22.04.2024
Sl. No.35(DL)
srm

C.O. No. 307 of 2022

Asiatic Oxygen and Acetylene Co. Ltd.

Versus

M/s. B.J. M. Industries Ltd.

Mr. Debjjit Mukherjee,
Mr. Kaushik Banerjee,
Ms. Rashmita Sen
…for the Petitioner.

Ms. Nilima Das
…for the Opposite Party.

1. The revisional application arises out of an order dated January 11, 2022 passed by the learned Civil Judge (Junior Division), 1st Court at Howrah, in Title Suit No.84 of 2013, which was renumbered as Title Suit No.10013 of 2014.
2. By the order impugned the learned court disposed of an application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997, *inter alia*, holding the defendant company to be a defaulter in payment of rent. The court directed the amount of Rs.3,34,704/- to be paid in three instalments.
3. The petitioner challenges the calculation and refusal on the part of the learned court to set off the municipal tax

paid to the Howrah Municipal Corporation allegedly in respect of the entire property. It is contended that the learned court ought to have held that the amount paid by way of tax to the municipal corporation should be deducted from the total arrears due.

4. Learned Advocate for the landlord/plaintiff/opposite party submits that only the occupier's share of the tax was paid and the defendant failed to prove with cogent evidence that there was no default.

5. Having heard learned Advocates for the respective parties, this Court finds that the learned court, upon considering the exhibits filed by the defendant, arrived at a conclusion that the defendant had paid the amount by a pay order in favour of the Howrah Municipal Corporation being a share of the property tax up to 4th quarter of 2003-04. However, it was not possible for the Court to deduce either for how many months or the probable period for which the tax had been paid. In the absence of any pleadings and documents, the Court could not reach a conclusion regarding the payment of tax by the defendant company.

6. Moreover, the rent bills also could not be produced since March, 1991. Only rent bills for August 1996, October

1996 and November 1996 were provided to the court. The learned court found that the defendant was a defaulter from March 1991 till January 2022, except for the months of August 1996, October 1996 and November 1996. A calculation was also made along with interest for the default and a sum of Rs.3,34,704/- was found to be due and payable.

7. Mr. Mukherjee, learned Advocate for the defendant company submits that the calculation was incorrect as 10% interest at a flat rate was charged. Secondly, it is submitted that the learned court ought to have allowed the parties to lead evidence on the issue as to whether the tenant would be entitled to recover the owner's share of the municipal tax, which was allegedly paid by the defendant tenant.

8. Learned Advocate for the landlord denies that the municipal tax was paid for the entire building. She relies on page 55 of the revisional application.

9. The short questions involved are; (a) whether the quantum of default was miscalculated by imposing compound interest, (b) Whether the defendant was entitled to adjustment of the municipal tax or any portion thereof.

10. It is submitted by the petitioner that the amount, as directed by the learned court, has been deposited in the learned court. Thus, the questions, which have been raised by Mr. Mukherjee, as mentioned hereinabove, shall be decided in the suit when the court proceeds to decide the issue of default, at the trial, upon evidence.
11. The deposit already made shall abide by the result of the decision of the learned court on such issue.
12. The revisional application is, thus, disposed of.
13. There shall be no order as to costs.
14. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)