

30.01.2024
Court No. 19

C.O. No. 117 of 2022

Mehta Suraya Private Limited

Vs.

East India Trading Co.

Mr. Subhasis Sengupta
Mr. Ratul Das
Mr. Saumendra Mohan Rakshit

.....for the petitioner.

Mr. Ayan Banerjee
Mr. Surajit Biswas
Mr. Arijeet Bera

....for the opposite party.

1. This revisional application arises out of an order dated December 13, 2021, passed by the learned Chief Judge, Small Causes Court at Calcutta in an ejectment suit no.347 of 2019.

2. By the order impugned, the learned court allowed an application filed by the defendant/tenant under Section 7 (1) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act), upon condonation of the delay. The learned court granted opportunity to the tenant to deposit the arrears of rent with 10% interest from July, 2019, at the rate at which it was last paid, upto the month previous to which it was to be paid as per the order and thereafter to deposit the current rent,

month by month within 15th of each succeeding month.

3. The learned court observed that if an act was required to be performed by a private person within a specified time, the same would 'ordinarily' be mandatory, but when a public functionary was required to perform a public function within a specified time, the same would be held to be directory, unless consequences thereof, were specified. According to the learned court, the expression 'ordinarily' allowed the defendant a passage of time to seek the appropriate relief under the law.

4. Mr. Subhasis Sengupta, learned Advocate appearing on behalf of the petitioner submits that the issue was finally put to rest in ***Bijay Kumar Singh and anr. Vs. Amit Kumar Chamariya and anr.*** reported in ***(2019) 10 SCC 660***. According to Mr. Sengupta, the court's jurisdiction to interpret a statute could be invoked only when the same was ambiguous. It was well known that in a given case, the court could iron out the creases, but it could not change the texture of the fabric. It could neither enlarge the scope of legislation nor the intention behind such legislation. The language of Section 7 was plain and unambiguous and not open to interpretation.

5. The courts could not rewrite or recast the legislation. It had been well settled that the real intention of the legislature must be gathered from the language used. The intention of the legislature in this case, was to incorporate a mandatory provision requiring the tenant to deposit the admitted arrears along with 10% interest. An application under Section 7 (1) of the said Act, was to be filed within a month from receipt of summons or within a month from the date of appearance, in case the tenant appeared without receipt of summons. In case of any dispute, the tenant was required to deposit the admitted rent as per the provisions of Section 7 and also file an application raising such dispute, calling upon the court to adjudicate either the rate of rent or arrears of rent. It is contended that all such steps were to be taken by the tenant within the time prescribed by the statute, i.e., one month from date of receipt of summons or from appearance, if the appearance was without summons.

6. The consequences of non-compliance, would lead to striking out the defense of the tenant under Section 7(3) of the said Act. The tenant would lose his right to seek protection from eviction under any of the grounds stated in Section 6 of the said Act.

7. It is further contended by Mr. Sengupta, that not only did the tenant not deposit the admitted

arrear rents from July 2019 along with the interest in the manner and within the time prescribed by law, but the application was also filed belatedly. The summons were received on November 5, 2019 and the application under Section 7 (1) of the said Act, was filed on December, 12, 2019 along with an application for condonation of delay, without any deposit.

8. The pre-conditions not having been fulfilled by the tenant, the tenant's defense deserved to be struck off. Mr. Sengupta urged the court to set aside the order impugned.

9. Mr. Ayan Banerjee, learned Advocate appearing on behalf of the opposite party submits that the decision in ***Chamariya (supra)*** would not be applicable in this case as the suit was not on the ground of default, but on the ground of reasonable requirement. According to Mr. Banerjee, the decision in ***Chamariya (supra)*** was rendered in a case where the ground for eviction was for default. Reference is made to paragraphs 3, 10, 19 and 21 in support of such contention. The facts of the case, in paragraph 3 and 4 would clearly indicate that the Hon'ble Apex Court was considering the consequences of non-compliance of Section 7 of the said Act, in case a landlord filed a suit for eviction on the ground of default.

