

15.4.2024
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Ct. no. 652
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CO 60 of 2020

**Sk. Nurul Hoda
Vs.
Nurul Ameen**

Mr. Palash Mukherjee ...for the Petitioner

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das
Mr. Soumava Santra ..for the Opposite party

Being aggrieved with the order dated 26th September, 2019 passed by the learned Civil Judge (Junior Division), 1st Court, Howrah in Title Suit no. 693 of 2017, the present application under Article 227 of the Constitution of India has been preferred.

The petitioner herein is a premises tenant in respect of the suit property at a monthly rental of Rs. 250/-. It is alleged that the petitioner, till the month of May, 2016 paid rent but the landlord had granted rent receipt till the month of April, 2016 but from May, 2016, the landlord refused to grant receipt in spite of several requests.

However, since the landlord refused to grant rent receipt so the petitioner under compelling circumstances, sent the rent for the month of June and July, 2016 through money order which was refused by the landlord. The petitioner once again sent the rent for

the month of August, 2016 & September, 2016 to the opposite party through money order but again it was refused by the landlord. In such circumstances, the petitioner filed one application under Section 21 (2) of the West Bengal Premises Tenancy Act, 1997 before the Rent controller being Misc. case no. 363 of 2016 for depositing the monthly rent in respect of the tenanted premises and deposited rent from June, 2016 to July, 2017, before Rent controller.

The petitioner herein filed copy of the challan showing deposit for the month of July 2016 to May 2017 and June & July 2017 by way of supplementary affidavit and also filed one copy of challan showing payment for the month of June, 2016.

In the meantime, the opposite party herein filed aforesaid suit being Title Suit no. 693 of 2016 for eviction and recovery of possession against the petitioner herein. In the said suit, the petitioner herein as defendant appeared and filed one application under Section 7(1)(b) of the Act of 1997 praying for an order allowing the petitioner to deposit the current monthly rent for the month of August, 2017 and also for the upcoming months. It is submitted that since then, the petitioner has been tendering rent before the court below from the month of August, 2017 under Section 7(1) of the Act of 1997. Along with the said application under Section 7(1) of the Act of 1997, petitioner also

filed application under Section 7(2) of the Act of 1997 and the learned court below on 26th July, 2018 had taken up said application wherein the petitioner was directed to pay total sum of Rs. 3850/- towards arrear rent for 14 months from June 2016 to July 2017 along with interest, in a single instalment within 27th August, 2018 and was further directed to pay current rent month by month.

It is submitted by the petitioner that at the time of hearing of the application, under Section 7(2) of the Act of 1997, the petitioner could not produce the challan as the challan for the aforesaid 14 months was missing from the possession of the petitioner and he could not file the same on the date of passing the order but immediately after passing the order impugned dated 26th July, 2018, the petitioner found those challans evidencing the payment made before the Rent Controller from June, 2016 to July, 2017.

Accordingly, the petitioner filed one application under Section 151 of the Code of Civil Procedure for recalling the order impugned passed in connection with said application filed under Section 7(2) of the Act of 1997. The plaintiff/landlord filed written objection against the said application and plaintiff also filed another application under Section 7(3) of the Act of 1997. Learned court below by the order impugned, rejected the petitioner's aforesaid application filed

under Section 151 of the Code on the ground that after full and final adjudication of the application under Section 7(2) of the Act on merit, court has become functus officio and cannot reopen the matter for adjudication unless and until directed by the superior authority and thereby he allowed plaintiff's application under Section 7(3) of the Act.

During hearing of the present application, the petitioner by filing copy of challan, as stated above contended that all the payments have been duly made for the said 14 months before rent controller and there cannot be any arrear rent for the said period.

In such view of the matter, the impugned order dated 26th September, 2019 is hereby set aside. Learned court below is directed to examine the challans if filed by petitioner before the court below for the relevant period and to consider the petitioner's application under Section 151 of the Code of Civil Procedure afresh within a period of six weeks from the date of communication of the order.

C.O. 60 of 2020 is accordingly disposed of.

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.)