

30.04.2024
Sl. No.32(DL)
srm

C.O. No. 373 of 2024
Mr. Prashanta Majumder
Versus
Sri Subir Majumder

Mr. Sarbananda Sanyal,
Ms. Paulami Chakraborty

...for the Petitioner.

1. The revisional application arises out of an order dated August 9, 2023 passed by the learned Civil Judge (Senior Division), 3rd Court at Barasat, North 24-Parganas, in Title Suit No.645 of 2020.
2. By the order impugned, the learned court rejected an application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act). The learned court was of the view that in the application there is an admission on the part of the defendant that rent after April, 2020 had not been deposited. Thus, without compliance of Section 7(1) of the said Act and deposit of admitted arrear rent with statutory interest @ 10% as also deposit of current rent, the application under Section 7(2) of the said Act could not be filed.

3. Compliance of Section 7(1) was a pre-condition for filing an application under Section 7(2) of the said Act and determination of the disputes raised in the application under Section 7(2), including the dispute with regard to the relationship of landlord and tenant, could be decided only upon compliance of Section 7(1) of the said Act.
4. The learned court applied the ratio of the Hon'ble Apex Court in the matter of matter **Bijay Kumar Singh –vs- Amit Kumar Chamaria** reported in (2019) 10 SCC 660.
5. The learned Advocate for the petitioner submits that the learned court had erred in not deciding the relationship of landlord and tenant and further erred in not determining the arrears payable thereby granting an opportunity to the petitioner to deposit the arrears so determined, by way of instalments.
6. The application under Section 7(2) of the said Act is perused. In paragraph 3, the petitioner has admitted that the plaintiff and his two brothers had inducted the defendant as a tenant in respect of the suit property at a rental of Rs.300/- per month, payable according to English calendar. An agreement of tenancy was entered into and a rent receipt was initially issued jointly by the plaintiff and his two brothers, namely, Dilip and Pradip.

From the first part of January, 1994, the plaintiff requested the defendant to pay the rent to Pradip. Accordingly, rent was paid to Pradip. Pradip subsequently became the landlord.

7. In paragraph 4, there is a categorical admission that the rent was paid by the petitioner/defendant to Pradip up to March, 2020. Thus, the petitioner's own admission is that since April 2020, rent was not paid and the suit was filed sometime in December, 2020.
8. The Hon'ble Apex Court in the matter **Amit Kumar Chamaria** (supra), has clearly held that the compliance of Section 7(1) of the said Act was a pre-condition to filing an application under Section 7(2) of the said Act. The Court had further held that the provision of Section 7(1) was mandatory and the tenant, in order to seek protection from delivery of possession in a suit for eviction under any of the grounds under Section 6 of the said Act, would have to deposit the admitted arrear rent along with 10% interest within one month from the receipt of the summons or within a month from the date of appearance, if the tenant appeared without summons. Thereafter, the tenant was required to continue to pay to the landlord or deposit with the civil judge, current rent

month by month within 15th of every succeeding month, a sum equivalent to the rent at that rate.

9. In this case, the admitted arrear with 10% interest was not deposited when the application under Section 7(1) of the said Act was filed.
10. Under such circumstances, the provisions of law had not been followed by the tenant and the learned court rightly rejected the said application.
11. Even in case of a dispute, the tenant was required to deposit the admitted arrear rent with 10% interest on the said amount as per sub-section (1), within the statutory period of one month and file an application asking the court to determine the dispute either with regard to the rate of rent and/or the arrears payable or the relationship. Such procedure was not followed. The prayer for belated deposit of the arrears cannot also be allowed by this court, in view of the decision of the Hon'ble Apex Court. The provisions of Section 5 of the Limitation Act will not apply, either to condone the delay in filing the applications under Sections 7(1) and 7(2) of the said Act or to allow belated deposit of the arrear rent with 10% interest. The filing of the application and the deposit of the amount are simultaneous acts to be completed within

one month from receipt of summons or within one month from the date of appearance in case the tenant appears without service of summons.