10. Specific emphasis was laid on paragraph 19 of the said judgment, which is quoted below:-

“19. Sub-section (1) of Section 7 of the Act relieves the tenant from the ejection 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.”

11. Mr. Banerjee further submits that the only possible interpretation, upon harmonious construction of Sections 7(1), 7(2), 7(3) and 7(4) of the said Act, would be that only when the suit had been filed against the tenant on the ground of default, can the court insist on strict adherence to the provisions of Section 7(1) and 7(2) of the said Act, and the time period prescribed therein was mandatory. In a suit for eviction on any other ground, the question of mandatory compliance of Section 7 (1) of the said Act, would not arise. Mr. Banerjee further submits that it was only natural for the tenant to appear on the date stated in the summons. The tenant could easily get misled by the date fixed by the learned court and not take any action, on a prior date. In this case, as well, the date of appearance of the tenant was fixed after one

month from the date on which the summons was served.

12. It is submitted that Section 7 (4) of the said Act, clearly contemplates a situation when a tenant deposits the rent as required under sub-Section (1) and (2). No order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant, could be made by the civil judge.

13. Mr. Banerjee also relies on the decision of the Division Bench of this court, in the matter of ***Subrata Mukherjee vs. Bishakha Das*** reported in ***2012 3 CHN (Cal) 423***, wherein it had been categorically held that the time limit for deposit of admitted arrear of rent as prescribed in Section 7 (1) and 7(2) of the said Act, was not mandatory, but directory. There was scope for the court to extend the time for the tenant to deposit the rent. Such view was taken by the Hon'ble Division Bench upon applying the provision of Section 5 of the Limitation Act, by virtue of Section 40 of the 1997 Act.

14. Having heard the learned counsel for the respective parties, this court finds that in the case in hand, there were certain non-compliances:- (a) the tenant did not deposit the admitted arrear rent along with the 10 per cent statutory interest within the time prescribed (b) the tenant did not approach the

court within the time prescribed by filing appropriate application under Sections 7 (1) and 7 (2) of the said Act.

15. Thus, default in deposit/payment of admitted arrear rent with 10% interest, within the time prescribed, is undisputed. Secondly, in the decision of ***Bijay Kumar Singh (supra)***, the Hon'ble Apex Court decided the scope and ambit of Section 7 of the said Act. Relevant portion being 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 the 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."

16. The Hon'ble Apex Court wanted to bring a certainty to the interpretation of the scope of Section 7 of the said Act. The facts of the case before the Hon'ble Apex Court, was that the tenant did not deposit the rent, but filed an application to determine the arrears of rent, by asserting that they had been paying monthly rent up to June, 1993, to the receiver. The learned trial court allowed the application, by determining the arrears of rent and granted time to pay the arrears of rent so

determined. The matter came up before the High Court, where a learned single judge set aside the order passed by the learned trial judge and held that the compliance of Section 7 (1) of the said Act and the time limit prescribed therein, were mandatory. The matter went up to the Hon'ble Apex Court. The dispute arose due to two conflicting decisions of the High Court. It was urged before the Hon'ble Apex Court that the learned single judge ought not to have decided the matter on merits, but ought to have referred the matter to a larger bench for a decision. With this background, the Hon'ble Apex Court held that instead of going into a controversy as to whether the matter should have been referred to a larger bench or not, by the learned single judge of the High Court, the scope and ambit of Section 7 should be decided, in order to bring a 'certainty' to the same.

17. The decision in ***B.P. Khemka (P) Ltd. vs. Birendra Kumar Bhowmick*** reported in **(1987) 2 SCC 407**, was considered by the Hon'ble Apex Court in ***Chamariya (Supra)***. In ***B.P. Khemka (Supra)***, the issue was the scope and ambit of Section 17, sub-Section 2A of 1956 Act. In ***Chamariya (supra)***, the Hon'ble Apex Court held that such provision was no longer equivalent to the 1997 Act, which repealed the 1956 Act. Thus, the decision in ***B.P. Khemka (supra)*** which permitted payment of arrears of rent

by instalments, was held to be not applicable in case of an eviction suit under 1997 Act.

