

19.07.2023
Sl. No.4(DL)
srm

C.O. No. 1417 of 2020
Sri Bhaskar Lahiri & Anr.
Versus
Sri Utpal Pal

Mr. Prabir Kumar Bhaumick,
Mr. Anirban Saha

...for the Petitioners.

Despite service, none appears on behalf of the opposite party. Affidavit-of-service is taken on record.

The petitioners are the plaintiffs in Title Suit No.43 of 2016 which is pending before the learned Civil Judge (Junior Division), 2nd Court at Ranaghat, Nadia. The suit is for eviction.

By the order impugned dated February 4, 2020, the learned court below held that the defendant was not in default. Accordingly, the applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act (hereinafter referred to as the said Act) dated May 16, 2016 filed by the defendant were allowed in his favour. The documents which were tendered as exhibits, the original rent receipts dated April 23, 2008, June 28, 2008, July 25, 2008 and June 28, 2008, bank cheques, rent deposit challans of Title Suit No.23 of 2009 and

Title Suit No.43 of 2016 were taken into consideration. The PW1 was examined and the learned court did not find any default.

The learned Advocate for the plaintiffs/petitioners submits that the objection of the petitioners with regard to the default in payment of rent since July, 2008 was not taken into consideration. The learned Judge failed to take into consideration the contentions of the plaintiffs in the objection. The grounds for rejection of the applications filed by the defendant under Sections 7(1) and 7(2) of the said Act, were not discussed in the order. According to the petitioners, the deposits made earlier were bad and invalid deposits. Hence, the defendant was a defaulter and his defence was liable to be struck out. According to the petitioners, the earlier suit was dismissed and after dismissal of the earlier suit, no rents had been paid.

In so far as the application under Section 7(1) of the said Act was concerned, the learned court below found that the defendant was paying the current rent month by month at the rate of Rs.450/- per month. Hence, the prayer for depositing current rent was allowed for the ends of justice.

While deciding the aforementioned issue as to whether the defendant was a defaulter or not, the learned court below

relied upon the evidence of the PW1 and exhibits 1, 2 and 3 and considered the evidence of DW1 and exhibits A and B which were tendered by the said witness.

Having considered all the evidence on record and the contentions of the parties, the learned court below found that the defendant was not a defaulter.

The contention of Mr. Bhaumick that the averments made by the plaintiffs were not taken into consideration is not correct. The learned court below considered the challans and counterfoil of rent receipts as also the postal receipts, which were submitted by the plaintiffs. Yet, upon perusal thereof, the learned court below came to the specific finding that there was no default.

In the application under Section 7(2) of the said Act filed by the defendant, the defendant prayed for determination of arrear rent, if any, and adjustments of the rent from the money paid to the original landlord. The learned court below found that Rs.1,00,000/- had already been paid to the plaintiffs. The plaintiffs filed counterfoil of the rent receipts along with the postal receipt and acknowledgement due, in support of his claim that the defendant was a defaulter. The contention of the plaintiffs were considered and the learned court below held that the exhibits 3 and 1, which were the original rent deposit

challans in connection with Title Suit No.23 of 2009 as also the challans in the present suit would indicate that the rent had been paid since July, 2008 through challans in Title Suit No.23 of 2009 and also paid thereafter as monthly rent. Thus, upon appreciation of the records and the evidence, the learned court below came to the finding that the defendant was not a defaulter.

The scope of interference in Article 227 of the Constitution of India does not include re-appreciation of evidence. This court is not a court of appeal. The court can interfere when an order is perverse. An order is said to be perverse, if it is without jurisdiction or contrary to law or based on extraneous considerations and not on the evidence on record. In this case, the order passed by the learned court below does not suffer from the aforementioned material irregularities.

However, the findings in an application under Section 7(2) are tentative. Default is one of the grounds for eviction. The question of default shall be decided as an issue in the suit upon trial. The court may pass necessary orders in respect of the said issue if the contention of the plaintiffs is found to be correct. The plaintiffs may raise all points at the trial.

This order shall not prejudice the trial.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)