main ground for preferring this application is, court below while disposing petitioner's application under section 7(2) of the Act was pleased to held that the defendant is a defaulter in payment of monthly rent though defendant has paid the entire arrear rent at the time of filing application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997.

Petitioner herein/defendant is a monthly tenant under opposite party/plaintiff in respect of suit premises at a monthly rent of Rs. 6,483/- payable according to English calendar month.

Petitioner states that the plaintiff/opposite party had previously filed one eviction suit being Ejectment Suit No. 7 of 2015 in the court of learned Civil Judge (Senior Division), Sealdah against defendant/petitioner on the ground of default in payment of rent. On receipt of writ of summons and copy of plaint in that suit, the defendant entered appearance in the said suit and filed applications under Section 7(1) and 7(2) of the said Act of 1997 and deposited arrear monthly rent in the said suit up to the month of May, 2018. Both the petitions of the petitioner herein were allowed and it was held by the learned court that the defendant was not a defaulter in payment of rent. After contested hearing the said suit was ultimately dismissed on contest but without any order as to costs by judgement and decree dated 07.05.2018. After dismissal of the said suit the defendant requested the plaintiff to accept the monthly rent of Rs.6,483 for the month of June, 2018 but the plaintiff declined to accept the said rent on the plea that he was proposing to file appeal against the said Judgement and Decree dated 07.05.2018. On hearing so, the defendant filed a caveat before this court and continued depositing the said monthly rent of Rs.6,483/- in the said suit before the learned court and has deposited such rent upto the month of October, 2018.

The petitioner further submits that since more than six months had passed away from the date of Judgement and Decree dated 07.05.2018 passed in the said Ejectment Suit No. 7 of 2015, the plaintiff did not file any appeal against the said Judgment and Decree, the defendant/ petitioner herein through its constituted attorney tendered the said monthly rent for the month of November, 2018 on 14.11.2018 to the above named plaintiff personally but he refused to receive the same for the reason best known to him. As such the defendant sent the rent for the month of November, 2018 through money order and the money order was returned to the defendant on 07.12.2018 with the remarks "refused". The defendant states that in the meantime the defendant had remitted the monthly rent for the month of December, 2018 to the plaintiff by money order again but the plaintiff refused to accept the same. In view of refusal to accept the rent sent through money order, the tenant/defendant took steps for depositing the monthly rent in the office of the learned Rent Controller but the Rent Controller did not give permission to the defendant to deposit the rent for the reason that arrear rent for the months of June, 2018 to October, 2018 had not been personally tendered and remitted to the landlord and opined that deposits of monthly rent made by the defendant in the said

suit from the month of May, 2018 till the month of October, 2018 are invalid deposits.

Subsequently, the plaintiff/ landlord had filed the present second Ejectment Suit where petitioner as defendant had filed petition under Section 7(2) of the said Act of 1997. Plaintiff did not file any written objection to the said petition filed by defendant under section 7(2) and said petition was heard by the court below and the court below was pleased to held that the tenant/ defendant is not a defaulter in payment of rent for the month of June 2018 to January, 2019 but no previous rent is due and thus the petition under Section 7(2) of the said Act is disposed of on contest.

The petitioner submits that learned court below while passing the impugned order has completely disregarded the deposit of monthly rent made by the defendant for the month of June 2018 till the month of October, 2018 in earlier Ejectment Suit No. 7 of 2015 as noted and there is no room for doubt that the defendant had not defaulted in payment of rent for the months that is from June 2018 to January, 2019 and there is no arrear rent at present payable to the defendant. Aforesaid observation of the trial court that the defendant is a defaulter, though no previous rent is due has caused the petitioner aggrieved to prefer this application. The

petitioner has specifically pleaded that learned judge while making said observation did not consider the refusal of the plaintiff to accept the monthly rent for the relevant period.

Learned counsel appearing on behalf of the opposite party submits that the court below was quite justified in making the said observation in view of the proviso as laid down in Section 7(4) of the West Bengal Premises Tenancy Act, 1997 which provides that the tenant shall not be entitled to get protection against eviction under Section 7(4) of the said Act if having obtained such relief once in respect of the premises, he again makes default within a period of 12 months.

Considered submissions made by both the parties.

The present application under Article 227 of the Constitution of India has arisen out of applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 which deals with mandatory deposit of admitted area rent at the time of appearance with the concerned Civil Judge calculated at which it was last paid and up to the end of month of previous to that in which the payment is made, together with interest @ 10 percent per annum. There is no obligation under section 7(1) on the civil judge to adjudicate or determine as to the correctness of the

amount deposited by way of rent or to make any observation about correctness in respect thereof. Such an order is purely a formal order without any adjudication as to the validity of the deposit, which the tenant makes at his risk.

Court below rightly observed that the word “again” in proviso to 7(4) of the Act of 1997 means another time. So the mischief of the proviso will be attracted when the tenant has again made default at least four months for the second time. In the present case such issue has been kept open for adjudication by the court below at the time of final adjudication of suit. Accordingly I do not find any merit in such application. I made it clear that I have not gone into the correctness or validity of the deposits of rent in question by the petitioner, which shall be kept open for adjudication, without being influenced by any observation made herein.

C.O. 1264 of 2020 is accordingly disposed of without interfering the order impugned .

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