18. The decision in ***Nasiruddin v. Sita Ram Agarwal*** reported in **(2003) 2 SCC 577** was also considered by the Hon'ble Apex Court in ***Chamariya (Supra)*** and the Hon'ble Apex Court was of the view that the ultimate conclusion in ***Nasiruddin (supra)*** was that word 'shall' should be considered to be mandatory, when a private person was required to do certain acts within the time prescribed. When it came to a compliance by a public functionary, the expression 'shall' should be ordinarily treated as directory unless the consequences thereof was specified.

19. Upon discussions on the earlier decisions and laws on such subject, the Hon'ble Apex Court came to the following conclusion. Paragraphs 19 to 21 of the decision in ***Chamariya (Supra)*** are quoted below:-

“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 Section 7 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 Section 7 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 (2-A) and (2-B) which was being examined by this Court in B.P. Khemka [B.P. Khemka (P) Ltd. v. Birendra Kumar Bhowmick, (1987) 2 SCC 407] . Sub-sections (2-A) and (2-B) of Section 17 of the 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso to Section 7(2) and sub-section (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 precondition 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.”

20. In my view, the learned trial court committed material irregularity by ignoring the decision of the Hon’ble Apex Court in ***Chamariya (supra)*** and held that the expression ‘ordinarily’ in ***Nasiruddin (Supra)*** would give an opportunity to the tenant to seek extension. The learned court did not consider the conclusions arrived at by the Hon’ble Apex Court in paragraphs 19, 20 and 21 of the said decision, which have been quoted above.

21. The Hon’ble Apex Court had clearly stated that Section 7 provided a complete mechanism for avoiding eviction on ground of non-payment of

arrears of rent, provided that the tenant took steps as contemplated under sub-Section (1) of the Section 7 and in case of dispute under sub-section (2) and deposited the arrears of rent on determination of the dispute. Further, the tenant was mandated by law to go on paying the current rent. Deposit of admitted rent along with an application for determination of the dispute, within the prescribed time, was a duty upon a tenant to discharge the obligation to pay the rent due. Failing which, the tenant's defense in a suit for eviction would be struck out.

22. In view thereof, the tenant could not take recourse to Section 5 of the Limitation Act, as it was not only the application, which was required to be filed by the tenant, but the tenant had to deposit admitted arrears of rent as well.

23. In paragraph 20 of the said decision, the Hon'ble Apex Court had clearly stated that if both conditions were satisfied, that is, deposit of admitted arrear of rent along with 10 per cent statutory interest within the time fixed which were prescribed by the statute under Section 7 (1) and filing of the application in case of dispute for determination of the rate of rent and arrears, only then a tenant was entitled to seek protection from eviction.

24. Thus, the learned trial judge could not have just picked up an expression from a paragraph of the

said decision in **Nasiruddin(Supra)** and interpreted the expression ‘ordinarily’ as an opportunity granted to the tenant to pray for extension of time to deposit the arrears of rent and to file the applications.

25. That decision in **Subrata Mukerjee (supra)** is no longer good law. The learned trial judge failed to consider the decision of **Calcutta Gujarati Education Society versus Sri Ajit Naraya Kapoor** passed in **C.O.175 of 2017**.

26. The Hon’ble Division Bench already held in the in **Calcutta Gujarati (supra)**, that Limitation Act did not have any application, if a tenant approached the court under Section 7 of the said Act, for determination of the arrears of disputed rents and for other reliefs as provided in Section 7 of the said Act of 1997.

27. The reliance placed on the decision of **Subrata Mukerjee (supra)** will not help Mr. Banerjee in view of the fact that the matter was already referred to a Division Bench and the question formulated was as follows:-

“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).”

28. The Hon'ble Division Bench, upon consideration of the previous decision and upon consideration of the provisions of Section 5 of the Limitation Act, as also Section 40 of the 1997 Act, arrived at the conclusion that the point had been already decided in ***Bijay Kumar Singh and anr. Vs. Amit Kumar Chamariya and anr.*** by the Hon'ble Apex Court and the decision in ***Nasiruddin (supra)*** was interpreted in the case of ***Chamariya (supra)*** in paragraph 16 thereof.