12. The Hon'ble Apex Court in the **Amit Kumar Chamaria** (supra), held as follows:-

“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 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 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 (2A) and (2B) which was being examined by this Court in B.P. Khemka. Sub sections (2A) and (2B) of Section 17 of 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso of sub sections (2) and (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 pre-condition 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."

13. The decision in *Amit Kumar Chamariya (supra)* is a binding precedent which has been decided by this Court, and it is a law laid down. Such is the decision in the matter of *Smt. Binika Thapa (nee Rai) & Anr. Vs Smt. Damber Kumari Mukhia & Anr.* decided in *C.O. 64 of 2023*. The relevant paragraphs are quoted below:-

“15. Section 7 was interpreted in *Amit Kumar Chamariya (supra)* and the entire mechanism by which a tenant could seek benefit from eviction on the ground of default, was considered to be mandatory and inter-related. The provisions of the said section were discussed in the following paragraphs thereof:-

16.

17. We proceed to discuss the ratio in *Amit Kumar Chamariya (supra)*. On institution of a suit by the landlord for eviction on any of the grounds referred to in Section 6 of the said Act, the tenant, subject to the provisions of sub-section (2) of the Section 7, was liable to 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 upto the end of the month previous to that in which the payment was made, together with interest at the rate of 10% per annum. Such payment or deposit was to be made within one month from the service of summons on the tenant or when the tenant appeared in the suit without summons being served, within one month from his appearance. Thereafter, the tenant was enjoined by law, to continue to pay to the landlord or deposit with the civil judge a sum equivalent to the rent at that rate, month by month within 15th of each succeeding month. In case of any dispute as to the amount of rent payable by the tenant, the tenant was liable to deposit with the civil judge, within the time specified in the sub-section, the amount admitted by him to be due from him together with an application for determination of the rent payable.

No such deposit could be accepted unless it was accompanied by an application for determination of the rent payable. On receipt of the application, the civil judge, having regard to the rate at which the rent was last paid and the period for which default may have been made by the tenant, determine the dispute and pass an order within a period not exceeding one year, specifying the amount, if any, due from the tenant and thereupon the tenant was liable to pay to the landlord within one month from the date of such order, the amount so specified in the order along with the monthly rent at the rate so determined.”

14. Thus, on an appreciation of the facts and law, it appears that the defendant had failed to deposit the admitted arrears. Factum of unpaid rent is available in paragraph 4 of the application under Section 7(2). Thus, there are two non-compliances, which cannot be condoned by any court. The ratio of the Hon’ble Apex Court in the matter of *Amit Kumar Chamariya* (supra) and in *Debasish Paul and Anr. vs. Amal Boral* reported in 2023 INSC 925, are binding precedents.

15. In *Debasish Paul* (supra), the Hon’ble Apex Court also reiterated the ratio of *Chamariya* (supra) and held that the ratio of *Chamariya* (supra) could not be doubted. The briefs facts before the Hon’ble Apex Court were as follows:-

“2. In the proceedings, the respondent made an application under Sections 7(1) and (2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the ‘said Act’). The application was

rejected by the Trial Court vide a judgment dated 11.09.2018 on the ground that the respondent had entered appearance in the suit on 09.02.2016 but filed the application only on 14.12.2016 i.e., after a delay of ten months.

3. The application, not being filed within the statutory period of one month, was, thus, rejected. No application was filed under Section 5 of the Limitation Act, 1963.

4. The respondent, aggrieved, by the same preferred a Civil Revision before the High Court and in terms of the judgment dated 21.08.2019, the High Court set aside the judgment dated 11.09.2018 and granted liberty to the respondent tenant to file an application under Section 5 of the Limitation Act, 1963 explaining the circumstances causing the delay for the purpose with the prayer for condonation of delay in support of the application under Sections 7(1) and 7(2) of the said Act already filed.”

16. The other prayer for instalments also could not be granted in view of the observations made hereinabove. In any event, the provision of granting instalments to pay up the arrear rent, has not been incorporated in the West Bengal Premises Tenancy Act, 1997.

17. The revisional application is, thus, dismissed.

18. There shall be no order as to costs.

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

(Shampa Sarkar, J.)