

22.05.2024
Ct. No. 19
Item No. 6
Cp

C.O. No. 196 of 2024
With
CAN 1 of 2024

Shri Suresh Chand Agarwal & anr.
Vs.
Sri Gopal Chandra Ghosh & ors.

Mr. Saptansu Basu, Sr. Advocate
Mr. Gopal Pahari
Ms. Mandeep Kaur

... for the petitioners.

Mr. Tarak Nath Halder

.....for the opposite parties.

1. CAN 1 of 2024 is an application for substitution of the heirs and legal representatives of plaintiffs. The application is allowed.
2. Let the cause title be amended by incorporating the heirs and legal representatives in terms of paragraph 4 of the application.
3. Office is directed to take immediate steps.
4. The revisional application arises out of an order dated December 4, 2023, passed by the learned Civil Judge (Senior Division), 4th Court at Alipore in Ejectment Suit No. 7 of 2020. By the order impugned, the learned court rejected the application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as "the said Act"), filed by the petitioners. The only ground for rejection of the same

was that the application was filed beyond the period of 30 days.

5. Mr. Basu, learned senior advocate for the petitioners, submits that the learned court erred in not considering the decision of the Hon'ble Apex Court in the matter of (In Re: Cognizance for Extension of Limitation). The Hon'ble Apex Court had clarified that the period from March 15, 2020 till February 28, 2022 shall stand excluded in computing the periods of limitation prescribed under various statutes and also other laws. According to the petitioners, the expression 'other laws' would include the special statute under which the suit for eviction was filed.
6. Mr. Basu further contends that as per the specific pleadings in paragraphs 14, 15 and 16 of the application under Sections 7(1) and 7(2) of the said Act, nothing was due and payable to the landlord towards rent. The rent was being paid regularly. Towards the end, the landlord refused to issue any receipts. Thus, the question of deposit of admitted dues would not arise as there were no arrears.
7. Mr. Halder, learned advocate appearing on behalf of the landlord, submits that even if the decision of the Hon'ble Apex Court was applied, and the Hon'ble Apex Court had excluded the period of limitation during the Covid period, but such extension could not automatically result in acceptance of belated

applications, without a prayer for condonation of delay, by filing appropriate application.

8. In the instant case, an application under Section 5 of the Limitation Act had not been filed. Thus, there was no opportunity for the court to condone the delay even by applying the decision of the Hon'ble Apex Court. It was further submitted that entertaining the applications would amount to violation of Section 3(2) of the Limitation Act. Moreover, the admitted dues were not paid. Mr. Halder further contends that had there been no admitted dues, subsequent deposit of a lumpsum of Rs.36,000/-, was irregular.
9. Having heard the learned advocates for the respective parties, this court is of the view that the issues raised by Mr. Basu and Mr. Halder are required to be gone into once again on the basis of oral and documentary evidence. Whether the decision of the Hon'ble Apex Court would apply or whether a necessary application under Section 5 of the Limitation Act should have been filed explaining that there was no delay in view of the Hon'ble Apex Court's judgment, are matters to be decided by the learned court afresh. Whether there were admitted dues prior to receipt of summons by the tenants or whether the subsequent deposits were towards monthly rent etc. are also to be decided by the learned court. Further, the question as to whether from the date of receipt of summons or at least from the date

of filing of the application under Sections 7(1) and 7(2) of the said Act, monthly rents were being paid month by month in compliance with the provisions of Section 7(1)(c), shall also be assessed by the learned court.

10. It appears that an application under Section 7(3) of the said Act had already been filed by the landlord. Thus, all the applications shall be heard together and disposed of within three months from the date of communication of this order, in accordance with law.
11. The application under Section 7(3) of the said Act will be treated as the objection to application under Sections 7(1) and 7(2) of the said Act.
12. The order impugned is set aside. The revisional application is thus disposed of. However, there will be no order as to costs.
13. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)