29. Paragraphs 9 and 10 of the decision in ***Calcutta Gujarati (Supra)*** are quoted below:

“9. Facts in CO 175 of 2017 are that an application for condoning delay to deposit under section 7(1) was allowed. Facts in CO 689 of 2019 are, there was order made determining arrears and deposit. The tenant did not deposit in time and the landlord filed for striking out defence. The tenant then deposited by challan and made application for condonation of delay. Latter case facts are similar to facts in Nasiruddin (supra).

10. Deposit of rent under section 7, calculated on rate at which it was last paid upto end of the month previous to that in which payment is made, is mandated to be paid to the landlord or deposited with the civil Judge. This deposit does not include requirement of application and therefore provisions in section 5 of Limitation Act cannot be extended as declared in Nasiruddin (supra). It is only when admitted rent is sought to be deposited, the deposit must be accompanied by application for determination of arrears. The time specified is by sub-section (1) in section 7. Said sub-section mandates deposit, subject to sub-section (2). In sub-section (2), there is proviso, which says that extension can be granted by the civil Judge only once and the period of such extension shall not exceed two months.

Sub-section (3) in section 7 provides for failure of tenant to deposit, attracting peril of striking out defence. In *Bijay Kumar Singh (supra)* it was said that 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 as well.”

30. Paragraph 11 of the said decision is quoted below:-

“11. The question referred mentions two other decisions of the Supreme Court, *Ashok Kumar Mishra v. Goverdhan Bhai* reported in (2018) 12 SCC 533 and *Manjusree Chakraborty v. M. Ahmed Bhuyan & Co.* reported in (2018) 12 SCC 551. We have perused the decisions. Applicability of Limitation Act, 1963 to rent restriction laws was not under consideration in them. Apart, there is also reference to judgment of a Division Bench of this Court in *Subrata Mukharjee vs. Bishakha Das* reported in 2012 (3) CHN (CAL) 423. By the judgment, view taken was time limit for payment or deposit of admitted rent is directive and not mandatory, by virtue of section 40 in the 1997 Act and section 29(4) in Limitation Act, 1963, section 5 provisions would be applicable and *Nasiruddin (supra)* was inspiration for aforesaid view that the time specified is directory. Here, we with respect observe that the Supreme Court in *Nasiruddin (supra)* said, if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory. The tenant cannot be said to be a public functionary. Also sub-section (2) in section 29, Limitation Act, 1963 saves application of period of limitation prescribed by special or local laws.”

31. Moreover, the argument that ***Chamariya (supra)*** was applicable only to the suits which were filed for eviction on the ground of default is also not acceptable. The title of Section 7 is as follows:-

“When a tenant can get the benefit of protection against eviction”.

32. Section 7 (1) (a) provides that on a proceeding being instituted by a landlord, for eviction on any of the grounds referred to in Section 6, the tenant shall subject to the provisions of sub-Section (2) of the Act, 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 up to the end of the month previous to that in which the payment was made together with interest at the rate of 10 per cent per annum.

33. The section next provides that such payment or deposit shall be made within one month from the service of the summons on the tenant or when he appears in the proceeding without summons being served upon him, within one month from his appearance. Thus, this Section is not limited to suits only on the ground of default. In case of institution of any suit on any of the grounds under the provisions of Section 6, the tenant was required to deposit the admitted arrear rent along with 10 per cent statutory interest per annum within the time specified by the provisions of the said Section to seek protection from eviction. Section 7 (3) of the said Act provides the consequences of non-compliance, i.e, defense of the tenant would be struck off.

34. Thus, applying the decision of ***Chamariya (supra)*** and the decision of the Hon'ble Division Bench in ***Calcutta Gujarati (supra)*** there is no room for any doubt that the provisions of Section 7 (1) and 7 (2) are mandatory.

35. A Special Bench of this court in ***Smt. Binika Thapa (nee Rai) & Anr. Vs Smt. Damber Kumari Mukhia & Anr.*** decided in ***C.O. No. 64 of 2023***, once again decided the issue while interpreting the decision in ***Chamariya (supra)*** and it has been held that the decision in ***Chamariya (supra)*** was law declared on the scope of Section 7 and it was a binding precedent, in terms of Article 141 of the Constitution of India. The relevant paragraphs are quoted below:-

“22. The decision in ***Amit Kumar Chamariya (supra)***, is the law governing the scope of Section 7 of the said Act. The question was framed in Paragraph 5 thereof. The same is binding on all courts. The facts of the case do not make an iota of difference with the points of reference. In ***Amit Kumar Chamariya (supra)*** the Hon'ble Apex Court finally interpreted ***Nasiruddin (supra)***, in paragraph 16 thereof. ***B.P. Khemka (supra)*** was also considered and distinguished in paragraph 18 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 ***Amit Kumar Chamariya (supra)*** would categorically reflect such finding.

23. Section 40 of the said Act makes the Limitation Act applicable to the provisions of the said Act, subject to other inbuilt periods of limitation prescribed. The Hon'ble Apex Court discussed the provision of law and held that

Section 5 of the Limitation Act would not apply if the tenant failed to comply with the mandatory provisions of Section 7.

24. According to the ratio in ***Amit Kumar Chamariya (supra)***, the period of one month as mentioned in paragraph 7(1)(b) was treated to be the inbuilt period of limitation making Section 40 of the said Act inapplicable.”

36. In the decision of ***Debasish Paul and Anr. vs. Amal Boral*** reported in ***2023 INSC 925***, the Hon’ble Apex Court once again reiterated the ratio of ***Chamariya (supra)*** and held that the decision in ***Chamariya (supra)*** could not be doubted.

37. Mr. Banerjee’s contention that the expression that no order of delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant, shall be made by the civil judge, as provided in Section 7 (4), would indicate that only if the suit was on the ground of default, the compliance of Section 7 (1) be treated as mandatory, is not correct.

38. Moreover, the expression on the ground of non-payment of arrears rent in Section 7(4) of the said Act means that the tenant would not face the consequences of his defense being struck off for non-payment of the rent dues, if upon determination thereof, the payment is made or if the tenant complies with Section 7 (1). But in all cases, deposit of admitted rent along with the 10 per cent statutory interest and also deposit of rent as directed by the

court, including the current rent were conditions precedent, for the tenant to be complied with, in order to seek protection against eviction. The tenant has a duty to comply with the provisions of Section 7 (1) and (2) of the said Act, if the tenant seeks to take the benefit of protection from eviction irrespective of the grounds taken for eviction of the tenant in the suit. In case there are rent dues, the tenant cannot set up his own defense in the suit for eviction.

39. The interpretation of the “defense struck off” was elaborately discussed in the decision of the ***Modula India vs. Kamakshya Singh Deo*** reported in **(1988) 4 SCC 619**, the Hon’ble Apex Court held as follows:-

“**24.** For the above reasons, we agree with the view of Ramendra Mohan Dutta, ACJ that, even in a case where the defence against delivery of possession of a tenant is struck off under section 17(4) of the Act, the defendant, subject to the exercise of an appropriate discretion by the court on the facts of a particular case, would generally be entitled:

(a) to cross-examine the plaintiff's witnesses; and

(b) to address argument on the basis of the plaintiff's case.

We would like to make it clear that the defendant would not be entitled to lead any evidence of his own nor can his cross-examination be permitted to travel beyond the very limited objective of pointing out the falsity or weaknesses of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses.”

40. Accordingly, the revisional application is allowed.

41. The order impugned to the extent of condoning the delay in filing the applications under Section 7 (1), permitting the tenant to deposit the arrear rent along with the current rent, is set aside. The tenant can pray for withdrawal of the money deposited.

42. The other part of the order impugned, is not interfered with.

43. There will be no order as to costs.

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

(Shampa Sarkar, J.)